

Follow us on **Twitter** @BerkLawBizNet • Like us on **Facebook** @The Network: Business at Berkeley Law

Faculty News and Research Highlights

Eric Talley commented on the progress of the Dodd-Frank legislation. "[Financial Reform, One Year Later](#)," which sees the act under legislative attack. Some are questioning whether the legislation is on track to accomplish its goals. (*NPRNews*)

Robert Bartlett and co-author Victoria Plaut published "[Blind Consent?](#) A Social Psychological Investigation of Non-Readership of Click-Through Agreements." Consumers typically don't read form contracts which often contain hidden traps. The result can be catastrophic, personally and systemically, as the subprime mortgage crisis demonstrated. Their article tackles this issue within a notorious domain, internet click-through agreements, and suggests ways to increase readership so consumers can avoid contract pitfalls.

Securitization -- the combination of a group mortgages into a package, interests in which are sold on public and private securities markets -- is a cornerstone of the financing structure for the American housing market. The collapse of this residential mortgage securitization market was a fundamental contributor to our continuing economic crisis. In their paper, "[The End of Mortgage Securitization? Electronic Registration as a Threat to Bankruptcy Remoteness](#)," John Hunt, Richard Stanton and **Nancy Wallace** discuss a previously overlooked threat to the stability and continued operation of the market for securitized housing mortgages. The recently created and little known "Mortgage Electronic Registration Systems, Inc.", or MERS, has ownership of over 60 million mortgages that secure trillions of dollars in homeowner debt. Hunt, Stanton and Wallace's paper describes how the MERS structure and operation may create unforeseen risks for investors in mortgage-backed securities and how that risk may be mitigated.

Alan Auerbach discussed the corporate tax code: "It's true that drastically reducing the corporate tax rate would make the US a more attractive place to invest — and probably turn us into a tax haven." But, he adds, how would you make up the revenue? "[Life in a low corporate tax world](#)" (*Washington Post*)

Events

Monday, August 29, 2011; 12:45 – 1:45pm

Boalt Hall Room 110

Corruption & Fraud in China: Challenges for US Companies & Investors

[Nathan Bush](#), O'Melveny & Myers, Beijing.



China offers both opportunities and perils for US companies and investors. Official graft and commercial bribery remain pervasive, raising risks of liability under the US Foreign Corrupt Practices Act, other nations' foreign bribery statutes like the new UK Bribery Act, and China's domestic law. Dozens of China-based companies

listed on foreign stock exchanges are now facing regulatory investigations and shareholder litigation stemming from allegations of fraud and other misconduct. Are these symptoms of the same underlying weaknesses in China's corporate governance standards and opaque regulatory climate? Bush will assess current efforts by US companies, investors, and regulators to confront these challenges, and the implications for China's political and economic climate. To register click [here](#).

2012 Symposium Topic Announced. BCLBE, in collaboration with the Berkeley Business Law Journal ([BBLJ](#)), will hold its **Annual Symposium** in March 2012. Scholars, practitioners, business leaders and policymakers will explore how information networks and flows have evolved in the digital age with dramatic impacts on the securities and other financial markets. Access to information is a significant component of making markets work. Securities markets have evolved from the trading floors and analysts' divisions of brokerage houses to a computerized, fragmented marketplace with algorithmic trading, computerized data mining, a vastly expanded over the counter market and trading in unregistered securities (such as Facebook). Computers programmed to trade can cause "flash crashes" with markets swings of 10% in minutes. Traders even seek advantages measured in milliseconds by locating their computer servers in buildings that also house servers for securities exchanges.

Faculty News and Research Highlights

continued

David Gamage weighs in on a pending bill which would allow sales taxes to be collected from online stores. "[You may soon be paying sales tax on your Amazon purchases.](#)" Gamage says Amazon's brick-and-mortar rivals are pushing hard to take away Amazon's advantage and "sponsoring and trying to campaign for legislation to make sure Amazon and other online retailers will be taxed." (*Marketplace Tech Report*)

Alan Auerbach recently noted the "[Road to economic recovery can be long, rocky.](#)" (SF Chronicle). Nearly three years after a financial panic threatened to bring down the US economy, unemployment is stuck at more than 9 percent, credit agencies are issuing dire warnings about the nation's debt, growth has stalled and President Obama faces the prospect of a one-term presidency.

Robert Bartlett presented "[Making Banks Transparent](#)" at The University of Pennsylvania Wharton School's Conference on International Financial Regulation. Contrary to current skepticism, it is possible to balance bank transparency and proprietary interests. By turning to the insights of credit risk modeling, this article argues that redesigning bank disclosures to facilitate credit modeling by market participants has the potential to meaningfully increase market discipline while minimizing the disclosure of sensitive bank data.

Curriculum

The start of the new academic year includes a high level of interest in the [LL.M. Business Law Certificate](#). Out of the Berkeley Law LL.M. program's 130 students, over 70 have expressed interest in pursuing the business law certificate. With one of the most diverse and distinguished advanced law degree programs in the United States, Berkeley Law attracts some of the world's most talented and promising legal minds every year. Berkeley Law's LL.M. graduates collectively represent over 60 countries, reflecting the program's tremendous international appeal. The Business Law Certificate Program allows LL.M. students to receive recognition for successful completion of a course of study to prepare for professional practice as legal advisors to businesses, to business-oriented NGOs, and to government entities. The curricular program requires students to develop a background in fundamental areas of business law. Students completing the program will have breadth, expertise and a foundation for professional practice.

Sponsors

LATHAM & WATKINS LLP



Events

continued

2012 BBLJ Symposium *(continued)*

The 2012 Symposium will be organized around three panels:

- 1) The Regulation of Insider Trading
- 2) The Evolution of Market Structure
- 3) Information Flow and Trading Challenges in the New Secondary Markets

BCLBE Online

The Network: Business at BerkeleyLaw recently posted on "[Revamping Patent Law: What it Means for Business Method Patents](#)," discussing the controversy prompted by "[The America Invents Act](#)," versions of which have passed the House and Senate, and which includes an administrative program for review of business-methods patents, bans all issuance of tax-strategy patents, and creates a review process to challenge patents within the Patent and Trademark Office, in some cases years after they are granted. While the Act is intended to create a more efficient patent granting system and reduce frivolous litigation, critics have expressed concerns that it may undermine inventors' property rights. Other recent posts on The Network include a summary of the unfinished business of Dodd-Frank financial reform legislation a year after its enactment and a discussion of new protections for securities violations whistleblowers.

BCLBE's [Venture Capital Research Network](#) continues to follow VC activities with recent posts including "[Economic Ties: Evidence from Venture Capital Networks](#)," which comments on how networks in the venture capital community facilitate the distribution and combination of resources across VC firms. A notable finding is that VCs use network ties to trade experience for access to capital, thereby allowing VC firms that have ample available capital but few other resources to successfully invest that capital.

Check the [BCLBE Website](#), follow us on [Twitter](#), or Friend us on [Facebook](#) for updates on our research, policy papers and activities, to view recordings of our past programs, and to obtain in depth analyses and background materials about important issues relating to the impact of law on business and the US and global economies.

BCLBE Directors

Eric Talley, Faculty Co-Director

etalley@law.berkeley.edu

Nancy Wallace, Faculty Co-Director

wallace@haas.berkeley.edu

Ken Taymor, Executive Director

ktaymor@law.berkeley.edu

Contact BCLBE at: bclbe@law.berkeley.edu