The interpretive notice provides, among other things, that:

- An FCM or IB must provide its customer with the NFA investor advisory titled "Futures on Virtual Currencies Including Bitcoin" and the CFTC customer advisory titled "Understand the Risk of Virtual Currency Trading."
- A CPO or CTA must provide investors with "robust" and customized disclosures related to their activities in spot market virtual currencies and virtual currency derivatives.
- Any CPO or CTA that operates a commodity pool, exempt pool, or managed account program that trades spot market virtual currencies must include standardized disclosure addressing the limits of the NFA's oversight.

The interpretive notice will become effective on October 31, 2018.

Search Updated: NFA Interpretive Notice Requires Enhanced Virtual Currency Disclosures for CPOs, CTAs, FCMs, and IBs for more on the interpretive notice.

INTELLECTUAL PROPERTY & TECHNOLOGY

STATES AIM TO PRESERVE NET NEUTRALITY

Telecommunications companies, online content providers, and e-commerce companies should monitor states' efforts to preserve net neutrality, as well as developments in anticipated litigation to challenge these efforts.

Over 30 states have proposed net neutrality legislation, and Oregon, Vermont, and Washington have already enacted net neutrality laws. The California legislature recently passed the country's toughest net neutrality legislation. As of press time, the California legislation awaits signature by Governor Jerry Brown.

These state efforts are in response to the FCC's release in January 2018 of the Restoring Internet Freedom Order (RIFO). Before the RIFO, internet service providers (ISPs) were classified as common carriers (pursuant to the Obama administration's 2015 Open Internet Order), which are regulated at the federal and state level and prohibited from giving customers preferential treatment. The RIFO reclassified ISPs as information service providers, effectively exempting them from net neutrality regulation. The RIFO also includes an express provision preempting any state or local regulations that are inconsistent with the FCC's deregulation policy.

Proponents of the state legislation argue that elimination of net neutrality frees ISPs to selectively block and throttle internet traffic for their own benefit (for example, by favoring their own content, or the content of others willing to pay more) and to the detriment of small businesses and consumers. However, opponents, including ISPs and many of their suppliers, argue that preserving net neutrality stifles investment in network infrastructure, leads to increased prices, and allows individual states to dictate national telecommunications regulations.

The state legislation likely will be challenged on preemption grounds. The FCC already points to the recent Eighth Circuit decision in *Charter Advanced Services (MN), LLC v. Lange* as support for the preemption position. In that case, the court held that Minnesota could not regulate a company's Voice over Internet Protocol (VoIP) service because the service is an information service, the regulation of which conflicts with the federal deregulation policy and is therefore preempted.

LABOR & EMPLOYMENT

CHANGES TO LEGAL IMMIGRATION POLICIES

Employers with foreign workers should be aware of changes to legal immigration policies under the Trump administration. These policy changes may affect employers by making the immigration sponsorship process longer, more expensive, and more uncertain. New guidance that eliminates deference for status extensions, and makes petition processing longer and deportation after petition denials more likely, creates unpredictability in recruiting and hiring programs.

To mitigate disruptions in business activities, employers should:

- Evaluate:
  - the company's overall hiring needs in the US and globally;
  - the US policy impact on immigration sponsorship; and
  - alternatives to immigration sponsorship.
- Identify foreign workers impacted by specific policy changes and strategize alternative visa classifications or work arrangements (such as working abroad) where needed and available.
- Review the processes used to complete immigration petitions and ensure that the company is following best practices consistently to collect and evaluate documentation relating to:
  - the foreign worker's (and immediate family members') immigration status and history, including any time spent in the US as a foreign student; and
  - the anticipated visa classification requirements and the foreign worker's qualifications.
- Set expectations with managers and foreign workers regarding timing and possible complications and update them as needed based on ongoing policy changes. Provide regular updates to both managers and foreign workers to avoid miscommunications.
- Plan for business continuity in case of immigration-related delays.
- Consider whether to engage in government advocacy pertaining to legal immigration and hiring needs.

All employers should continue to ensure compliance with Form I-9 requirements due to increased worksite enforcement.

Search Immigration Executive Orders Under Trump: Buy American and Hire American for more on the Trump administration's efforts to restrict legal employment-based immigration.

Search Employer-Sponsored Nonimmigrant Visa Petitions in the US for more on the process for employer-sponsored nonimmigrant visa petitions in the US.

TAX

GILTI PROPOSED REGULATIONS

The IRS and Treasury Department recently released proposed regulations addressing the new tax on global intangible low-taxed income (GILTI). The proposed regulations are the first of several sets of guidance expected on GILTI this year.

GILTI was introduced in 2017 tax reform legislation and requires a US person that owns at least 10% of the value or voting rights of a controlled foreign corporation (CFC) to annually include GILTI in its gross income. GILTI is generally net income of a CFC in excess of a 10% return on the CFC's tangible assets. For purposes of calculating GILTI, Subpart F income and certain other income is excluded. US shareholders that are corporations can deduct 50% of GILTI (37.5% for taxable years beginning on or after January 1, 2026).

The proposed regulations provide computational, definitional, and anti-avoidance guidance so that US shareholders can determine their GILTI inclusion amounts, including:

- Detailed guidance on items determined at the CFC level, such as:
  - tested income and tested loss;
  - qualified business asset investment (QBAI); and
  - the items necessary to determine the amount of interest expense that reduces net deemed tangible income return (net DTIR).
- General rules to determine a US shareholder's pro rata share of CFC-level items.
- Specific rules describing the aggregation of a US shareholder's pro rata share amounts to determine the shareholder's GILTI inclusion amount.
- Anti-abuse rules addressing transfers between related CFCs that are principally designed to reduce the GILTI inclusion of a US shareholder.

The proposed regulations rely in part on rules already developed under Subpart F. Therefore, taxpayers can use the same analysis for GILTI that they already use for Subpart F purposes.

The proposed regulations apply to taxable years of CFCs beginning after December 31, 2017, and to taxable years of US shareholders in which, or with which, such taxable years of CFCs end.

GC Agenda Interviewees

GC Agenda is based on interviews with Advisory Board members and leading experts from Law Department Panel Firms. Practical Law would like to thank the following experts for participating in interviews for this month's issue:

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Hogan Lovells US LLP

Lee Van Voorhis
Jenner & Block LLP

Laura Wilkinson
Weil, Gotshal & Manges LLP

CAPITAL MARKETS & CORPORATE GOVERNANCE

Craig Arcella
Cravath, Swaine & Moore LLP

Karen Hsu Kelley
Simpson Thacher & Bartlett LLP

Robert Downes
Sullivan & Cromwell LLP

COMMERCIAL TRANSACTIONS

Daniel Herling
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Nicole Bogard, Jake Downing, Richard Schwartz
Seyfarth Shaw LLP

Jamin Koslowe and Alvin Brown
Simpson Thacher & Bartlett LLP

Michael Bergmann, Neil Leff, and Jeffrey Lieberman
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