DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Carolyn Herzog

Executive Vice President and General Counsel, Arm Limited

THE SPEAKERS

Carolyn Herzog
Executive Vice President and General Counsel, Arm Limited

Doug Cogen
Partner, Fenwick & West LLP

Lior Nuchi
Partner, Norton Rose Fulbright LLP

Dominic Robertson
Partner, Slaughter and May

Karalyn Mildorf
Partner, White & Case LLP

Kevin Anderson
Partner, Wiley Rein LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor and her colleagues, we are presenting Carolyn Herzog and the Legal Department of Arm with the leading global honor for General Counsel and Law Departments. Arm is a world-leading global semiconductor and software IP company, providing solutions for AI, IoT [Internet of Things], and security.

Her address focused on key issues facing the General Counsel of an international technology corporation. The panelists' additional topics include mergers and acquisitions, technology and innovation, UK/EU digital tax proposals; national security and CFIUS; and intellectual property.

The Directors Roundtable Institute is a 501(c)(3) which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel. Join us on social media for the latest news for Directors on corporate governance and other important VIP issues.

Carolyn Herzog

Executive Vice President and General Counsel

Carolyn Herzog is EVP and General Counsel at Arm. Carolyn joins Arm from Symantec where she served as the Chief Compliance Officer, Vice President and Deputy General Counsel responsible for the Office of Ethics and Compliance, the Privacy Program Office, Litigation, Employment, Product Legal, Global Enterprise Go-to-Market, Americas Sales and Services and License Compliance.

Previously, Carolyn was the Vice President, Head of Legal and Public Affairs for Symantec's Europe, Middle East and Africa region, based in the UK. Carolyn has served on the European Board of the Association of Corporate Counsel as well as the Board for the National Cyber Security Alliance, and prior to moving to the technology sector, Carolyn worked in the international development arena, both in the non-profit sector and with The World Bank in Washington, D.C.

arm

Arm Limited

Arm defines the pervasive computing shaping today's connected world. Realized in 125+ billion silicon chips, our device architectures orchestrate the performance of the technology transforming our lives — from smartphones to supercomputers, from medical instruments to agricultural sensors, and from base stations to servers.

A Global Ecosystem of Innovators

The foundation of a global ecosystem of technology innovators, we empower the world's most successful business and consumer brands. Every day our thousands of partners embed more than 45 million Arm-based chips in products that connect people, enhance the human experience, and make anything possible. Extensible, scalable, and ever evolving, it is a foundation that confirms how we lead by design — to serve today, anticipate tomorrow.

ARM Company Highlights

- World's leading semiconductor IP company
- Arm technologies reach 70% of the global population
- More than 6,000 employees from 61 nationalities
- More than 130 billion Arm-based chips shipped to date
- An ecosystem of more than 1,000 partners

Our People

Arm was founded by a dozen engineers working from a converted barn in Cambridge, UK, a quarter of a century ago. By the end of 2015, that team had grown to more than 4,200 people in sites around the world. Arm gives its people the capabilities, processes and infrastructure to enable them to develop and thrive as the business scales and strengthens. At the same time, we seek to nurture a work culture that remains true to our founders' original vision; empowering our engineers to be innovative and drive Arm-based technology into all areas where compute happens, maximizing their creative potential and enabling all of our people to be their brilliant selves.

KAREN TODD: Good morning. I'm Karen Todd, the Executive Director and Chief Operating Officer of Directors Roundtable, and I'd like to welcome you here today. I especially want to thank the law firms, Bar groups, professional groups, universities, and other organizations who invited their members to attend this event. We do appreciate it, and we hope that you enjoy the discussion.

I wanted to give you a brief on this program series. We honor General Counsel because they are the moral compass of companies, and they have a lot to handle. We wanted to give them an opportunity to tell you about their successful actions and how they deal with business in today's changing world.

We've been doing this program since 2005, and in that time, we've honored over 50 different companies internationally. Today, we're here to honor Carolyn Herzog and the Law Department of Arm. I'd like to acknowledge all the people of the Law Department of Arm who are here. [APPLAUSE]

Thank you. We've very glad you were able to be here. Arm has two different bases; one in the UK and another in Silicon Valley. Obviously, it would be difficult to bring all the UK people here, so we appreciate the Silicon Valley people who are present.

We have a distinguished panel that I will now introduce: Doug Cogan from Fenwick & West; Lior Nuchi from Norton Rose Fulbright; Dominic Robertson from Slaughter and May; Karalyn Mildorf with White & Case; and Kevin Anderson with Wiley Rein.

Before we get started, I have a special surprise for Carolyn. We contacted the Dean of the Law School of Wisconsin about this event and she sent us this letter:

> Dear Director Todd:
>
> It is my honor to be included in the Directors Roundtable Institute World Recognition of Distinguished General Counsel Carolyn Herzog and the Law Department of Arm. Carolyn has held the role of EVP and General Counsel with Arm, the world's leading semiconductor IP company, since February of 2017. She joined Arm from Symantec, where she served as the Chief Compliance Officer, Vice President, and Deputy General Counsel. Carolyn is a very talented and sought-after professional. Prior to moving to the technology sector, Carolyn worked in the non-profit sector and with the World Bank in Washington, D.C. She is an excellent Guest of Honor for the Directors Roundtable Institute.
>
> Carolyn is an ideal candidate to address the key issues facing General Counsels' offices in international technology corporations. Her wide range of experiences in two major technology companies, plus her wide range of international experience, will ensure an engaging program.
>
> Congratulations to Carolyn for this worthy and well-earned honor. We are very proud to be her law school.
>
> My best wishes,
> Margaret Raymond
> Fred W. and Vi Miller Dean and
> Professor of Law

[APPLAUSE]

KAREN TODD: With that, I'm going to turn it over to Carolyn.

CAROLYN HERZOG: Thank you so much! It's nice, because I was reminding the panel last night how much fun I had in law school, but that particular Dean was not there when I was in law school. [LAUGHTER]

Thank you all so much for being here and thank you very much to the Directors Roundtable and our guests today for this recognition. I'm truly grateful for this opportunity to represent Arm and our amazing legal team here. I'm also hugely appreciative to our law firm partners who support us every day, some of them through the fascinating evolution of the company. You'll hear a little bit about that in this program.

When I began my career, I couldn't have imagined the path that would lead me to where I am today. After honing my skills as a waitress, my first job was working on health and education projects at the World Bank in the African Department in Washington, D.C. Now, I lead the legal team for one of the most influential technology companies in the world. It's a company that many of you probably have never heard

of. Along the way — as you heard — I worked for many years with a company you probably *have* heard of — Symantec — one of the world's leading cyber security companies. This path, and my role now, illustrate the challenges and the changing role of General Counsel for *all* companies as we look to the future. Let's face it — we're here in Silicon Valley, and *all* of us spend our days looking towards the future.

This is a photo from my days post-World Bank, after law school. I joked last night that my father was a little disappointed that I was one of the few people — I went to work for a non-profit that was World Bank-funded — that made less money after law school than before law school. [LAUGHTER]

I began my career in the pre-smartphone era, before we saw the potential of a smartphone or supercomputer in your pocket, and knew how incredibly transformative that would be. Thinking back to what we wanted to achieve in those projects in Africa, the challenges were often about unlocking the key to personal behaviors. I've worked on the first regional AIDS project in Africa, and recall being surrounded by these incredibly smart economists and strategists — and yet the ultimate solution came down to culture and predicting human behavior. We cannot solve for the world's greatest needs without taking into consideration culture, behavior and, of course, taking on some big bets. Now, technology unlocks completely different opportunities and solutions. But some of that same technology brings new challenges for us in the legal field every day. That's incredibly exciting for us.

I'm forever grateful for two things in this unexpected career path that I've taken. One, I have never, ever been bored; and two, I've always felt that I've been doing something incredibly important to help make the world a better place.

Now, Arm isn't exactly a household name, but I can guarantee that you've all used our technology. The name originally

derives from an acronym, Advanced Risk Machines. Yes — we are so geeky that we have an acronym within an acronym for our name, but like an "artist formerly known as," we are actually a name and not an acronym. My children asked, "What is that leg company that you work for?" but it is "Arm." [LAUGHTER]

What we do is we create technology that powers everything from smartphones to IoT [Internet of Things] to cars, robots, cellular networks and more. We license that technology across the technology industry, where other companies then build it into devices that use services that you all use today.

I absolutely love hearing stories about how Arm is used in the most unexpected ways. I was traveling with our CEO — this last week, we went to Tokyo — and he was at an event at the Tech Museum here in San Jose the night before. He was looking at all of these demonstrations and was attracted to one in particular. The presenter was incredibly excited when our CEO approached him and said that he was Simon Segars of Arm. The presenter said, "Oh my goodness — we use your technology!" Simon wasn't aware of this at the time. They use the Arm technology to embed a device into the horn of a rhinoceros, and they use this tracking device in the horn of the rhinoceros to help protect them from poachers. With this, they drastically reduced the killing of rhinos in Africa as a result of being able to track them.

Implementing technology for good is very much at the core of what Arm does. It made Simon proud and excited to hear this story. We hear these kinds of stories every day, where Arm technology ends up in the most unexpected places being used for exciting opportunities.

As you can see from some of these statistics, Arm is everywhere. Seventy percent of the world's population uses Arm's technology. That's usually a pretty surprising statistic for people. Ninety-five percent of all smartphones use Arm's architecture. I guarantee the phone that is in your pocket or in your bag today is using Arm's architecture.

We partner with over 1,000 companies in the Arm ecosystem, so we are all about the partnership and 130 billion chips are shipped with Arm's technology today.

Our Chairman, Masayoshi Son, likes to say that "trillion is the new billion," orange is the new black, and trillion is the new billion! [LAUGHTER]

My choice to leave a successful company and industry in cyber security couldn't have been at a more exciting time. I was completely at home and, honestly, absolutely thrilled with my management — people often say that you leave your manager — I did not. I loved my manager, and I absolutely loved the people that I worked with (and I just waved to one of them) — it was just a wonderful company and a wonderful place. I was one of the lucky people that could afford to be picky about where I wanted to go next.

Choosing Arm was not just about the fascinating technology and the potential trajectory of the company. It was about the mission of the company and the highly inclusive and high-integrity culture to which I was going.

Arm is an amazingly employee-focused company, with an incredibly long-tenured leadership. Some people in the audience know these stories — our CEO has been with the company for over 27 years. He has a lot of interesting stories to tell. I sometimes have to remind him to slow down. I look at him blindly and think I have absolutely no idea what he's talking about. We talk about "we," not "I." Arm is an incredibly curious company, and our people are willing to challenge the status quo. We have an Intranet chatter site where people will say almost anything. In our open forums, they will challenge the CEO or me openly. It's incredibly unique that way — people are not afraid to challenge what they're hearing or seeing, and to think about new and innovative ways of doing things. Arm is absolutely a global company with unique and wonderful people, and a very inclusive culture. I'll talk about diversity a little bit later, but we have the motto of "being your brilliant self." It's not that we don't have more that we need to do in diversity — we absolutely do — but the inclusiveness is absolutely apparent on a day-to-day basis.

Integrity is also important. We believe in technology for good, but the last thing that keeps me up at night, as a General Counsel, is people doing the wrong thing. People at Arm do not act unethically, and they ask challenging questions. I find it very interesting — one of the first things that was apparent to me when I joined is that people would ask the legal team, "Do you want to check that with outside counsel one more time?", which was not something that I had experienced before in my career.

Now, you might recognize some of these handsome people in the room in this slide. It's my pleasure to talk a bit about the legal team at Arm, because the legal team is just as unique as the company in which we operate. I want to take a moment to acknowledge some of the amazing work that this team has been doing. Obviously, I've been with the company less than two years, so this recognition is not about me. I'm very well aware that this is about the incredible team at Arm that is responsible for our success and enabling the success of the company.

> "When I began my career, I couldn't have imagined the path that would lead me to where I am today. After honing my skills as a waitress, my first job was working on health and education projects at the World Bank in the African Department in Washington, D.C. Now, I lead the legal team for one of the most influential technology companies in the world."
>
> *– Carolyn Herzog*

The Arm Legal and Public Affairs Team is made up of approximately 90 professionals and, as Karen mentioned, it is primarily split between our headquarters in Cambridge in the UK, our two U.S. offices here in San Jose and our site in Austin, which is heavily engineering based. One of our team members from Austin is here. We also have a few team members located in key countries.

Many Arm team members have been with the company for tenures that rival my 16 years at Symantec, and we are bringing in new talent every day. Our team includes other strategic functions. Like many legal departments, we have Trade Compliance; we have an Office of Ethics and Compliance; Public Affairs; and an Operations Team to help us run like a business.

In this role, being a tremendously intellectually talented lawyer is simply not enough. It requires a broader view of what the business wants to achieve, and a growth mindset to help the business get where it needs to go, while also managing risk.

We are embedded within the business — and this has always been true — but we also need to give the right advice at the right time as the business develops, allowing us to act as a true business partner in achieving the company goals.

This also requires the foresight and the emotional intelligence required to leverage available resources all around us. A legal department is not about individuals performing individual roles, but an ecosystem of resources which help us to rely on the best version of ourselves. This includes choosing the absolute best outside counsel to partner with us on this journey. Relationships have never been more important inside and outside the company, and we are always looking at what we are building and what is changing and why.

Our team has been recognized in the past, particularly for our IP expertise in Europe, but this is the first time that we've been recognized as a global team, so I want to thank you again for this recognition today.

I also recognize that the team has to be embedded across the business. We sit on some important committees and team areas, not only as an executive team, but we're also involved in areas like our Investment Committee, the IP Steering Committee, and the Executive Committee and Board committees. We've developed an AI Ethics Committee, which I'll talk about later. We sit on the Security Council. I encourage all people who have the opportunity to think about where the legal department sits, and what kind of influence you have across your organizations.

I'm going to talk a little about what it's like going through a period of transformation. Of course, many of the people that know Arm also know that a little over two

years ago, Arm was acquired by SoftBank and taken private. This event has pushed the company through a massive amount of change. As a result, our legal team needs to think about how we are evolving and changing with the business.

I often say that nobody works in technology if you're not somewhat addicted to change; otherwise, we'd work in a dentist's office. Transformation requires more than just this "change management skill" that we like to talk about a lot. It's not a simple concept, and it's not just around adaptability or saying, "we're open to change."

As a leader, when we're going through this kind of transformational change, I'm looking for change champions — people that want to be a part of change — visionaries. Leaders who are not just comfortable with ambiguity and are willing to take on risk, but who are accountable professionals and who know that it has to be the right risk at the right time with all the right protections. They know that what we value most, and what our most important assets are, what has to be protected — and where we sometimes have to let go. We also have to protect our culture, and we have to be thinking about our customers first and know what they value most.

The strength of the Arm legal team is critical now, and like many companies who have been in the tech industry for a while, Arm's business is transforming rapidly. The trajectory of our opportunity is both exciting and very daunting.

The company is entering new markets, and we're entering into new types of relationships. We have new technology developments, and our technology is also entering into new devices, like cars, robots and almost *anything* that is using machine learning and AI.

We've also chosen to take a stand on some issues that we see as important for our business, but also for the industry as a whole. The legal team is taking a more active role as a partner to the leadership and the business areas in driving the future of the company.

We ask powerful questions; we ask "why," "how," "when," and "who with." We are parenting the heck out of our company, because we are in deep, and we are everywhere. Like parenting, we also have to learn when to let go. We are automating; we are letting our smart, talented leaders make judgment calls for themselves; and we are giving them guardrails so that we are only involved when they need us most.

We engage where we add the most value. We continually look for these opportunities to let go. Then we also have to look for those twists and turns in the road, so that we can plan ahead. In a global economy where technology is almost *always* preceding regulation, we have to use our knowledge and skills to be more predictive than ever before.

One of the interesting things about working with SoftBank is that we don't do one-year planning and two-year planning. We do 10-year planning. That has been a new learning experience, and incredibly challenging.

One of the things that's also transformative for me — and I would expect many of you are also thinking about this, and certainly outside counsel is thinking about this — is that today, and as we look to the future, *every company* will be a technology company. We were speaking last night about farming — farming and automated tractors — even farming is a technology company now. The ability to partner and lead through transformation is a critical skill for General Counsels and legal teams going forward. Where Arm works in an ecosystem, we're thinking about all the companies that we partner with and the companies that they serve, and this is *all* about technology in the future.

Because of the rapid growth of new technologies, technology is transforming *every company* into a tech company soon. At Arm, we see — as I mentioned earlier — *one trillion* connected devices being online by 2035. The Internet of Things, AI, autonomous vehicles and more will be enabled by these devices. That is going to lead to a transformation of *every business* and their interactions with partners and customers.

We are already seeing this in cases where linked data systems have led to one company's systems being compromised by another's. Where are the liabilities when corrupted IoT data leads to a failure of a partner's system or equipment? If a landscaper installs a smart watering system for

a customer and the poor security settings of that system cause the broader smart house to be hacked, who is at fault? That is not a far-fetched scenario. There has already been a situation where a smart fish tank system in a casino was hacked and used to gain access to the casino's customer files.

These examples don't even get into the incredible increase in personal data companies will possess in the AI era, or the implications of explaining AI decisions when people don't agree on the outcome.

This brings me to an issue that we've been thinking about a lot in the company. There have been a lot of discussions about AI, with every day bringing new headlines into how AI will either save the world or destroy it. Recently, I went to my nephew's graduation in Boston. As soon as we entered into the museum at MIT, there was a father walking behind his daughter, saying, "I am a robot, must destroy!" This is the image that we have of robots and artificial intelligence. The debate around artificial intelligence has created a lot of mixed feelings on this subject. Our own research at Arm has shown that people are excited about the opportunity for AI, and also these opportunities to transform healthcare or transportation. They're also concerned about the potential for AI to be hacked or to cause harm.

Arm research has shown that 75% of people are concerned about autonomous vehicles being hacked; 85% are concerned about AI itself getting hacked; 57% about AI that will become more intelligent than humans; and 60% are concerned that AI will be used by criminals. This is actually not unfounded — 2017 research proved that AI is actually good at generating spear phishing attacks on social media faster than humans.

Right now, AI is battling a massive trust issue. Of course, there are concerns about AI and the black box — this closed system that receives input and produces output, but actually provides *no clue* as to how or why a decision has been made.

> "Now, Arm isn't exactly a household name, but I can guarantee that you've all used our technology. The name originally derives from an acronym, Advanced Risk Machines. Yes — we are so geeky that we have an acronym within an acronym for our name . . ." – *Carolyn Herzog*

What are we afraid of? What *should* we be afraid of? Are the movies all wrong? We know that AI is being used now for credit scores, for bail or sentencing recommendations, and for guiding social media results. With the fear of the unknown and all of these horrible headlines, it's easy to see why people are forming a negative view about AI. This technology is still relatively unknown in terms of how it's being used today, and what it can do.

This is one of the biggest challenges for the future of AI, and it's already impacting our lives on a daily basis. How do people feel about it?

How do we form our views? Is it by how it's being used currently — do we understand it — or is it most likely by movies and books — by *I, Robot*, by *The Terminator*, by *Transformers*, *Minority Report* — I've seen them all — *War Games*, *The Matrix*, and *Blade Runner*. We're probably more influenced by these movies than by how AI is actually being used. We know that this is the generation of AI and the data revolution; it's already upon us, it's already happening. We want to be able to tell a different story, because the reality is that the data revolution and AI are happening; it *is* going to happen, and it's important to build trust around this important technology.

AI relies on *massive* amounts of information and data, to be able to learn. If we want to use more personal AI, we *have* to be able to give it more of our personal information. I was hearing a story about some interesting case that was in Canada earlier, and we have to be able to look at this global landscape and see how we are going to be competitive. The future of *every company in this room* is based on the premise that people will open up more of their lives and personal information to technology. We need to be trusted in order to make this happen.

AI is arguably the biggest economic and technological revolution to take place in our lifetime. It's not news that we are expecting this data explosion; computing is everywhere. Everywhere there's computing, there will be intelligence. How do we device the intelligence from all of this computing power? There is another challenge that Arm is prepared to tackle. In order to best serve our global customers of AI and the data consumer, we must be able to keep up with these global solutions. With the data explosion, there is an ever-increasing interest in the need to protect data. There are inconsistent global views. That's probably not news to anybody in this room. It's nice to have a global panel, to be able to talk about that. There has to be a balancing of the fragmentation of regulation and the globalization of commerce and technology. We have an interest in being able to provide global solutions, but fragmentation of technology and fragmentation of regulation will never enable us to be able to provide those global solutions.

Foundationally, digital protectionism or the localization of data is inconsistent with the principles of AI innovation, which is about open and fair markets. We are constantly looking at the top key issues, such as data protection, cyber security and consumer rights. There is also a competition question. Honestly, when you consider the apparent imbalance between western use and our interests of governance, and eastern use

— such as China — and governance, there is just an imbalance in how we are able to compete in a global market.

Why does Arm care? Why is Arm involved? One, with the growth of devices in AI and intelligence at the edge, Arm is going to play a critical role in the future of AI; and, therefore, we have an obligation to participate and lead in the discussion of ethics. We know that technology moves faster than regulation, and that by leveraging an ethical discussion and encouraging everyone to do the right thing, we can influence law and regulation. I don't know if everybody agrees with me, but that's what I believe.

Culture will create a diverse perspective, so there is, in ethics, no *one* culture; there is no *one* rule of law that everyone can agree on. How do we implement, globally, a view around ethics and morality?

I believe the answer lies in diversity, and companies can't answer this question alone. We need the partnership of a diverse community which includes governments, public and private debate, and a lot of interaction.

I don't have all the answers, but within Arm I've chaired an AI Ethics Working Group. Arm is preparing to release for public discussion an AI Trust Manifesto together with an AI Code of Practice, to bring together the strength of collaboration within the Arm ecosystem and a discussion around this important topic.

In this manifesto, we address issues such as bias, transparency and accountability, responsibility — discussing topics like liability and insurance and the future of jobs. Another "why" is that this is core to our foundational principles that we are in the business of developing technology for good. Trust promotes adoption — it's good for business — we need full transparency.

We are producing and analyzing more data than ever before and have more powerful tools at our fingertips than ever before. With this, society, companies and governments have a responsibility to protect information *not only* because data privacy laws say we must, but because *ethically*, securing and responsibly managing our employees' and our customers' information is a transparent and consistent matter as the right thing to do. Companies and customers care.

Generally, becoming a trusted solution can not only be solved by legislation or litigation. Both of these generally move too slowly, but technology is advancing and the risks are too high, so advancing discussion around these things is incredibly important.

I'm going to talk a little bit about privacy and security, because you can't talk about ethics and managing data without talking about them also. Of course, I've spent a lifetime talking about these things.

One of the key components of our contract with customers is data privacy. It's interesting, because people always seem to sit on different sides of the fence around "do you care a lot about it?" or "are you bored by it?" It's incredibly important, and I can't stop talking about it, but I also think that you can't discuss data privacy [pronounced with a short "I"] or data privacy [pronounced with a long "I"] — whichever way you want to say it — without a real focus on security. It's no longer an issue of whether you're a technology company or you don't consider yourself a technology company. You can't omit focusing on the responsibility around customer data. You cannot be competitive in any world, and certainly not a world around artificial intelligence, without focusing on data privacy and responsibilities around security.

Arm has now produced a second security manifesto, encouraging all companies to take a collaborative responsibility around discussions around security and sharing more information around security. I encourage everyone to go to our web site and read that. It's a helpful document and very easy to read. We've also participated in a cyber

tech report. It's a public commitment with about 60 global companies, including Microsoft, to protect and empower civilians online and to improve security, stability and resilience in cyber space.

As I mentioned, I spent about 20 years working in the field of cyber security before moving to Arm. It's still very much a critical part of my role as General Counsel. There are probably very few General Counsels in the world who are not extremely focused on responsibilities around data privacy and security. It's also much on the minds of boards and executives in every company, and, of course, it's on the minds of the companies that we serve. It is increasingly a part of our daily lives.

There are not only legal and regulatory requirements around privacy and security, but this is an area of responsibility that is increasingly, as I've mentioned, an area of ethical responsibility. If you have some responsibility as a chief compliance officer, or you're connecting with people that are responsible for ethics, you'll find this more and more in that area of dialogue.

In security, we're very much aware of increased regulation in this area and a potential for greater fines, lawsuits and bad press. The court of public opinion is weighing in more and more, and certainly, in privacy, we're seeing the same.

Being hacked or experiencing a security incident is not a matter of "if" or "when"; it's a matter of "how often," these days. These days, we're dealing with privacy by default, and privacy by design, we have to constantly ask ourselves if privacy is designed into our systems, into our products, and where else does privacy need to be designed in.

GDPR [General Data Protection Regulation] was a wakeup call for everybody to look in every possible system and every possible product to see, "Are we doing all the right things?" Now, with the California Consumer Privacy Act, like one of our infamous wildfires, it's a bad joke this week — but we're all actively watching and waiting to see how are these regulations going to be enforced — are we going to see more fragmentation in the United States? I was asked earlier, is it possible that we'll see a federal law passed in the United States? I would like to see that, but I don't think it's likely. We're seeing whether or not other countries like Canada will pass a more country-wide legislation. It will be interesting to see what will follow on from GDPR. Again, fragmentation is not a good thing in terms of how do we better serve our customers; how do we implement a more global solution from a technology perspective.

The final topic I want to talk about today is one that is, again, not only near and dear to my heart, but critical to the future of legal professionals — and that is diversity and inclusion. Like ethics of AI and data privacy and security, we have to look beyond the legal requirements and risks to the broader benefits of a more diverse, inclusive and fully engaged workforce.

I'm happy that Arm shares my belief that people must have an equal opportunity to find success in any business. It's the law in most countries, and the right thing to do. A more diverse and inclusive workforce is a stronger and more innovative workforce, and companies are better for it.

At Arm, we have a belief in being your brilliant self. This isn't just a nicer way to say that we comply with the laws for EEO [Equal Employment Opportunity] and discrimination; it's a core belief of the company that we want different perspectives, and we want ideas born from life experiences that span a range of cultures and countries. The world is becoming more diverse and connected every day, we need ideas that reflect that diversity. We demonstrate this in our commitment to corporate responsibility and sustainability, and through our D&I [Diversity and Inclusion] programs. Through our Employee Community Engagement Program Team Arm, our people are using their skills, experience and expertise to create sustainable, positive change in the communities where we are based.

Last year, members of Team Arm contributed more than 9,000 hours — the equivalent of over 1,000 days of community time — to tackling sustainable development goals, through campaigning, volunteering and fundraising. In just 12 months, our people at Arm helped to raise and donate over £1 million to charitable contributions.

Contributing to my community and supporting D&I is in my DNA. These are things that I've always believed in, and believed they were the right things to do. They motivate me in my day-to-day work. It's easy and innate for me. I recognize that I can't bring people along just because it's the right thing to do. The strategy is not working in domestic politics today, and it's certainly not the right way to engage in the office. Now, more than ever, I have an obligation to speak my truth.

While remaining open and inviting to opinions and perspectives of others, I also believe that coming to the table with *solutions*, rather than just speeches, is essential. Here are a few things that I will do: I will invite everyone to the discussion, and I will be open to different views while making my views clear, defensible, and enabling company objectives. I will create a positive platform to help my company attract and retain very diverse talent. I will vote, and I will encourage others to vote. I will give credit where credit is due. I will invite diverse voices to the table. I will resist settlement agreements for substantiated allegations of sexual harassment. Harassment is a violation of our code of conduct and the law.

I also want to note that the world faces some massive global challenges. Climate change, collusion, poverty and inequality in education that is designed for the 21st century and available for everyone. We all know that technology is a great opportunity for positive transformational change. We need to be doing more, and to prove it, the news about tech these days just isn't helping our image. Emerging technologies like AI and IoT have an incredible opportunity to help solve major challenges. Arm is participating by focusing on the UN's 2030 Sustainable Development Goals. These are also called the Global Goals, and you may have heard of them.

It's the world's most comprehensive to-do list today, aimed at ending extreme poverty, fighting inequality, and being the last generation threatened by the effects of climate change. The Global Goals are adopted by 193 governments and an ever-increasing number of businesses. Arm was even involved in developing these 17 goals. The 2030 Vision is an organization that Arm founded. We've partnered with the UN's system and other organizations who understand the problems that need solving and are now reaching out to the broader ecosystem to identify solutions and to demonstrate positive power of emerging technologies. We also commissioned research to look at the role of technology in goals and the commercial opportunities they represent.

The 2030 Vision represents an incredible way to support Global Goals and to unlock commercial opportunities at the same time. Arm has a long-standing commercial partnership with UNICEF [United Nations International Children's Emergency Fund]. You may wonder why UNICEF, and how we made this connection. As a for instance, re this partnership, Arm initiated a Wearables for Good Challenge. The winner in 2015 is called Khushi Baby, and it's recorded 80,000 vaccinations in India, and has helped to achieve the support of the Gates Foundation to start scaling. Our support has actually increased funding for this incredible new technology, and with UNICEF, the Gates Foundation has become the first private company to cobrand with this product.

We've also started, with the Gates Foundation, a Global WASH [Water, Sanitation and Hygiene] Challenge, calling for innovators and entrepreneurs to promote technologies to support solutions that make it easy for the urban core to access safe, clean water and sanitation services.

This is just another example about how technology can be used to address problems on a global scale and used for good solutions.

> "As you can see from some of these statistics, Arm is everywhere. Seventy percent of the world's population uses Arm's technology. That's usually a pretty surprising statistic for people. Ninety-five percent of all smartphones use Arm's architecture."
>
> – *Carolyn Herzog*

I also recently learned that Arm is supporting the difficult task of tackling bias in the classroom, and through an interesting collaboration. I'd like to show you a short video to demonstrate how Arm partners.

[VIDEO PLAYS]

I felt insulted; I felt defeated. I got my Masters in Interaction Design. I was the only woman of color in my class. The teaching assistant would tell me that he would think things were too complicated for me; that he didn't need to see my work — he already knows what grade he's going to give me. The bias that I was subject to made me feel defeated.

The day I was going to quit the course, the program director told us that he was giving us an assignment for our master's thesis, to solve a social problem using technology.

In that moment, I decided I wanted to take this experience and apply my skills to reverse racism and sexism in the workplace. I discovered terminology like "microaggressions," "implicit bias" and "empathy gap."

You cannot force people to empathize with someone else. That's why I started using virtual reality to develop immersive experiences, where people's bias is tested in a gamified world.

The thesis project went well. We had very positive reactions. Oculus Launch Pad was a huge training point for me. I met my collaborator, Jessica Outlaw. She was interested in eliminating bias in the classroom. Our project is called "Teacher's Lens." Teachers are tested on their unconscious biases by being placed in a virtual classroom and asked to make certain decisions. The Oculus VR headset that I used has an Arm processor. It's the same foundational IP that powers our phones, our traffic systems, and pretty much all the tech I used for coding.

Teachers are immersed into a virtual classroom, and they are tested for things like their expectations that might be influenced by race or by gender. We can see what students they look at the longest, who they interact with, and also their response times. Teachers want to provide their students with quality of care, especially those who may need it most.

It's great, because we have this tool that allows us to see and experience our bias in a VR environment, and it makes it possible for us to change our attitudes in the real world.

My name is Clorama Dorvilias, and my innovation is made possible by Arm.

[END OF VIDEO]

Another interesting way that Arm's technology is being used for good, and I love that video!

In closing, I just want to share that I'm fortunate to have grown up in an environment where my belief in fairness and justice was nurtured and encouraged. While I didn't actually set out in life to be a lawyer, I believe that this foundational belief must have informed my decision to become a lawyer and go to law school. I certainly didn't plan on becoming a technology lawyer, but perhaps being involved in something that is constantly changing and possibly disruptive is just a comfortable place for me. Certainly, my nature as a teenager seems to inform that. [LAUGHTER]

Despite the reality that I'm now looking at my first child getting ready to go to college and explore the vast wonders of opportunities in the world, I couldn't be more excited to be working in this industry and in this company with this team right now, as the generation of disruptive technology is in full flight at such an innovative time.

Today's youth, from kindergarten through university, represents the first generation of young people to grow up with disruption and innovative technology. They're at home in the midst of this accelerated rate of change, replacement and innovation. While I lament the loss of the mom and pop bookstore and remembering what it was like to just look up at the stars without the use of technology, and getting lost in my thoughts, we can celebrate that today's youth is more connected and more aware of global challenges than any generation before. This positive disruption provides them with key insights into big issues, such as closing the gap between rich and poor, protecting the environment, and a sense of social justice.

Their powerful thinking and their ability to use big data and modern technology will enable them to address these global challenges better than previous generations. I might have mentioned earlier that I am an incredible optimist, as well.

What's my obligation as a General Counsel? One is to ensure that my team is prepared to act as change agents; that we can make practical and ethical decisions; that each team member knows what they are here for, and why, and what they can do to help us move forward; together, to instill a sense of pride in helping other people inside the company, as a core element of our job, or doing something meaningful within our community.

There are endless opportunities to enable positive change, and there is no better place or time to be a part of this amazing global, innovative practice.

I will leave you with a quote, because I believe somebody else has always said it better than I have. It is from one of my heroes, Eleanor Roosevelt — who, by coincidence, my grandmother designed several suits for. This is quite ironic, as Eleanor Roosevelt was 5´11˝ and my grandmother only designed for petites — not surprising looking at me! You may be aware that San Jose has been voted the "happiest city in the United States" by *Forbes*, and through several studies. I've lived in many places, and I found that quite curious, but this quote by Eleanor Roosevelt brought it home for me. She said that "the most unhappy people in the world are those who face the days without knowing what to do with their time. But if you have more projects than you have time for, you are not going to be an unhappy person. This is as much a question of having imagination and curiosity as it is in actually making plans."

I hope you leave here today with a little more pride in the power of our profession to do good, and a little more curiosity about Arm, and also of our role. Thank you very much! [APPLAUSE]

KAREN TODD: Before we move on to our panelists, I have noticed that Arm is unique in having a presence in the UK, as well as the U.S. What have you seen as a general counsel in that dual structure that's unique for you?

CAROLYN HERZOG: It is unique, and certainly, Arm's voice at the heart and soul of the company is definitely in the U.K. Most of our customers and our partners — the same thing — are in the U.S. or in Asia. By being in the UK and having that global presence, it's a uniquely, globally-minded company. Having worked at the World Bank and at Symantec — both very global companies with very global customers — Arm is uniquely global in that mindset, and it *has* to be very global in that mindset.

KAREN TODD: Thank you. Our next speaker is Doug Cogen from Fenwick & West.

DOUG COGEN: I am going to do two things today with my time. One is to talk a bit about what we're seeing at Fenwick in the tech M&A market. I'm an M&A lawyer and have been running the M&A practice at Fenwick for about 20 years. Fenwick's one of the indigenous Silicon Valley firms. M&A's a big piece of what we do. I have a lot of colleagues here from other practice groups at the firm. I'll talk a little about what we're seeing in the marketplace, and then also talk about a case that came down last month, which is one of the more significant cases in M&A law that's happened in the last few years. I'll help you understand about that case, because it's important.

First, what we're seeing in tech M&A. So far, global M&A in 2018 is approaching $3 trillion, which is an absolute record that shatters prior records. U.S. M&A is up 25%. Interestingly, overall deal count is down a little bit, so we're seeing slightly fewer, but much bigger, deals. Every day we see a new giant deal; you just saw the IBM/Lenovo deal; SAP just announced a huge deal yesterday; and earlier in the year, we did the acquisition of GitHub by Microsoft — a $7.5 billion deal. Companies are paying top dollar for key technologies that help them achieve the goals that Carolyn was talking about that Arm is seeking.

There has been a bit of a slowdown in Q3, and a couple of things driving that,

which probably won't surprise you. One is U.S. inbound M&A — and you're going to be hearing some more about CFIUS [Committee on Foreign Investment in the United States] later in this discussion — is down, and that is, in all likelihood, due to government policies and some of the changes in CFIUS that make it harder to do deals for foreign acquirors. Obviously, Chinese investment is particularly affected by this, and I'm sure that's not surprising to anybody.

That's starting to enter the boardroom in terms of what deals are doable and what you can get through the regulatory environment. Probably, there's not too much surprise there.

It's interesting — I put this slide together without coordinating with Carolyn before — but if you look, virtually everything on this list is something Carolyn mentioned. The chip sector is incredibly active. Arm and the companies it competes with and partners with are out there doing deals. We're seeing a tremendous number of deals focusing on SAAS [software as a service] business models. We at Fenwick have also been doing a ton of gaming-related deals in gaming technologies. FinTech, blockchain-enabled technologies, have been tremendously important. Obviously, security and cyber security is the number one issue in virtually every boardroom in the world right now. Companies that can find acquisition targets that help them scale in cyber security and become more relevant to that market are tremendously important. Then, again — as Carolyn was talking about — machine learning and AI are driving a tremendous amount of deal activity. Companies almost universally — probably Arm is one of the few exceptions — feel like they are way behind where they need to be. We are certainly seeing a lot of car manufacturers and first-tier automotive suppliers very active in Silicon Valley, and the whole autonomous vehicle area is obviously huge.

What's driving deal activity, in addition to strategy, continues to be a very attractive environment to raise debt in, even though interest rates are creeping up — as a matter of government policy, almost universally, in the west. We're still seeing a very favorable environment in which to raise huge amounts of debt. There is very big equity support — we're seeing a lot of IPOs in the U.S. equity markets — more than we've seen in the last five or six years. There's a lot of sovereign wealth and other limited partner-type equity investors who are willing to support large multibillion-dollar transactions. That's become an increasing part of what we're seeing in the Valley. Sectors are consolidating for the reasons you'll appreciate.

One of the more interesting things to call out here is stockholder receptivity to the big transformative deals. Just to go back to that Microsoft deal when they acquired GitHub for such an extraordinary price, the markets might have been shocked or disturbed to see such a high multiple deal. Instead, the markets almost universally cheered Microsoft making that transaction. It had a lot to do, actually, with why IBM chose to pay what they did for Red Hat. Stockholders in the stock market get it, and they are rewarding companies and their stock prices in terms of supporting what they see as transformative deals and deals that help bring them into the next stage of technology development.

In the United States, we had a tremendous boost from repatriation. Everybody understands the basics there, but a lot of cash came into the United States, and there's a "use it or lose it" mentality in boardrooms, where the stockholder community is pressuring companies to return that money in the form of stock buybacks or dividends. Boards who want to do something transformative with that cash need to do acquisitions. That's been driving a lot of deal activity, as well. Stockholder activism — as everybody appreciates — has become an ever-increasing dynamic in U.S. markets, and that drives deal activity both on the sell side and on the buy side.

Also, companies are continuing to rationalize their portfolios and optimize their businesses. There are a lot of good businesses housed within large companies that don't make sense any more for that company for margin reasons or strategic reasons. That's driving companies to divest those assets and put them either in the hands of a strategic or a financial buyer who has a better use for them.

Seventy-three percent of companies, in an EY survey, said that transforming their portfolio and rationalizing it and focusing their business is an objective. Nearly 90% of companies plan to do a strategic divestment in the next two years. That's a tremendous statistic. Divestitures, by the way, are an art. They are at least 20 times harder than an acquisition. They are hard to get companies organized around. There are obviously a lot more issues that come up when you're trying to figure out how to put the assets and the people and the resources together to create a viable business and pull that out of a company. That's a very difficult thing to do — it's a lot easier to just buy the stock of a target you're interested in.

We're seeing significant revenue multiples in software M&A. I mentioned a few of the deals with eye-popping prices being paid for companies. Companies are willing to buy earlier and buy bigger, and profitability can come later. That's the Silicon Valley way; it's how some of the big companies that are household names built themselves into being the largest companies on the planet.

We're seeing a lot of these same trends, in terms of union of government policy, of market reaction, and that's going to keep driving deals.

This, I thought, is very interesting. I wanted to make sure I included this in my slides today. I have two clichés that I will bust in my conversation today. The first one, people have always said — since I've been doing M&A now for a couple of decades — "most deals don't work." Most M&A doesn't

achieve the objectives that the companies thought they would achieve when they went into the deal. This was a global survey done by Deloitte, and the question was asked, "Did the deal generate the value or the ROI that you expected it to?" Look at the difference, as you go into 2017, of how many companies feel like the transaction did achieve their objectives. This is just astounding. When you look on the left side of the slide, you see how few companies, in looking back on the deals they did in the prior two years, didn't feel they generated what they had hoped it would, in terms of an ROI. The vast majority of both strategic and private equity buyers feel the majority of their deals are successful, and only about 25% or less didn't work. That's pretty interesting, when people walk around and say, "M&A doesn't work," most companies are actually saying it does.

I've done about 150 deals for Cisco, and a famous old saying of John Chambers, the long-term CEO of Cisco, was, "If every one of our deals is working, we're not doing enough deals." The feeling is, "Go out there and be more aggressive." What this shows is more and more deals *are* achieving their objectives.

Diligence is something a lot of the folks in this room do; it's one of the main things we do for Arm in the transactions we do for them. Some of the things we've been seeing over the past year is a changing regulatory environment. As Carolyn mentioned, target companies have relatively weak compliance programs. They need a lot of help there; they just don't have the architecture; they don't have 90 legal staff — sometimes they don't have *any* legal staff, and yet these are companies selling for $1 billion.

There is data privacy, obviously, and a quickly evolving regulatory environment, particularly in Europe. Companies are just barely catching up. When it comes to GDPR compliance these days, we find you almost can't ask the question, "Are you in compliance?" The question is, "What are you *trying* to do to start looking forward to compliance?" Most target companies are barely catching up.

Open source compliance is a huge area. Obviously, deep diligence is needed into IP [Intellectual Property] ownership, misappropriation, and infringement issues. Chain of title, all these questions around the ownership and potential exploitation of IP in terms of existing contractual relationships, and license terms are a huge area. Usually, the largest single cost center in any transaction of scale we work on, is IP and commercial diligence.

In terms of process, we recommend having an intensely *iterative* diligence process, where you're interviewing target company employees, doing your hard research with documents, bringing that back into the deal terms and just educating the client. When we do deals for Arm, we have regular all-hands meetings where we're talking about the key issues in the transaction; everybody's getting up to speed together. That feeds back into the next loop of diligence; into the deal terms; and having that robust iterative process is critical to having a successful, no-surprises deal.

A few quick observations of what we're seeing in the marketplace in key areas. There is more emphasis on IP reps having more extensive indemnification in escrow and support around them. This is also true in the tax area. This creates an issue, because a lot of the target companies are VC [venture capital]-backed companies. To the extent that you have indemnification for a longer period of time than a 12- or 18-month escrow, that creates a real issue for the VC funds in being able to distribute the proceeds of the deal out to their limited partners. It's an area of real tension.

One of the ways this is being addressed — although less so with strategic buyers than with financial buyers, and less so in the United States than in Europe since we have a lot of UK and European lawyers in the room today — is with rep and warranty insurance. It's coming on, and just barely being adopted by strategic buyers in the U.S., but it does seem to be the trend, and the product has gotten a lot better. The rep and warranty insurance companies have

improved the product and made it more reasonably priced and more comprehensive. They are able to move faster in the course of getting a deal done to actually put it in place. It's definitely a growing trend, and I'd expect to see more of it.

One of the big fights we're having a lot in deals and the value these days is the question of if there are indemnification claims made, and litigation-related costs, whether or not you need to prove that there is an underlying breach of the rep in the contract in order for the acquiror to have recourse to the escrow to cover the defense costs.

Generally, historically, the idea had been that you had to prove that at the bottom of the pile, there was a breach, in order to get indemnified. It's evolved over the last five years or so. Most acquirors are successfully getting the term that any claim made arising out of the acquisition should be indemnified, whether or not there's a breach there, on a "but for" theory.

I'll now shift to the second piece of what I wanted to talk about. I'm going to do this very quickly, I condensed one of the longest opinions I've ever read. [LAUGHTER]

> "We have an Intranet chatter site where people will say almost anything. In our open forums, they will challenge the CEO or me openly. It's incredibly unique that way — people are not afraid to challenge what they're hearing or seeing, and to think about new and innovative ways of doing things."
>
> *– Carolyn Herzog*

It was a nearly 200-page opinion by the Chancery Court, because they knew what a big deal it was when they were deciding this. I've condensed it to three slides. This was a case that came down early in October 2018. It's called *Akorn v. Fresenius*. Fresenius is a German pharmaceutical company buying a U.S. biotech company. Hopefully, everybody appreciates what the role of a material adverse effect is in an acquisition contract. An MAE [Material Adverse Effect] is the standard by which the acquiror is held to acquire the target if there are declines in the target business, between signing and closing. It usually has two functions in a deal: one is pure decline in the business; without a representation in the acquisition agreement saying the business is great. There are a hundred other possible representations: "I own my IP; I comply with law," etc., but there's no rep that says. "My business is just fine, thank you." What there is, instead, is the concept that if the business suffers a catastrophic decline between signing and closing, and that decline is going to go to the heart of the bargain, the idea that the long-term value of the company has been impeded in a very fundamental and significant way, maybe the buyer should be let out of its obligation to close the deal. Delaware courts historically had been very reluctant to let buyers out of acquisition contracts, for obvious reasons, considering how disruptive that would be to the target company who's announced the deal.

It is the second great cliché that M&A lawyers always say, "There's never been an MAE declared by a Delaware court." That has been said a thousand times by every M&A lawyer. Now, there has been.

What is at the heart of the *Akorn v. Fresenius* decision is that the Chancery Court decided that the things that occurred in the Akorn company — and we're going to talk in the next slide about what those things were — this was about a $4 billion deal, by the way — actually did constitute an MAE, and let Fresenius out of the deal. Now, in a great many deals — this is my sub-bullet up there — you get to the brink in MAE litigation, and something changes; the price changes, or the parties walk away for a termination fee, or something. A great many deals walk up to the MAE line, but don't actually get to the point where the court makes this decision. Here, the court made the decision and decided in favor of the buyer.

What was the story here? The business of Akorn had a horrific decline in performance. (These are quarterly numbers in my slide.) Quarter after quarter, the business, revenues were declining by about 30% each quarter. It took about a year to get this deal up to the point it otherwise would have closed. It had a long sign-to-close period. The income of the company was falling off a cliff, as you can see. A whole bunch of things were happening in the larger environment both to Akorn and others, in terms of its products, that were creating issues. The reason I italicized *disproportionate effect* is when you define MAE, often what you say is if this bad thing happens, it's potentially an MAE; but *not* if this bad thing is happening to everybody in the industry. If it's just part of a general downward trend in the industry, then the buyer shouldn't be let out of its obligation to buy the company. That makes sense on a gut level. In this situation, what particularly drove it is Akorn also was having horrific FDA compliance issues. They had a whistleblower; there were clearly data integrity violations. For anybody who works with FDA-regulated companies, you understand the significance of this. The FDA looms as a regulator over life science companies in a way that nobody looms as a regulator in the tech industry, period — there's just nothing like it. There was even potential fraud. The whole situation was very dire at Akorn. They were trying to deal with these compliance issues; more and more kept coming out over the course of the deal; but the business was falling off a cliff at the same time.

To put some numbers around it, because they're interesting, to remediate their regulatory problems, even the target company said this was nearly a $50 million fix. The buyer said it was a $250 million fix with about a $2 billion valuation impact. The court ultimately found it was about $1 billion valuation impact, which was about 20% of the value of the whole deal. Keep that 20% number it in your mind as you go back to your companies and law firms, because a lot of folks are now wondering, "Is 20% some kind of measure now?" The court was careful to say, "Don't take it literally. It doesn't mean a 21% decline in valuation is an MAE." But now, people are very mindful of that number, and as lawyers now negotiate deals, you're going to think about whether you take that number into account and you explicitly say, "We don't mean 20% to be a valuation decline to be an MAE" or otherwise try to define it in a more bright-line way, which, of course, has risk. Any time you define something in a bright-line way, you've made it easier — potentially, if you hit that bright line, now you've got it. There's always an interesting question there of whether you put specific numbers in.

Everybody agreed it would take years to fix the issues in Akorn. And "years" is important, because, as I said earlier, the basic idea of MAE is not only is it a catastrophic decline, it also needs to be lasting in its

effect; it can't just be a one-year blip. That's always been a key aspect of the concept of MAE, and the court supported that.

In addition to the basic MAE decision — this is my last slide, so everybody's got a sense of the arc here — the court also did a lot of other things, and some of these are just funny and interesting, especially to an M&A geek. The court not only decided the MAE, they decided a whole bunch of other things in this 200-page opinion, and some of them are fascinating. We put together a quick list of some of the things that the court also touched on.

One is lawyers love to debate — M&A lawyers, especially — when you have a contract that says that "I have best efforts to do this, and I have reasonable best efforts to do that, and I have commercially reasonable efforts to do that other thing," and we, as practitioners, always think there are differences there. It just feels like there are differences between having "best efforts" versus "reasonable best efforts" versus "commercially reasonable." There are subtle differences of effort that if I ever had to litigate these questions, they would be meaningful. The court said, "No. All the same thing. We're not going to try to figure out what the difference is in effort between a 'commercially reasonable effort' and a 'reasonable best effort.'" The court threw out the whole thing and just said, "Take it easy, lawyers — efforts are efforts; you have an effort to move forward and do what you're supposed to do." We'll see, now, if lawyers actually stop arguing as much about that. I thought that was wild.

There was also an interesting discussion of — one of the terms you see in contracts a million times, and M&A contracts in particular — is a standard called "in all material respects." You have to comply with your covenants in a contract "in all material respects." People like to debate what that means. The one thing that everybody was sure of was it meant less than MAE. We knew that much and maybe it meant more than just the word "material" standing on its own," but nobody's quite sure about that, either, and nobody could tell you exactly what a court thought "in all material respects" meant — at least what the Delaware Chancery Court meant by those words when the lawyers use them.

They did an interesting thing here. I feel strange about this, but they analogized to U.S. securities law, and they said that "in all material respects" means the same as it means in securities law, where if it alters the total mix of information, then it potentially meets that standard of "in all material respects." It is analogizing to securities law the idea of what's "material." What's a "material failure to disclose" something? What's something you're supposed to disclose? If it alters the total mix of information that an investor would make in terms of buying or selling a stock, that's "material"; that's what "material" means in that context. They analogized that and brought that into an M&A contract, and they said that's what they think it means.

The counter-argument was that it had to fundamentally alter the purpose of the contract; that's what the litigants were arguing about. The court said, "No, that's not what it means." That was an interesting and real difference. That's more like what the idea of MAE is, that it goes to the *fundamental* basis of the bargain. The Court said, "No — it's not that. It's 'does it alter the total mix?'" Which is a lighter standard than a lot of us might have thought.

What does the "ordinary course of business" mean, and what does it mean to have the "ordinary course" consistent with past practice — another area that lawyers love to argue about in my zone. Here, in the context of all the FDA things going on, the question was, "What should the company have done to change the conduct of its business?" The court said that you can't just look back at what you used to do. If your world has changed, your course of business — even if it's something you never did before — has to change, too. It makes sense on an intuitive level. It's interesting, because most people thought the words "ordinary course of business" had this backward-looking element, "If I did what I always did, if it was consistent with what I always did, that's 'ordinary course.'" The court said, "No, that's not necessarily good enough. If you are in the middle of a regulatory disaster, you have to adapt your business to that. That is your new ordinary course." That was an interesting difference.

Important change: Delaware is a pro-sandbagging state. What that means is that things you learn in the diligence process, if you're an acquiror — if you're Arm and you go into a deal and you want to buy a company, and you do your diligence, and you spend weeks diligencing that company, that doesn't get held against you if later on you make a claim arising out of something you learned in the diligence process. You are allowed to get as smart as you can and *still* get a set of reps in the contract that protect you and that you can make indemnity claims on. That's called "sandbagging." The idea is you knew about it, you shouldn't be able to make a claim. By the way, for some of our European colleagues, most European jurisdictions are very uncomfortable with sandbagging. Delaware is very comfortable with it. One of the fundamental concepts of Delaware law is the contract rules. If the parties agree to something in a contract, we're not going to take a paternalistic view and try to figure out something different. Interestingly, for those of us in California, it is an anti-sandbagging state, for reasons I won't get into here, but that's something to be careful of. You won't see too many merger agreements governed by California law, for all sorts of reasons and that's one of them.

Next is a provision in any acquisition contract that talks about continuing diligence and having access to the company to continue to learn about the company, and acquirors routinely have that. Add in non-disclosure agreements, and they are probably the first things two parties who are considering an acquisition sign between them — which talk about what you can use

the information you learn for. When a deal starts to go sideways, like it did with these two, can you use your continuing diligence capabilities, and can you use the rights you have to do diligence and have those covered by the NDA, *to get out of the deal*? The target got very concerned and said, "You're using continuing diligence, but you're doing it to try to build a case to get out of our deal. You can't do that!" The court said, "Yes, you actually can do that," unless it's explicitly prevented. Now look for that to become a negotiating point in NDAs and in merger agreements.

I'm going to jump to the last one, because its related to what I was just talking about. If you *are* trying to get out of a deal, make sure you're trying to get the deal done right up until the moment you are terminated by a court or by agreement. You have to have clean hands when you come to it. Fresenius was scrupulous in every step of the way, moving the deal forward at the same time as they were trying to get out of it. I have actually been in the unhappy situation of having a very large deal almost have an MAE called on it — I won't name names but it wasn't for Arm — and the acquiror played it very well in that situation. We were under tremendous pressure, and they were trying to get out of a multi-billion-dollar deal. It was a horrible experience; we were getting grilled by their litigators; they were asserting all sorts of bad conduct on our part. At the same time, the corporate lawyers were just happy — they'd call me up — and acted like nothing was happening. I had the white hat team there just trying to move the deal forward while five minutes later, I'd hang up and talk to the litigation partner from the same firm who was just being nice to me, grilling me as if I were a criminal. [LAUGHTER]

That's how you have to do it — you have to try to get your deal done until the moment the judge says you don't, or else the court may prevent you from having the right to get the deal done. It's very important to "maintain clean hands" through a transaction.

Lastly, one interesting twist, and since we have some folks on the panel who are very regulatory in their focus, there was an antitrust provision that had what's called a "hell or high water." This is the highest level of antitrust standard to try to get the deal through the antitrust process, and the court actually found that the buyer breached its obligation. "Hell or high water" is a very high standard, but the court didn't hold it against the buyer, because there was a twist in the antitrust regulatory section that said the buyer controls the antitrust strategy. Despite the fact that they had a "hell or high water" obligation, the fact that they were allowed to control and direct the strategy — which is a very common provision — the court let them off the hook on what they thought was a breach of that standard. That was interesting, and you can be sure that will become an intensely negotiated point.

That's all I will say about that deal. It's a *very* important deal; it's interesting to read it, but it is a long case. If you're an M&A person, you should definitely be aware of this development. Thank you. [APPLAUSE]

KAREN TODD: Thank you. It seems like, from what you've said, that MAE is still a pretty high bar. Is that going to change the kind of due diligence that companies should do going into a deal?

DOUG COGEN: Yes. It's still an absolutely high bar. I don't think the bar necessarily has changed; instead, you now have a roadmap to understand some of the ways in which a court might find arguments about whether an MAE has occurred.

Does it change what you do in diligence? No, I don't think so. Companies that do their diligence and do it well, like Arm, are going to continue to do diligence. You want to be in a jurisdiction that is pro-sandbagging, so that your diligence is not held against you.

KAREN TODD: Alright. Our next speaker is Lior Nuchi with Norton Rose Fulbright.

LIOR NUCHI: Good morning, everyone. I'm Lior Nuchi, a partner at Norton Rose Fulbright in the San Francisco office. If you're familiar with the firm, we are a multinational firm — 4,000 lawyers, large offices in Europe, the U.S., Canada, Australia and South Africa. I'd like to start by introducing three of my partners who are here. Katrina is from Germany, Anthony from Canada, and Nick from Australia.

I was asked to discuss technology and innovation in the legal practice, especially when it comes to M&A. Probably Nick should be giving this presentation rather than me, but Nick is a global thought leader in the use of technology in providing legal services, and I may refer to Nick a few times during this presentation.

I'll start with an anecdote, a story. I'm probably one of the older lawyers in this room. I went to college and law school in New York, and then started at a San Francisco law firm, a regional firm at the time. This was before we had computers on our desks; we didn't even have voicemail at the time. I was very excited to start at a law firm. I thought I was going to work on big, important matters — the kinds of deals that Doug works on — earth-changing deals that Arm does, and things like that. I was very pleasantly

surprised — on the first day on the job, I was told I was going to be working on a deal representing a lender, a $200 million loan facility for a wind-renewable project, which was very much new technology at the time. We started out by having meetings between our client, the insurance company that was providing the loan, and the borrower, a renewable wind farm company, and the various law firms for the parties. Everyone was sitting in the room, and I was assigned to a senior associate, who told me to take copious notes throughout the day because we would have to review all of the discussion and the changes at the end of the day. Being a diligent recent law grad, I spent the day taking copious notes. At the end of the day, I watched him prepare a markup of the document, and then we handed it over to Word Processing. Then he told me that he was leaving for the day, and that I was going to be meeting with a paralegal, who would teach me how to proofread the document, and then do a blackline markup. That way, the next day, when everybody came in to continue negotiations, they'd have a blackline document showing all the changes that had been made.

I actually sat there that evening, learning all kinds of proofreading marks — there are certain specific marks you made when you deleted a big paragraph, when you made a small change, or you moved a comma — and then I blacklined all the changes and so on. I did that every night for the next 10 days while the deal was being negotiated. At the end of that, I thought to myself, "I just spent seven years getting this very challenging, elite education," and here I was proofreading. When the deal finally closed, I took the senior associate to lunch, and I said, "There's got to be a better way than doing this. This makes no sense to bring in all these talented young lawyers and have them do this kind of work," and he said, "No, this is very critical, and this is how I learned to be a lawyer — this is how we all learned how to be corporate lawyers. You're learning a lot by osmosis; you're learning what's going in, what's going out, and the whole process — this is kind of critical — this is how you get to bill a lot of hours." [LAUGHTER]

> "A legal department is not about individuals performing individual roles, but an ecosystem of resources which help us to rely on the best version of ourselves. This includes choosing the absolute best outside counsel to partner with us on this journey."
>
> – *Carolyn Herzog*

"Your bonus is going to be contingent on those hours, so this is all good. A couple of years from now, you'll move on to real intellectual work."

Anyways, I became a vociferous advocate for a technological solution to this, and about two years later, somebody called me up and he said, "They've just invented the software for blacklining. You should get your firm to adopt it." Armed with that, I went to management and I said, "They now have a software solution." It took a long time to get it adopted, because there was a lot of institutional resistance along the lines of adopting technology, making things more efficient, because it was going to be a decrease in hours and training.

Over the years, law firms were a little slow to adopt technology. That started changing a few years ago, especially the inhouse counsel in Silicon Valley. In particular, Mark Chandler, who's General Counsel of Cisco, one of Doug's clients, who started coming up with a model for law firms, saying, "If you want to be working with us, you have to get off of the traditional hourly billing model and have a project of billing structure. We need to have some level of predictability in terms of what our legal spend is, and this is generally how we work with our vendors on a somewhat fixed fee or modified fixed fee basis."

When law firms started having to work that way, they began developing project management processes and software to track what people are doing, and make sure that they were managing the transaction in a way that met the same hourly goals and hourly rates that they would normally apply to measuring productivity and profitability. That caused what is a revolution inside law firms, because you started to focus on using software tools internally, to measure what you were doing and to try to figure out how to be more efficient in order to increase margin. Various law firms developed their own internal management software. We, as a firm, have a program that we developed, called "Transform," where we track what people are doing and how they are doing, and try to be as cost-effective and as profitable as possible, using that software.

Over time, what law firms started doing was sharing that project management software with their clients, so that you could basically corroborate in being cost-effective and efficient. That brought a level of transparency to the outside counsel/inhouse counsel relationship. It provided both sides with a lot of data that they could analyze: where should we be spending time; where should we not be spending time; and other issues. Doug, for example, mentioned that now, in M&A, a big time-sink is around diligence and IP diligence, and to what extent has the target complied with regulations.

As law firms and clients started seeing the data as to where time was going, they could say, "Is there a more efficient way to do this?"

What also came out of that is business people started focusing on it and saying, "Is doing this particular work the only way to solve this problem?" People started looking at insurance products, because for business people, when you're looking at risks, oftentimes you

just pass that on to insurers. They started bringing in insurance companies to look at the data and say, "Are there insurance products that can be developed to help reduce some of this cost and mitigate the risk?"

Now we work in an environment, as lawyers, where we're often working with our client and with insurance companies to see if there is a way to move a risk into an insurance product as opposed to just contractually between the parties. That's a big area of innovation and development. More significantly than anything is the adoption and development of AI software to create tools to help in this whole process.

To give you an example, we're working with Salesforce. The head of M&A in the legal department, Ray Chan, has started a project, she calls the "Atticus Project." She's working with a number of law firms to develop AI software to do due diligence review of data room agreements and contracts in M&A. We went out and canvassed what's available in the market. There's a lot of funding right now of legal processes software companies. One of the most high-profile companies is called Kira Software, which is developing AI tools for document management and for due diligence review of documents in M&A.

As part of this Atticus project, we started working with Kira. You have to adopt their software and then feed it documents, like the types of documents you would review in an M&A data room. Over time, it learns what the provisions are and starts coming up with patterns, giving you data and saying "If you have this provision, if you compare that to 60 other transactions, this kind of problem could arise or that other problem could arise." Then you can take that data — and Doug talked about the fact that reps and warranties insurance has been adopted in Europe and in Asia, but not so much in the United States. Now, with all the data you can bring back, you can share that with insurance companies. They can say, "This is what you're finding, and this is the way

it appears across 60 transactions, and in this number of cases it creates a problem. This is what the cost is down the line, we can basically come up with an insurance product where you pay X dollars today to be insured against that potential outcome."

As a result of all of that data and those discussions, we're finding that reps and warranties insurance is becoming more adopted now in the United States. When I first called Kira to talk about working with them, it turns out that it was founded by three recent graduates from the same law school that I went to. They'd all started as junior associates at leading New York law firms and they dropped out when they were third-year associates to start this company. I asked the main founder how they had come up with the idea, and he said, "We were junior associates at these firms, we joined there after seven years of intense education at New York schools. I had to go into the data room and review agreements to see if they had change of control provisions that might get triggered in an M&A context, and I was spending days reviewing these agreements. I went to the senior associate, and said, 'There's got to be a better way than me spending all of this time,' and they said, 'No, this is how you get trained and this is how you report hours.'" So, he decided to build a software program that could do this just as well as attorneys can.

That is getting widely adopted. We're working with WeWork right now on developing AI software for them to manage all of their leases. We're working with RPX, which has developed an insurance product for IP litigation and IP breaches, and that's getting widely adopted both in M&A and for managing litigation. We just did a transaction for a startup called Zeguro — for their Series A financing — and they are creating an insurance product for data breach and cyber-attack incidents. They're working with a number of law firms and insurance companies to come up with an insurance product that's going to be provided to mid-sized companies and help them with data breach.

The area that I find most interesting and that I'm most involved in is one Doug mentioned. From the perspective of strategic buyers, when they get into an M&A transaction, one of the biggest challenges is that the targets, which have great technology and great founders haven't been doing compliance. They haven't been doing regulatory review; their IP is messy. When you talk to those startup companies — my DNA was being a startup lawyer — they're reluctant to call law firms and do it by the book because they're cash-constrained, they're resource-constrained; they don't want to incur the costs. Right now, there is a fair amount of investment in creating compliance software. I've seen some early versions of this, and I have to say, I started out as a skeptic, but the software is terrific. The startups can, as they are building the company, work with the software. It's very interactive; it's super-intelligent. It asks them, "Do you do this, did you do that?" It basically connects them to the various things they have to do.

It's being slowly adopted. That is very much in the future. What we're seeing is the adoption of a lot of software to help with all of these processes.

Nick has been developing AI chatbots. The first one that he did was during GDPR. We were getting lots of questions from our clients and spending a lot of time answering them. We were enjoying all the interactions with the clients and building that relationship, but when you've answered the same question 30 times, you start asking yourself, "Is this the most efficient way to do this?" It becomes expensive for each client. Nick created this amazing chatbot where the clients could get about 70% of the information they needed by interacting with this online chatbot and then come to us when they needed extra attention. It was hugely successful, and we've now been developing similar things for compliance and regulatory. We're seeing how many companies now that wouldn't have sought out our advice on these issues, because they thought we were going to be too expensive, are using that to get 70-80% of the work done, and then coming to us for the extra work to get it finished.

We're in Silicon Valley; people here like the word "disrupt." Our clients, both from an economic perspective and a technology perspective, have been disrupting legal services and changing it into a technology-driven product. When Andreessen Horowitz got formed by Marc Andreessen and Ben Horowitz, they famously said that software is going to eat the world. We're seeing that in many contexts, and increasingly, it's becoming a bigger part of legal practice. If we look back at this, five or ten years from now, the level of technology usage in our work is going to be much higher than it is today. We're going to look back at some of the things that we are doing now, and it's going to be like my first anecdote — you mean there was actually a world when people blacklined without using software? It's going to seem very odd to us that people ever worked that way.

That's the future, and it's a very positive development for what we're doing. [APPLAUSE]

DOUG COGEN: We use Kira, by the way. We find Kira extremely helpful.

LIOR NUCHI: I noticed on your web site, you talk about them.

DOUG COGEN: Yes.

LIOR NUCHI: When Salesforce came to us and asked us to talk to Kira, there were three or four law firms in that meeting, and none of us had actually heard about it. When we were told that we needed to use AI software; I reported to the firm that Salesforce wanted us to help them develop software for doing due diligence. Their reaction was, "What are the junior associates going to do? How are they going to get trained? What will happen to the hours?" [LAUGHTER]

In just six months, people have looked at it and say, "Wow! That is very value-added!"

KAREN TODD: As the only non-lawyer on this panel — my background is in engineering — do you see an educational process occurring where software engineers train as lawyers or vice versa, and the law firms then have someone or several people who are dual software/legal experts?

LIOR NUCHI: As lawyers, we were very skeptical that non-lawyers can understand the issues that we are dealing with. The point was made earlier, also, that we view ourselves as operating in a world where culture, history, personality — the intangible aspects of human society — are very important. We're generally skeptical of engineers sitting there telling us that a machine can do what we can do.

Kira has been successful in part because it was founded by lawyers, and people give them a certain level of credibility in what they do. I will honestly say that as I sit here and see some of the software read the question, see the answers, I've become more and more convinced that engineers are very capable of mapping out, in software, the decision tree that goes into a lot of the analysis that we do. They're good at figuring out a very economically rational outcome.

If "A" is this and "B" is that, the risk is "this." Quantifying the risk, it can be in this range of cost, and the probability of that happening, when you look at statistics across a spectrum of events, is wide. If you then share the cost of all of that amongst all the participants in the market, each one can pay "X" dollars and there can be a payout to whoever suffers that outcome. That's the way engineers and economists think. As lawyers, we don't tend to think that way, but it seems to be a very accurate and rational way to think about it.

KAREN TODD: Thank you. Our next speaker is Dominic Robertson. He's from Slaughter and May, and he's going to give us a UK perspective.

DOMINIC ROBERTSON: Thank you very much for having us here; particularly thanks to Carolyn for a thought-provoking discussion earlier on. Slaughter and May is one of Arm's outside counsel in the UK. We helped them with the acquisition by SoftBank. Normally, when we advise clients on an acquisition, we think it's been great working with them, but it's now goodbye and good luck. It's been a real privilege for us, to carry on working with Arm, and to do a lot of interesting projects with them.

I absolutely endorse what Carolyn said about the importance and quality of their legal team — and what is very clear when you work with Arm is the level of respect which the business has for the legal team. That doesn't happen by accident.

I wanted to talk today about the introduction of digital taxes in the UK and the EU which are going to fall very heavily on businesses in Silicon Valley. I know that Americans have a bit of an issue with British taxes going back to the 1770s. [LAUGHTER]

Hopefully, this won't provoke a San Jose Tea Party this morning. [LAUGHTER]

What we've got at the minute is a big debate in the tax world about where value is being generated. Everyone agrees that profits should be taxed where they are generated, but they don't always agree where that is. Traditionally, people have said, "You've got value being generated where the capital is, where the significant people are." For technology companies, that's led overwhelmingly to value being attributed to the United States. Thanks to the tax deferral system that existed before tax reform, you had very low effective tax rates on U.S. technology companies' rest of world business, until the profits were eventually distributed back to the U.S.

That has provoked a huge amount of political challenge across Europe about whether this is the right answer. The UK Treasury and other EU treasuries have tried to develop a model where they say there are some businesses where a huge amount of their value is being derived from user data, not from traditional sources. We therefore have to have a means of taxing these companies' profits, in those countries where those users are generating valuable data for their company.

The EU has been, for several years, pushing for a change to the corporate tax system to rebalance taxing rights away from the traditional model and towards a new data-driven model. The U.S., understandably, has said this is a terrible idea, because these are our companies, and that's been the case both under the Obama administration and under the Trump administration.

It looks like, for the foreseeable future, U.S. opposition in particular means there isn't going to be a globally agreed reform of the corporate tax system to enable people to tax profits based on the location of users and generation of data.

As to what several European countries are now doing, they therefore want a temporary fix for this. A short-term measure to placate our voters is that we will get some revenue-based tax on digital companies. The last time we had temporary tax in the UK was to pay for the Napoleonic Wars in the 1800s, and we've still got it today. They can last a while.

The UK announced two weeks ago that we are bringing in a digital services tax, which will likely be two percent of all revenues involving UK users. That has got a lot of press. In fact, when you look at it, it is a much more narrowly targeted measure than you might have thought. A lot of people have said to me, "Does this actually apply to every technology company?" The answer is, "No, it's only being focused on those technology companies that are deriving a particularly high value from user data, so it's only being applied to companies which are running search engines, social networks and online marketplaces connecting third-party sellers and customers."

When you read the consultation documents, it's bizarre, because they keep talking about these in an abstract sense. Just call them Google, Facebook and Amazon! [LAUGHTER]

It's only going to apply to businesses which have over £500 million sterling of worldwide revenues, and over £25 million of UK revenue. It could be, if anyone is getting up to £500 million, you could suddenly find there's a big cliff-edge effect when you tip over into this.

This is something that the UK government is still consulting on. It comes into effect in April 2020. The UK Treasury is very interested to hear from people who might be affected by this. If you do have clients or you, yourselves, are GCs of companies who may be affected, do think about getting in touch with the UK Treasury either directly or through our advisors, because they are trying to get this right and to make it targeted. Unfortunately, per what they've said to us, politically, in the UK, we have to have this tax. This is our way of dealing with the public anger in Europe about how much tax big companies aren't paying when they come in and do business in the EU.

This has been a common theme across several other European countries recently. Italy has already brought in a broader digital services tax, which is going to apply to all automated online sales. That would apply to online sales of software and probably all of Amazon's business, unlike the UK tax. Spain has said they're going to unilaterally tax in a similar way as the UK and France, announced at the start of yesterday. They're looking at doing this too.

Now, there is a broader discussion in the EU about whether to bring this in on an EU-wide basis. It feels as if it's getting stuck within the EU political process. Four of the five big EU economies — UK, Italy, Spain and France — are very much in favor of this. A lot of smaller countries — Ireland and the Netherlands — who, of course, rely a lot on U.S. investment, have opposed. Scandinavia is also opposed. Sweden is worried this is going to be extended to Spotify at some point. Germany, very much the biggest power within the EU, has taken the stance that it is pretty neutral at the moment. They feel honor-bound to try and help France out, and France is very keen on doing this. However, German businesses themselves are very worried about this. This report is trying to come up with a new category of data-driven companies and say, "These companies are deriving lots of value from user data, and we should

tax them based on where their users are." For all other companies, this model argues that user data doesn't drive value in the same way. That doesn't really stack up: as Carolyn said earlier, "every company is now a data company." The German car companies, in particular, look at this tax and say, "Increasingly we are going to be deriving value in analyzing user data in our cars in developing autonomous driving, and we are worried that over time, this taxing model is going to start applying to us."

It may well be that for a long time, therefore, we don't see anything happening in the EU as a whole, but we see more and more unilateral European taxes in this area.

The other tax I wanted to talk about, which had much less publicity, but affects far more people is the UK Offshore Intangibles Tax, which was also announced in the budget a couple of weeks ago. What I've got in this slide is the classic Double Irish structure, which a lot of U.S. tech companies have used for the many years. A U.S. top company, IP in Bermuda or Cayman Islands and an Irish principal sitting underneath that, and your local distributors or its sales support providers in the UK or anywhere else. Until tax reform happened in the U.S. at the end of last year, the U.S. had the large majority of the rest of world profits rolled up in IPCo; they wouldn't be taxed until such time as IP pays dividends back to the United States. Therefore, you held the cash there for as long as possible, and that's why, as Doug said, post-tax reform, there's now a lot of cash coming back into the U.S.

All of those profits have now been taxed as at the end of last year, and from now on, those profits will be taxed in the United States on a current basis under the wonderfully named "GILTI [Global Intangible Low-Taxed Income] rules." American tax does have better acronyms than UK tax. [LAUGHTER]

It will all be taxed in the U.S. on the current basis of at least a 10.5% rate.

The UK has actually missed the boat a bit in trying to deal with this. There has again been concern in the UK that you've got your UK sales; but a substantial amount of the profit on those sales is untaxed. The way that this tax is going to work is that the royalty which is paid to the IPCo, will have a UK tax imposed of 20% on that royalty, to the extent that it is derived from UK sales. That can be a sale to your own affiliate distributor; it can be sales to third parties outside the UK where your technology then plays a substantial part in the value of a product which is sold into the UK. When we asked the Treasury how they're going to trace that, they said, "That's an interesting question; we'd like to hear your thoughts on how that works."

There are two main exemptions to this. One is if your IPCo is resident in a good tax treaty country with the UK. Bermuda isn't one, but the U.S., obviously, is. Ireland also is a good treaty country — then this doesn't apply at all. What they're mainly targeting is income where the UK tax base is being eroded and people are being tempted to suck too much profit out to a low-tax country. Another exemption, therefore applies where IPCo is paying tax equal to half the UK rate — the UK rate's only 19% now; so that's only 9.5%. You might look at that and think, that's fine for the U.S., because everyone's paying GILTI at 10.5%+. But this exemption doesn't apply to a CFC-type [controlled foreign corporation] charge like GILTI. When we suggested to the Treasury that there should be an exclusion for businesses subject to GILTI or other CFC charges, they see this as a question of who has taxing rights over this. If the U.S. is having to step in and tax its subsidiaries on untaxed income, it's because nobody else is. Maybe we should get in first. Again, we tried this in the 1770s and it didn't work out too well.

This tax will kick in in April 2019, a year earlier than the digital services tax. It's also going to be a short-term measure in terms of impact. In fact, from October 2020, the Double Irish structures are all stopping, because Ireland was persuaded that they have to get rid of that structure. This explains why the UK offshore intangibles tax raises £475 million in the first year, and then the revenue drops off a cliff thereafter.

For this one, again, the Treasury is listening to representations. For me, the area which people should be focusing on most here is where you have income which is genuinely being taxed somewhere else — it's not just being taxed in Bermuda — this isn't the intended target, and you should be focusing only on income which is actually untaxed anywhere else. [APPLAUSE]

KAREN TODD: Thank you. Is there ever a situation where you get a cumulative effect of UK, U.S. and EU taxes all at the same time?

DOMINIC ROBERTSON: For the revenue tax, yes, absolutely. That's where the big downside is with a revenue tax. If you pay that, it can't be credited against any other taxes. The expectation here is that the offshore intangibles tax will be creditable against your GILTI charge; to the extent that your GILTI tax in the U.S. is being derived from UK sales, it will be crowded out completely by this UK tax. At that point, you worry about how the Tweeter-in-Chief is going to react to that. [LAUGHTER]

KAREN TODD: When Brexit comes about, are we going to see a separation between the EU's tax and the UK tax?

DOMINIC ROBERTSON: Quite possibly. At the moment, the UK tax is coming in unilaterally, without waiting for the EU. We will see, by the end of 2020, at least four of the big five EU economies — UK, Italy, Spain and France — will all have adopted their own subtly different versions of digital services tax. This is, of course, exactly why the EU always says it makes sense to have a common system rather than having four different sets of rules.

KAREN TODD: Right. Our next speaker is Karalyn Mildorf, from White & Case.

KARALYN MILDORF: Good morning. It's a pleasure to be with you today and to honor Carolyn and Arm, who we've had the privilege of working with on a number of very interesting transactions and matters. On a personal note, I am excited for something new, which is participating in an event with such a fantastic diversity of Carolyns. This is wonderful! [LAUGHTER]

I'm a national security attorney with White & Case. I spend most of my time, for a while now, on the Committee on Foreign Investment in the United States, or CFIUS, reviews. For those of you not familiar with CFIUS, CFIUS is a multi-agency committee led by the Treasury Department that conducts national security reviews of foreign direct investment into the United States.

I've been doing this for about a dozen years now, and when I started out, nobody knew what CFIUS was. There were only a handful of firms that did it on any kind of regular basis — it was usually a pretty quiet practice and process. I would tell people what I did, and I would just get blank, confused stares. I would have to clarify, "No, CFIUS, not syphilis!" [LAUGHTER]

Since then, it has been quite an evolution, as a number of things have happened. There

have been changes in the law. Probably most significantly, which led to more changes in the law (which I'll talk about a little bit later), there was an enormous influx of Chinese investment about five or six years ago. China overtook the historical leader of the United Kingdom, which had usually been followed by Canada, as the country most represented in CFIUS filings. As you can imagine, China presented quite a different threat profile for CFIUS to catch up with in the transaction review context — the same types of issues you hear about all the time with China, such as technology theft and espionage. There were basically a lot more evolving threats that CFIUS had to adapt to. As the concerns increased, the scrutiny increased, and you started hearing a lot more about CFIUS. Usually when you hear a lot about CFIUS, it's not because it went great for the transaction parties.

Sometimes you get high-profile cases. The biggest one was earlier this year, when President Trump, on CFIUS's recommendation, blocked the acquisition of Qualcomm by Broadcom. You can see major deals being impacted by CFIUS. Although you tend to hear about CFIUS when things go wrong, you can also know that the vast majority of transactions are still approved by CFIUS.

Arm is in a space that, as you can imagine, has a lot of national security interest. Arm has been very successful in acquiring companies that have had very interesting and sensitive technologies. We've had the pleasure and privilege of working with Arm to advise on these issues and get through the process.

The biggest thing I want to highlight, and then some specific things within it, is the importance of considering CFIUS issues and national security issues in any transaction that involves both a foreign investor and a U.S. business. National security, while it sounds very hard-core and you would think might be obvious or something that's defined, is actually quite deliberately *not* defined and is interpreted — which is a very consistent theme within CFIUS — quite broadly. We've seen "national security" cover a hugely wide range of areas. You have the very traditional obvious things — defense contractors, critical infrastructure, and aerospace contractors that are doing a lot of classified work for the U.S. government. You also get into technology. There has been particular sensitivity on things like semiconductors. Emerging technologies like AI and autonomous driving have raised a lot of concerns, and they're tricky, because these can be technologies that have enormous commercial applications, but also have enormous defense applications, as well. They have to find a balance in looking at those things.

We've seen sensitivity and interest in things like healthcare, biotechnology, identity authentication, cyber security, mining, transportation, oil and gas, and energy. Food safety has come up. When the Chinese bought Smithfield Ham a few years ago, that went for a CFIUS review.

It's important in any transaction — even if it sounds pretty commercial — to go through and ask the questions and try to assess whether there might be concerns. The best way to do that is to think about how CFIUS conducts *its* analysis, which, fundamentally, is a risk-based analysis that looks at the "threat." I'm going to put it

in quotes, especially since I'm sitting next to a foreign-owned company, the "threat" posed by the foreign acquiror, the "vulnerability" exposed by the U.S. business, and the consequences of combining that threat and that vulnerability. You have to analyze these issues through a lot of due diligence.

White & Case, where I am, is an enormous global law firm; we have offices in more than 20 countries throughout the world. We have a lot of M&A that's coming in, and we end up spending a lot of our time counseling clients on the front end and assessing if there are CFIUS risks; what are they; and then analyzing whether a filing is appropriate. Just because you can find nexus to national security, it doesn't mean that you necessarily need to file or that you're going to have a problem. What you don't want to do is find out later in the process that you should have filed, and you do have a problem. You want to head these issues off and plan for them as much as possible on the front end, because the CFIUS process tends to take quite a while. You want to have those issues as part of your deal-planning timeline at the very beginning.

Jurisdictionally, it's important to note that there have been a number of key changes. Historically, CFIUS has had (and still does have) the jurisdiction to review any transaction that can result in control of the U.S. business, which, as you'll note, is very broad. Control, itself, is a term that is both defined and interpreted by CFIUS very broadly. It doesn't mean a 50% acquisition; you can have a 5% acquisition that, if it comes with certain rights, that investment will be deemed to confer control. Looking at the specific rights involved is a key part of the analysis of CFIUS issues.

Even with that broad jurisdiction, there has been concern, largely directed at transaction structures that we're seeing out of China and others, that there was not a wide enough net for CFIUS to get its hands on all the transactions it would want to review. New legislation came out earlier this year; it was originally introduced last year, and it was passed earlier this summer and enacted. In August, President Trump signed the Foreign Investment Risk Review Modernization Act, or FIRRMA, into law, which is the first big statutory overhaul in more than a decade to the CFIUS process. It does a couple of notable things, and the most important things are, one, it expands CFIUS's jurisdiction, for the first time in history, to include, most notably, certain non-controlling but non-passive transactions. You have a minority investment and a board seat, and all of a sudden, that, alone, can subject you to CFIUS jurisdiction.

> "As a leader, when we're going through this kind of transformational change, I'm looking for change champions — people that want to be a part of change — visionaries. Leaders who are not just comfortable with ambiguity and are willing to take on risk, but who are accountable professionals and who know that it has to be the right risk at the right time with all the right protections."
>
> *– Carolyn Herzog*

It also captures certain real estate transactions, regardless of there being any investment. You don't need traditional M&A activity. If you are purchasing, or even leasing, real estate that's in close proximity to sensitive U.S. government facilities, that can be subject to CFIUS review.

Now, that jurisdictional expansion, by and large, is not going to happen until new regulations are implemented, which may take up to 18 months. We started in August, so a lot of that is a long way out. We'll get to see what draft regulations look like and comment on them. One thing that FIRRMA does is it authorizes pilot programs to essentially test-run certain aspects of the law earlier. CFIUS just released their first pilot program; it actually took effect this past Saturday, November 10th, so we are now live. The pilot program focuses on specific areas, which I'll get to in a second.

It also incorporates one of the other key aspects of FIRRMA, a big change, which is that, historically, CFIUS has always been, at least ostensibly, a voluntary process. You could get exceptions to that, where CFIUS would request parties file if they learned of a transaction of interest or initiate a filing if needed. Generally speaking though, parties would choose to go in and notify, and get the clearance and avoid any long-term risk by having that approval letter in hand.

FIRRMA actually made notification, at least of a shorter-form version to let CFIUS know about the transaction, called a declaration, mandatory in certain circumstances, and gave CFIUS a lot of leeway to determine how widely they want to use that mandatory authority.

The pilot program focuses on a relatively narrow set of industries and targets U.S. businesses, but it makes notifying qualifying investments mandatory. A pilot program U.S. business, one that would be captured, is one that is involved with critical technologies in connections with certain industries. It is not surprising that critical technologies is the focus of the first pilot program as this is one of the biggest concerns of CFIUS. They identified 27 industries by NAICS [North American Industry Classification System] code. If you have those two factors in play: critical technologies, and involvement with those critical technologies in connection with these industries, you would be a U.S. business where foreign investment would capture you in the pilot program.

They also impose the jurisdictional expansion. Both control transactions relative to a U.S. business and non-controlling but non-passive investments, where you would get board membership or observer rights, access to material non-public technical information in the possession of the U.S. business, or the ability to participate in substantive decision-making of the U.S. business. If you have minority investment with any of those, even without control, that would be an investment that would be subject to CFIUS's jurisdiction. If you meet all of those components of being captured on both the investment side and the target business side, you are subject to a mandatory declaration. They wanted to cast a wide net and incentivize parties to come in and notify them so that they could look at the transactions of interest and dispose of the ones in which there is less interest. To do that, they are authorized to issue penalties up to the value of the transaction, which, you can imagine, is a very steep price to pay for non-compliance.

They have the ability to get at you if they want you. How aggressively they'll use that, of course, remains to be seen. My personal expectation would be that they would use that where they felt it was necessary, but not in the ordinary course. It is important, if you have a transaction that might come under the pilot program, or even if you're not sure, to assess that, just because it's not your general CFIUS risk analysis. You have that penalty component if you have a potential mandatory declaration obligation.

Those are the key issues in my view of CFIUS. [APPLAUSE]

KAREN TODD: Thank you.! Do you feel there is a trend to standardize CFIUS more as we go forward, in terms of time limitations and other parameters?

KARALYN MILDORF: Every transaction party — and I'm not going to speak for Carolyn — but I'm pretty confident would love to see more of a standardization of timelines for CFIUS. The timelines for

actual review and investigation are actually mandated by statute. The problem that there has been with CFIUS is that there is a pre-filing period, where you have a draft that goes in. You submit a draft of your filing, and you wait for CFIUS to come back. You address whatever their questions and comments are, you submit the final notice, and then they have to accept it as complete. That process, right now, is taking about a month at the best, and sometimes can take substantially longer. There are no set timelines for that, currently. The new law does implement timelines which will come with the new regulation. Unfortunately, not immediately, that will put caps on both that pre-filing process and the acceptance process, that will hopefully give a lot more certainty. They're trying to beef up resources, which is a challenge and a problem, and they've lost a lot of staff, especially with the new law. There's been a lot of turnover in the office. They're trying to replace those who have left *and* build up to handle new resources. You can imagine, with this new process of declarations and mandatory requirements for filing, there's going to be a substantial increase in filings, and they were already overworked. They've seen historical increases in the number of transactions reviewed in the last two years, and it stayed steady at that high level.

Hopefully they'll be able to use the declaration process under the new regulations, which, aside from the mandatory one, allows for a shorter form and potentially quicker adjudication of more benign cases. If they are able to use that effectively, they may then dedicate more of their resources to efficiently dealing with more complex transactions that need a deeper look. There are a lot of challenges in ramping up to that, but over time, there will be improvements in the timing of the process, and the efficiency and the reliability of the timeline for parties.

KAREN TODD: Thank you. Our next, and final, speaker is Kevin Anderson with Wiley Rein.

KEVIN ANDERSON: I have some very short comments here to get us wrapped up. I wanted to focus on an issue that is unintentionally very consistent with Carolyn's presentation at the beginning. I believe that Arm is uniquely situated — at least from my narrow perspective — to effectuate the goals that you stated.

Carolyn is the fourth General Counsel over the last 15 years at Arm with whom I've had the opportunity to interact. During that time period, I've come to learn that for each of those four General Counsel, I will be their least favorite outside attorney, because I do IP litigation. Unlike all the other people here, when she interacts with me only something bad can happen. Whereas with them, something good — the transaction is happening! [LAUGHTER]

CFIUS is good, it means you're doing a transaction. With us, there's only the possibility for doing bad things.

When I was trying to come up with some comments today, I was trying, like a good litigator does, to turn that into a positive. [LAUGHTER]

The best I can come up with is that one of the reasons that's true is that Arm is an IP company, and maybe the world's preeminent

IP company, and it never has to sue anyone. It never has to initiate action. Why is that? This is where Carolyn's goals are consistent with, and honor, the concepts that I've seen in the company over the last 15 years. Arm has commercial relationships with virtually anybody in the tech space, even its main competitors, Intel and Andy, are licensees. The reason that Arm has been successful over that time is that it relates specifically to what I do, which is valuation of intellectual property. During that time period, Arm has developed a reputation for dealing honestly with its licensees, and for fostering the general overall good of the ecosystem out there. There are certainly many times during that period where I believe that Arm could have maximized its own profit at the expense of the general good and the ecosystem. Going all the way back to the founders and certainly everyone that I've interacted with at Arm, they have taken the long view, and understood that what's good for everyone as a whole is ultimately going to be good for Arm. That has played itself out; it's not just in the IP space, where I am, but in all of the spaces with which Arm deals. A good example that we had earlier this year, and it's just a bit of a shout out to Arm and its legal team, and I'm sure everyone in here is familiar with the specter and meltdown issues related to processor security. We were fortunate to have some limited interaction with Arm and provide assistance with them on that. I would say that, both from a technological standpoint and from an interaction with the government, Arm set the gold standard. That's widely recognized out there, that Arm set the gold standard in handling that problem.

What I would say is that Arm is able to do that because — and this is true about the valuation — everyone recognizes Arm as a party that can be trusted to provide the common good there.

While I know that in today's political environment, there is very much a focus, certainly in some areas, on maximizing one's own country or one's own party good,

Arm continues to be in a position to use its corporate history as an example of how the overall collective good can ultimately achieve a better result for everyone.

Carolyn, you pointed out that legislation and litigation are frequently trailing, and that is true. I would urge Arm to continue to reach out in those areas, because I do think that people can see Arm as an example of the optimism that one sees when you come to Silicon Valley. As opposed to the pessimism that one sees when one goes to the political capitals of the world. I look forward to hopefully helping you in that area. [APPLAUSE]

KAREN TODD: Thank you. In the area of IP, do you see tech companies leaning more towards handling their IP assets as trade secrets or through patents?

KEVIN ANDERSON: I would say patents, without talking about too many of the panelists' clients up there, there are still plenty of patent battles out there. I would say that you've seen, over the last couple of years, a decline in the number of patent cases but an increase in the seriousness of those cases that are brought. Fortunately, from Arm's perspective, Arm has been able to largely stay out of those serious cases. Companies are going to continue that, and replacing the director of the Patent Office who was previously someone from Google who was probably less pro-patent, with a plaintiff-side litigator who is more pro-patent, you're going to see a lot more patent litigation in the next few years.

KAREN TODD: Thank you. I'm going to go down the panel for one final question, and from each of your practice areas, and also from your position as General Counsel, tell me what key issue you would advise boards on these days. We'll start with Dominic.

DOMINIC ROBERTSON: The principal issue which your tax advisors now have to advise boards on is reputational. That's been a massive change in the 12 years I've been working as a tax lawyer, that tax had moved from being a technical black box subject, where people just do what they can to minimize their effective tax rate, to being in a position of affecting reputation. Time and again, what boards want to know is not is this good to minimize our taxes; it's how will this look on the front page of the *Financial Times* or *The Wall Street Journal* if it becomes public.

KAREN TODD: Thank you. Doug?

DOUG COGEN: There are lots of issues on the minds of boards these days, but if I have to pick one thing, it's definitely cyber security and what to do in the event of a breach. How to prevent one, how to protect the data of customers and of users, and every board is talking about this, almost in every board meeting. That would be it.

KAREN TODD: Great. Carolyn?

CAROLYN HERZOG: I'm going to have to steal from both of them, because it is reputational. When you're looking at risk at the board level, and depending on the agenda, cyber security and data privacy have to be on the board agenda. It is the responsibility of the Executive Committee to be looking

at the board from a risk perspective and whether it's cyber security or data privacy or other types of reputational risk, it's the responsibility of the General Counsel and the Executive Committee to be constantly advising the board of the most high-profile risks and, particularly, the reputational risks that are going to be impacting the board.

KAREN TODD: Thank you. Karalyn?

KARALYN MILDORF: This is consistent with what I spoke about before, awareness and consideration for transactions of CFIUS issues, even if it might not be obvious that they're at play. If you're in an area where CFIUS is relevant or could be of relevance and you want to do M&A activity, just the importance of being very proactive in developing a strategy so that you can manage the process and manage risk as effectively as possible. That goes to all levels of the transaction. That goes from your initial assessments in asking the right questions about the potential risks involved and in due diligence with the target. Structuring the deal potentially to minimize CFIUS risks and negotiating purchase agreement terms to give you as much protection as possible so that the deal you're doing is what you want to be doing. If you do that, you're not going to end up in a situation where you run into problems that frustrate your goals.

KAREN TODD: Great. Lior?

LIOR NUCHI: I would add to all of those excellent comments, globalization, diversity and inclusion. We've been working with Google where there's a worldwide walkout relating to harassment issues. I don't think that the company saw that coming. It ended up being a much bigger issue than anybody imagined. Some of the takeaways are, for the companies that we're dealing with, you're looking at a very highly educated global workforce, a younger workforce that has views about these issues. They're being very proactive and active in that way. Boards are paying a lot of attention to that and shifting and learning as they go. That's a big issue right now.

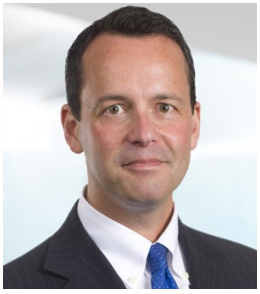
KAREN TODD: Thank you. Kevin?

KEVIN ANDERSON: As a litigator, if I get in front of the board, it's probably a very bad thing! [LAUGHTER]

Try to avoid that! I'll just free-form away from litigation, and all the risk management is on board, but I would go more towards advice that Warren Buffett would probably give, which is to be optimistic and remember that, even when it looks like there's downtime, that we do have an incredible political and economic system. Try not to forget that, and act accordingly with a sense of optimism for the country. [APPLAUSE]

KAREN TODD: Great! I want to thank all the speakers for their expertise today. I want to thank the Law Department of Arm for being here, and Carolyn for representing them. I'd like to give them a final round of applause. [APPLAUSE]

Thank you again to the audience for being here.



Doug Cogen

Partner

FENWICK & WEST

Doug Cogen concentrates his practice on mergers and acquisitions, strategic and commercial transactions, corporate counseling and governance, securities matters, shareholder activism and takeover defense. Doug is the co-chair of Fenwick & West's M&A practice and served as a member of the firm's Executive Committee for 10 years.

Doug's transactional experience includes over $100 billion of completed mergers, acquisitions and divestitures including cross-border transactions in the software, internet, life sciences, medical devices, telecommunications, networking, semiconductor, computer hardware and consumer products industries; public company tender offers; and private placements of equity and debt securities. He has handled over 125 deals for Cisco Systems including several multibillion dollar acquisitions such as Cisco's $6.9 billion acquisition of Scientific-Atlanta, $3.7 billion acquisition of AppDynamics, $3.2 billion acquisition of WebEx Communications and $2.3 billion acquisition of Duo Security. Mr. Cogen has also led multiple deals for Symantec including its $4.6 billion merger with Blue Coat and $7.4 billion sale of Veritas to Carlyle. Other representative transactions include Concur's $8.3 billion acquisition by SAP, GitHub's $7.5 billion acquisition by Microsoft, Cepheid's $4 billion acquisition by Danaher Corporation and Macromedia's $3.4 billion merger with Adobe Systems.

Mr. Cogen is ranked as a leading M&A lawyer both nationally and in Northern California by *Chambers USA*. He was also named 2018 Lawyer of the Year for technology and telecom dealmaking by *The Deal*, and the *Daily Journal* ranked him one of California's Top 100 Attorneys in 2018, 2013 and 2006. He was also included in *The Legal 500* "Hall of Fame" in 2018 and named by *The Legal 500* as a Leading Lawyer in the United States – M&A/Corporate category in each of the last five years.

Fenwick & West LLP

For more than four decades, Fenwick & West has helped some of the world's most recognized companies become, and remain, market leaders. From emerging enterprises to large public corporations as well as the venture capital and investment banking firms that are financing them, our clients are leaders in the technology and life sciences sectors that are fundamentally changing the world through rapid innovation.

Fenwick consists of over 400 attorneys with offices throughout the United States and abroad, including Silicon Valley, San Francisco, Seattle, Shanghai and New York. The firm was one of the first technology law firms in the world, and is now one of the 100 largest law firms in the U.S., representing leading companies such as Airbnb, Amazon, Cisco Systems, Dropbox, Facebook, Intuit, Netflix, Shutterfly, Symantec, Twitter and Uber.

Named Technology Group of the Year in 2018 for the fifth consecutive year by *Law360*, Fenwick is continually recognized for being at the forefront of emerging technology with deep roots in Silicon Valley's history and ecosystem, allowing the firm to understand the business models and intellectual property that drives deals. Fenwick has repeatedly earned ranking among the leading firms for mergers and acquisitions, complex financial and commercial transactions, startup and venture capital, initial public offerings, intellectual property protection and licensing, securities litigation, and domestic and international tax planning and tax controversies.

For instance, our M&A group was named Technology M&A Law Firm of the Year for the fourth consecutive year by *Global M&A Network* in 2018. *Chambers USA* also highlights the group as "very strong... a superb team that handles a high volume of M&A work for major corporations." The group has completed over $500 billion in transactions in recent years, including executing significant acquisition programs for leading serial acquirers such as Cisco Systems, Facebook, HPE, Proofpoint and Symantec.

Lior Nuchi

Partner

NORTON ROSE FULBRIGHT

Lior O. Nuchi represents multinational companies in initial public offerings, mergers and acquisitions, strategic alliances and venture capital financings. He also represents major investment banks in underwriting public offerings for technology companies, as well as a wide variety of private equity firms, financial sponsors and venture capital firms, family offices, non-institutional investors and universities in connection with their investments in, and acquisitions of, technology companies, fund formation, monetizing intellectual property and technology and commercial transactions.

Lior's clients are based in Silicon Valley, Israel, Europe, China, Taiwan, Korea and India and Lior has extensive experience in cross-border transactions in the technology industry, having practiced in Israel, Tokyo, Hong Kong and Taiwan in addition to the San Francisco Bay Area. Lior further assists technology companies and investors with respect to corporate governance matters and typically acts as principle outside counsel to his clients, focused on their most important legal needs. Lior's securities and corporate governance practice has included representing Boards of Directors and Committees of Independent Directors in connection with a wide variety of governmental and internal investigations.

Lior has extensive experience in intellectual property matters for technology companies and has led teams of intellectual property lawyers in litigating and settling major patent cases in Federal District Courts in California, Texas and Delaware and at the International Trade Commission in the U.S., as well as in various European jurisdictions such as England, Germany, France and the Netherlands. Lior has represented several major technology companies in formulating and implementing their intellectual property strategies by prosecuting strategic patents and via acquisitions of strategic patent portfolios. Lior is also active in the Privacy and Cybersecurity area and counsels clients on these issues on a regular basis with the assistance of his partners who are experts in the field.

As outside counsel to many corporations, Lior frequently advises on other legal matters important to the management team, including commercial transactions, equity plans, executive compensation, labor and employment matters, regulatory compliance, commercial disputes and structuring and managing international operations.

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Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4,000 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

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Dominic Robertson

Partner

SLAUGHTER AND MAY

Dominic is a Tax Partner and a member of the Technology Group. He advises a wide range of clients, including U.S. companies and various financial institutions, on all areas of corporate tax law.

He spends much of his time advising on structuring and other tax aspects of M&A and other corporate finance transactions.

Dominic is ranked in the tax section of *Chambers UK 2018* and listed as a leading individual for Tax. Dominic has previously been named by the *Tax Journal* as one of their "40 under 40" leading young UK tax professionals. He regularly writes for the *Tax Journal* and is the co-editor (with another of our tax partners) of the *Transfer Pricing Law Review*.

Experience

- Liverpool Football Club on its sale to Fenway Sports Group (previously New England Sports Ventures)
- Several U.S. technology companies on structuring their UK operations, including advice on transfer pricing, and updating their structures to adapt the U.S. Tax Cuts & Jobs Act
- Virgin on the IPO of Virgin Money and the sale of part of its stake in Virgin Active
- GKN on its defense against the hostile takeover bid from Melrose, including advice on the merger of its Driveline business with Dana Inc.
- Various banking and corporate clients on tax issues affecting their treasury operations, including FX hedging, anti-hybrid tax rules and the special tax regime for regulatory capital securities
- Wren House Infrastructure Management on the acquisition of North Sea Midstream Partners from funds managed by ArcLight Capital Partners
- GSK on various transactions, including a major asset swap with Novartis, the creation of a consumer healthcare joint venture with Novartis, and the creation of a bioelectronics joint venture with Verily Life Sciences

Slaughter and May

A Global Law Firm

Slaughter and May is a leading international law firm that supports a broad range of clients on strategic projects, from many of the largest multi-national listed corporations, through serial entrepreneurs and private investors, to new entrants and some high growth early-stage companies. They provide the full range of legal service, including corporate/M&A, litigation and financings. They are recognised throughout the global business community for providing legal advice of the highest quality, for creativity in finding solutions and for commercial awareness.

The U.S. is one of their most active international markets; they advise over 100 of the U.S. companies in the Fortune 500 and multi-national businesses with significant U.S. interests.

They regularly work alongside elite U.S. law firms, including on some of the most significant global transactions. They work closely with the leading independent Californian firms, as well as major law firms in key regional centres across the entire country including New York, Texas, Illinois and Massachusetts.

Supporting Facts:

- Over 70% of their turnover comes from cross-border work
- In the last year, they have worked in over 140 countries, working with over 200 different relationship law firms
- Their lawyers speak 77 different languages and represent 39 nationalities
- They advise over 100 of the U.S. Fortune 500 companies
- They advise 34 of the FTSE 100 on their activities in Europe and beyond
- *"They have a fantastic reputation, and their M&A work is second to none. They stand out from the crowd with their ability to spot issues at a really early stage."* – Chambers & Partners, 2019

Karalyn Mildorf

Partner

WHITE & CASE

Karalyn Mildorf is a partner in the National Security and CFIUS (Committee on Foreign Investment in the United States) practice of White & Case, focusing her practice in the areas of Exon-Florio reviews before the Committee on Foreign Investment in the United States and foreign ownership, control or influence (FOCI) mitigation matters. *Chambers USA* has consistently recognized Karalyn as a leading CFIUS expert, noting in 2018 that "The 'very dedicated and hard-working' Karalyn Mildorf is 'always responsive and understands client needs.'" Comments in *Chambers USA 2017* include that "She has a strong track record in national security work, including CFIUS filings and FOCI compliance, and has a particular niche in Exon-Florio reviews." In 2017, Karalyn was named one of only four "International Trade Rising Stars" under 40 by *Law360*.

She has advised clients on CFIUS issues in hundreds of transactions covering a wide variety of industries and investor countries, and has extensive experience with national security requirements in connection with complex transactions. Karalyn advises clients on all matters pertaining to CFIUS reviews, including conducting detailed due diligence and assessing potential national security issues in connection with transactions, developing and implementing CFIUS strategies, negotiating CFIUS-related deal terms, representing clients in all stages of the CFIUS filing and review process, engaging with relevant government officials, and negotiating and advising regarding implementation of and compliance with CFIUS mitigation arrangements.

Karalyn also has extensive experience representing clients in a myriad of FOCI mitigation matters. She has negotiated, prepared, and advised regarding compliance with, and implementation of, numerous FOCI mitigation arrangements, including Special Security Agreements, Proxy Agreements, Security Control Agreements and FOCI Board Resolutions.

She has also represented clients in national security reviews before Team Telecom; conducted export compliance and industrial security due diligence for many transactions covering a range of business sectors; advised clients with respect to voluntary disclosures before the U.S. Department of State, the U.S. Department of Commerce and the Department of the Treasury's Office of Foreign Assets Control; and represented clients with respect to a variety of export control compliance matters.

White & Case LLP

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As testament to our global accomplishments, The *Financial Times* honored White & Case as the second-most innovative law firm in North America in its *FT* Innovative Lawyers North America 2018 report. In addition, the report ranked White & Case as an innovator for seven matters in six categories, and the Firm received top rankings in all three *FT* Innovative Lawyers reports for North America, Europe and Asia during 2018.

Kevin Anderson

Partner

Wiley Rein LLP

Kevin Anderson is a Partner in the Intellectual Property Practice at Wiley Rein LLP in Washington, D.C. With more than 15 years of experience representing Fortune 100 companies, innovators, and a wide range of technology-centered entrepreneurs, Kevin assists clients in developing, protecting, and capitalizing on their intellectual property. He specializes in patent litigation, counseling, and licensing; copyrights for technology and computer-related companies; and trademark/trade dress infringement.

Mr. Anderson has successfully litigated cases involving a broad swath of technologies including: wireless standards such as CDMA and WiFi; broadband Internet technologies such as asymmetric digital subscriber line (ADSL); wireless applications such as the SMS; navigation systems; communications and other networking technologies; microprocessor technology; wireless email products; software; computer systems; LEDs; pharmaceuticals; and medical devices. He has also appeared on behalf of defendants in intellectual property cases in broad variety of venues including Federal district courts in Virginia, Texas, Delaware, New York, Illinois, California, New Jersey, Michigan, Florida, West Virginia, and Georgia.

Mr. Anderson has been named an "Acritas Star Lawyer" (2018) and named one of D.C.'s "Super Lawyers" for Intellectual Property Litigation by *Super Lawyers* magazine (2013-2018). Mr. Anderson earned his J.D. from Duke University School of Law and received his B.A., from Arizona State University.

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Wiley Rein is a dominant presence in Washington, D.C., with more than 240 attorneys and public policy advisors. Our firm has earned international prominence by representing clients in complex, high-stakes regulatory, litigation, and transactional matters. Many of the firm's attorneys have held high-level positions in the White House, on Capitol Hill, and in federal agencies including the U.S. Department of Defense, the U.S. Patent and Trademark Office, the Federal Communications Commission, the U.S. Department of State, the U.S. Department of Commerce, the Federal Election Commission, and the U.S. Department of Justice. Many of our attorneys also have active high-level security clearances that allow them to quickly "read in" to matters when there is a need to access classified materials. The *Legal Times* has noted that the firm "represents as perfect a merging of public policy and corporate America as exists in Washington."

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