

*When the facts come out, the truth will be known.*

## **THE RED HERRING**

*Newsletter of the AALS Section on Business Associations (SOBA)*

Volume XXXVIII – Fall 2018

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### **2019 ANNUAL MEETING – NEW ORLEANS**

## **Contractual Governance: the Role of Private Ordering**

**January 4, 2019 1:30-3:15**

### **AALS Annual Meeting, Business Associations Section**

Fulton Room, 3<sup>rd</sup> Floor Hilton New Orleans Riverside

*Co-sponsoring Sections:* Agency, Partnership, LLC's and Unincorporated Associations, Contracts, Securities Regulation, and Transactional Law & Skills

The program will explore the use of contracts to define and modify the governance structure of business entities, whether through corporate charters and bylaws, LLC operating agreements, or other private equity agreements. From venture capital preferred stock provisions, to shareholder involvement in approval procedures, to forum selection and arbitration, is the contract king in establishing the corporate governance contours of firms?

1. Welcome & call to order from Anne Tucker, SOBA Chair-Elect.
2. Tribute to the life and work of Lynn Stout (1957-2018).
3. Program Speakers:
  - [SEC Commissioner, Hester Peirce.](#)
  - [Jill E. Fisch](#), University of Pennsylvania Law School Saul A. Fox Distinguished Professor of Business Law; Co-Director, Institute for Law and Economics.
4. Presentation of new work:
  - [Megan W. Shaner](#), The University of Oklahoma College of Law, Associate Dean for Research and Scholarship, Professor of Law, presenting *Interpreting*

*Organizational “Contracts” and the Private Ordering of Public Company Governance.*

- [Cathy Hwang](#), University of Utah Associate Professor & [Yaron Nili](#), University Wisconsin Law School Assistant Professor of Law, presenting *Shadow Charters*.

5. Panel Discussion / Q & A moderated by Anne Tucker.

6. Audience Q & A.

Abstracts for the papers to be presented follow below.

As for the much anticipated and always exciting business meeting, you should have received a message from our fearless leader naming the nominees who will be deemed elected unless someone has been so bold as to object.

The nominee for chair-elect is: Andrew Tuch of Washington (St. Louis).

The nominees for the Executive Committee (whose terms will expire as of the 2022 annual meeting) are:

Mira Ganor (Texas)

Matthew Jennejohn (BYU)

James Park (UCLA)

Dana Brakman Reiser (Brooklyn)

Andrew Verstein (Wake Forest).

Vote early or forever hold your peace – or is it piece?

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Information relating to other programs and panels of interest follows.

MORE →

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## **Abstracts for Paper Presentations**

### **SHADOW CHARTERS**

Yaron Nili & Cathy Hwang

For decades, scholars, practitioners, and shareholders have focused on the corporate charter and bylaws as the battleground for major corporate governance change. This focus, however, has overlooked other important sources of influence. This Article is the first to shine a light on ancillary corporate governance documents, which it terms as “shadow charters.” Shadow charters—which include documents such as board committee charters and board governance guidelines—are an important part of corporate decisionmaking and board behavior, and represent an overlooked and important way to influence corporations.

This Article makes two contributions to the literature. First, it provides the first account of shadow charters. It uses hand-collected data—consisting of hundreds of shadow charters—and interviews with dozens of public company directors, to reveal how shadow charters influence board decisionmaking, business practice, and shareholders’ rights. This empirical account also highlights the vast array of documents that influence corporate governance, as well as the variety of governance documents companies adopt. Second, this Article contributes to robust literatures in corporate contracts and corporate governance. We show how shadow charters change the well-understood contractual relationships between corporations, their managers, and their shareholders. On one hand, shadow charters give managers flexibility to specify and organize their work productively. On the other hand, because they can be adopted without shareholder approval or knowledge, they may diminish shareholder input. The Article explores this inherent tension and its impact on the corporate governance landscape.

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### **INTERPRETING ORGANIZATIONAL “CONTRACTS” AND THE PRIVATE ORDERING OF PUBLIC COMPANY GOVERNANCE**

Megan W. Shaner

Corporate law is undergoing an explosion of governance by private ordering. With increasing frequency and creativity, the charter and bylaws of public corporations are being used as a tool for restructuring key aspects of corporate governance. The current focus of parties, courts, and scholars has been on the facial validity of these efforts. In light of the courts’ willingness to uphold corporate governance contracting, legal battles will morph from validity challenges to interpretation disputes. Yet interpretation principles are a topic to which corporate scholars

have devoted limited attention. With interpretation poised to take on an influential role in shaping corporate law and norms, establishing a cohesive interpretative framework is critical.

This Article rejects the contract metaphor traditionally applied to questions of charter and bylaw interpretation in favor of a more nuanced interpretative framework. Dissecting the provisions that comprise a public corporation's organizational documents reveals a rich combination of standardization, customization, and innovation. Drawing from many sides of traditional interpretation debates, this Article links the different types of organizational provisions to the interpretive theory and principles that most accurately achieve the primary interpretive goals attendant to each. The outcome is a framework that requires courts to engage in a more explicit and tailored analysis, resulting in a stable interpretation scheme and clear judicial guidance to market actors.

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### **OUR MISSION (SHOULD WE DECIDE TO ACCEPT IT)**

For the record, the AALS website includes the following statement of purpose:

The Section on Business Associations promotes the communication of ideas, interests, and activities among members and makes recommendations on matters of interest in the teaching and improvement of the law relating to business associations.

The website address is: <https://connect.aals.org/businessassociations>

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## SOBA Works in Progress Panel Discussion

With MC Jessica Erickson

Thursday, January 3, 2019

3:30 to 5:15 PM

First Floor, Hilton NOLO Riverside, Grand Salon Section 10

The Works in Progress session will feature the following papers and commentators:

- *Horizontal Directors*, Yaron Nili (Wisconsin). Commentators: Afra Afsharipour (UC Davis), Jill Fisch (Penn).
- *Side Benefits in Private Equity: The New Greenmail?*, William Clayton (BYU). Commentators: Megan Shaner (Oklahoma), Andrew Tuch (Washington (St. Louis)).
- *Autonomous Corporate Personhood*, Carla L. Reyes (Michigan State). Commentators: Usha Rodrigues (Georgia), Stefen Padfield (Akron).
- *CDS Manipulation*, Gina-Gail Fletcher, Indiana (Bloomington). Commentators: Felix Chang (Cincinnati), Paolo Saguato (George Mason).
- *Complex Compliance*, Veronica Root (Notre Dame). Commentators: Kristin Johnson (Tulane), Eric Chaffee (Toledo).
- *Delaware's New Competition*, William Moon (Maryland). Commentators: Roberta Romano (Yale), Jens Dammann (Texas).

Please come join the session. No advance reading required!

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## AALS SECTION ON BUSINESS ASSOCIATIONS

### EXECUTIVE COMMITTEE & OFFICERS

#### *Term Expiring at the 2019 Annual Meeting:*

Eric Chafee, Toledo  
Anita Krug, University of Washington  
Elizabeth Pollman, Loyola Los Angeles  
Jennifer Taub, Vermont

#### *Term Expiring at the 2020 Annual Meeting:*

Afra Afsharipour, UC Davis  
Jessica Erickson, Richmond  
Mohsen Manesh, Oregon

#### *Term Expiring at the 2021 Annual Meeting:*

Tamara Belinfanti, NYLS  
Tom Lin, Temple  
Benjamin Means, South Carolina  
Megan Shaner, Oklahoma

#### *Fearless Leaders:*

Matthew Bodie, Saint Louis – Chair  
Anne Tucker, Georgia State – Chair-Elect  
Usha Rodrigues, Georgia – Immediate Past Chair  
Andrew Tuch, Washington U in StL – Nominated Chair-Elect (2019)

#### *Fearless Editor:*

Richard Booth, Villanova

#### *Formerly Fearless Editors:*

John Coffee, Columbia 1981-1982  
Robert Thompson, Georgetown 1982-1984

## OTHER PROGRAMS OF INTEREST

(including – just for the record – official catalog entries for the above programs)

### AALS Discussion Group

[Go Back](#)

#### Sessions Information

- **January 3, 2019**  
10:30 am - 12:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** AALS Discussion Groups  
**Session Capacity:** N/A

As the cryptoasset ecosystem shows signs of emerging from its "Wild West" phase, insider trading has become a principal concern for trading platforms, investors, and regulators. Insider trading cases concerning cryptoassets present challenges, however, because the legal understanding of both cryptoassets and the markets in which they are generated, bought, and sold has been significantly outpaced by their development, expansion, and innovation. In the United States, market professionals, the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), and others debate whether virtual currencies are securities, contracts, currencies, commodities, or something else. Both the SEC and CFTC assert jurisdiction over cryptoassets, but (at this writing) neither has precisely defined the scope or nature of its purported regulatory oversight. This commercial and regulatory uncertainty leaves a number of questions about insider trading in cryptoassets unanswered. This Discussion Group considers these and other related concerns regarding insider trading in cryptoassets.

#### Date & Time

Start Date: 01/03/2019, 10:30 am

End Date: 01/03/2019, 12:15 pm

Room: Grand Salon 15 & 18

Floor: First Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Discussion Group Moderator: John P. Anderson, Mississippi College School of Law

Discussion Group Participant: Eric C. Chaffee, University of Toledo College of Law

Discussion Group Participant: Mihailis Diamantis, University of Iowa College of Law

Discussion Group Participant: Michael D. Guttentag, Loyola Law School, Los Angeles

Discussion Group Moderator: Joan M. Heminway, University of Tennessee College of Law

Discussion Group Participant: Peter J. Henning, Wayne State University Law School

Discussion Group Participant: Donna M. Nagy, Indiana University Maurer School of Law

Discussion Group Participant: Josephine Sandler Nelson, Villanova University Charles Widger School of Law

Discussion Group Participant: Ellen S. Podgor, Stetson University College of Law

Discussion Group Participant: David Rosenfeld, Northern Illinois University College of Law

Discussion Group Participant: Hannibal Travis, Florida International University College of Law

Discussion Group Participant: Andrew Verstein, Wake Forest University School of Law

Discussion Group Participant: Aaron Wright, Benjamin N. Cardozo School of Law

### Sessions Information

- **January 3, 2019**  
3:30 pm - 5:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Works-in-Progress  
**Session Capacity:** N/A

Session description is not available at this time.

#### Date & Time

Start Date: 01/03/2019, 3:30 pm

End Date: 01/03/2019, 5:15 pm

Room: Grand Salon Section 10

Floor: First Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Commentator: Afra Afsharipour, University of California, Davis, School of Law

Commentator: Eric C. Chaffee, University of Toledo College of Law

Works-in-Progress Presenter: Felix B. Chang, University of Cincinnati College of Law

Works-in-Progress Presenter: William W. Clayton, Brigham Young University, J. Reuben Clark Law School

Commentator: Jens C. Dammann, The University of Texas School of Law

Moderator: Jessica Erickson, The University of Richmond School of Law

Commentator: Jill E. Fisch, University of Pennsylvania Law School

Commentator: Gina-Gail S. Fletcher, Indiana University Maurer School of Law

Commentator: Kristin N. Johnson, Tulane University Law School

Works-in-Progress Presenter: William J. Moon, University of Maryland Francis King Carey School of Law

Works-in-Progress Presenter: Yaron G Nili, University of Wisconsin Law School

Commentator: Stefan J. Padfield, University of Akron School of Law

Works-in-Progress Presenter: Carla L. Reyes, Michigan State University College of Law

Commentator: Usha R. Rodrigues, University of Georgia School of Law

Commentator: Roberta Romano, Yale Law School

Works-in-Progress Presenter: Veronica S. Root, Notre Dame Law School

Commentator: Paolo Saguato, Antonin Scalia Law School at George Mason University

Commentator: Megan W Shaner, University of Oklahoma College of Law

Commentator: Andrew Tuch, Washington University in St. Louis School of Law



### Sessions Information

- **January 4, 2019**  
8:30 am - 10:15 am  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

This program will examine the role of finance in business transactions from various perspectives with the goal of inspiring more deliberate consideration of finance in law school teaching and legal scholarship. From structured finance to real estate, from mergers and acquisitions to capital markets, finance plays an important and fundamental role in transactional law. The intersection of transactional law and finance is dynamic, providing academics, practitioners, and the judiciary with both challenges and opportunities. First, a panel will focus discuss financial literacy pedagogy, which may include teaching methods, teaching business and finance basics joint degree programs; learning how to communicate with business/finance people, small group work, and courses with non-law students (such as courses with business school students). The second part of the program will consist of scholarly presentations selected from a Call for Papers.

Business meeting at program conclusion.

#### Date & Time

Start Date: 01/04/2019, 8:30 am

End Date: 01/04/2019, 10:15 am

Room: Fulton

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker from a Call for Papers: Jordan M. Barry, University of San Diego School of Law

Speaker: Robert P. Bartlett, III, University of California, Berkeley School of Law

Speaker: Deborah Burand, New York University School of Law

Speaker: Kristin N. Johnson, Tulane University Law School

Speaker: Julie D. Lawton, DePaul University College of Law

Speaker: Robert J. Rhee, University of Florida Fredric G. Levin College of Law

Moderator: Christina M. Sautter, Louisiana State University, Paul M. Hebert Law Center

Speaker from a Call for Papers: Anne M. Tucker, Georgia State University College of Law

## Contracts, Co-Sponsored by Business Associations and International Human Rights

[Go Back](#)

### Sessions Information

- **January 4, 2019**  
10:30 am - 12:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

This session will discuss the text and issues related to the Proposed Final Report of the Working Group to Draft Human Rights Protections in Supply Contracts for the American Bar Association Business Law Section. The hope is that the draft contract provisions will form a part of corporate chain contracts seeking to help eradicate labor trafficking and child labor from supply chains, making a difference to real people—their health, safety, and freedom, and in some cases, life and death. Adoption of policies, while a good start, is not always enough: principles need to be put into practice. One way to do so is to put them in supply contracts. The contracts or related documents (like purchase orders) are what govern, and often guide, the behavior of the parties. When combined with effective remedies for their violation and a willingness to enforce them, they have great potential to make a difference.

A virtual business meeting was held prior to the Annual Meeting.

#### Date & Time

Start Date: 01/04/2019, 10:30 am

End Date: 01/04/2019, 12:15 pm

Room: Magazine

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker: Sarah Dadush, Rutgers Law School

Speaker: Mr. Chris Johnson, Center for Justice, Rights, and Dignity

Speaker: Nancy S. Kim, California Western School of Law

Speaker: Ramona Lampley, St. Mary's University School of Law

Moderator: Jennifer S. Martin, St. Thomas University School of Law

Speaker: David V. Snyder, American University, Washington College of Law

## Commercial and Related Consumer Law and Creditors' and Debtors' Rights Joint Program

[Go Back](#)

### Sessions Information

- **January 4, 2019**  
10:30 am - 12:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

The Consumer Financial Protection Bureau was created following the 2008 financial crisis with the intended goal of making markets for consumer financial products and services work for all Americans. Congress granted the Bureau broad powers to enforce and regulate consumer financial protection laws and entrusted it with a number of consumer-facing responsibilities. This program will examine the tumultuous history of the CFPB, from its creation as part of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, its actions over the Director Richard Cordray's tenure, the legal fight over who currently leads the Bureau, and the actions of the interim director named by President Trump. Panelists will also discuss the possible future of the CFPB and the "lessons learned" from its history and what they tell us about future fights to ensure consumers are protected in the financial products marketplace.

Business meeting for Commercial and Related Consumer Law will be held at program conclusion.  
Business meeting for Creditors' and Debtors Rights will be held at program conclusion.

#### Date & Time

Start Date: 01/04/2019, 10:30 am

End Date: 01/04/2019, 12:15 pm

Room: Fulton

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker: Kathleen C. Engel, Suffolk University Law School

Speaker: Mr. Deepak Gupta, Gupta Wessler PLLC

Speaker from a Call for Papers: Hosea H. Harvey, Temple University, James E. Beasley School of Law

Speaker: Patricia A. McCoy, Boston College Law School

Speaker from a Call for Papers: Alexandra Everhart Sickler, University of North Dakota School of Law

## Contracts, Co-Sponsored by Business Associations and International Human Rights

[Go Back](#)

### Sessions Information

- **January 4, 2019**  
10:30 am - 12:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

This session will discuss the text and issues related to the Proposed Final Report of the Working Group to Draft Human Rights Protections in Supply Contracts for the American Bar Association Business Law Section. The hope is that the draft contract provisions will form a part of corporate chain contracts seeking to help eradicate labor trafficking and child labor from supply chains, making a difference to real people—their health, safety, and freedom, and in some cases, life and death. Adoption of policies, while a good start, is not always enough: principles need to be put into practice. One way to do so is to put them in supply contracts. The contracts or related documents (like purchase orders) are what govern, and often guide, the behavior of the parties. When combined with effective remedies for their violation and a willingness to enforce them, they have great potential to make a difference.

A virtual business meeting was held prior to the Annual Meeting.

#### Date & Time

Start Date: 01/04/2019, 10:30 am

End Date: 01/04/2019, 12:15 pm

Room: Magazine

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker: Sarah Dadush, Rutgers Law School

Speaker: Mr. Chris Johnson, Center for Justice, Rights, and Dignity

Speaker: Nancy S. Kim, California Western School of Law

Speaker: Ramona Lampley, St. Mary's University School of Law

Moderator: Jennifer S. Martin, St. Thomas University School of Law

Speaker: David V. Snyder, American University, Washington College of Law

## Business Associations, Co-Sponsored by Contracts, Security Regulations, and Transactional Law

[Go Back](#)

### Sessions Information

- **January 4, 2019**  
1:30 pm - 3:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

The program will explore the use of contracts to define and modify the governance structure of business entities, whether through corporate charters and bylaws, LLC operating agreements, or other private equity agreements. From venture capital preferred stock provisions, to shareholder involvement in approval procedures, to forum selection and arbitration, is the contract king in establishing the corporate governance contours of firms? In addition to paper presenters, the program will feature prominent panelists including SEC Commissioner Hester Peirce and Professor Jill E. Fisch of the University of Pennsylvania Law School.

A virtual business meeting was held prior to the Annual Meeting.

#### Date & Time

Start Date: 01/04/2019, 1:30 pm

End Date: 01/04/2019, 3:15 pm

Room: Fulton

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker: Jill E. Fisch, University of Pennsylvania Law School

Speaker: Cathy Hwang, University of Utah, S. J. Quinney College of Law

Speaker: Yaron G Nili, University of Wisconsin Law School

Speaker: Ms. Hester M. Peirce, United States Securities and Exchange Commission

Speaker: Megan W Shaner, University of Oklahoma College of Law

Moderator: Anne M. Tucker, Georgia State University College of Law

## Trusts and Estates, Co-Sponsored by Business Associations and Taxation

[Go Back](#)

### Sessions Information

- **January 5, 2019**  
8:30 am - 10:15 am  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

In addition to facilitating gratuitous transfers, trusts play a major role in commercial transactions. These "business trusts" are the preferred form of organization for mutual funds (which hold more than \$16 trillion) and are commonly used in asset securitization (an industry worth in excess of \$1 trillion), employee pension and retirement accounts (which hold more than \$24 trillion), and real estate investment trusts (which comprise over thirty firms on the S&P 500). Until recently, however, there has been little scholarly interest in business trusts, perhaps because they fall in a curricular gap between trusts and estates (where the primary focus is gratuitous transfers) and business associations (where the primary focus is the corporation and partnership). Building off of recent scholarship, this panel will begin to address this gap in the literature by presenting cutting-edge scholarship on business trusts of all types

Business meeting at program conclusion.

#### Date & Time

Start Date: 01/05/2019, 8:30 am

End Date: 01/05/2019, 10:15 am

Room: Grand Salon Section 4

Floor: First Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Moderator: Daniel B. Kelly, Notre Dame Law School

Speaker from a Call for Papers: Peter B. Oh, University of Pittsburgh School of Law

Speaker from a Call for Papers: Carla L. Reyes, Michigan State University College of Law

Speaker from a Call for Papers: Mr. Ryan Scott Teschner, Rheem Manufacturing

Speaker from a Call for Papers: Lee-ford Tritt, University of Florida Fredric G. Levin College of Law

### Sessions Information

- **January 5, 2019**  
8:30 am - 10:15 am  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

The panel will explore emerging trends pertaining to blockchain solutions across industries and cryptocurrency implementation efforts. The rapid evolution of the market for blockchain technology solutions and cryptocurrencies has caused regulators to identify potential risks and possible liabilities. So far, both the SEC and CFTC have asserted jurisdiction over cryptocurrencies, but they have yet to define the scope or nature of their purported regulatory oversight.

Business meeting at program conclusion.

#### **Date & Time**

Start Date: 01/05/2019, 8:30 am

End Date: 01/05/2019, 10:15 am

Room: Commerce

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### **Speakers**

Moderator: Eric C. Chaffee, University of Toledo College of Law

Speaker: Kristin N. Johnson, Tulane University Law School

Speaker: Carla L. Reyes, Stetson University College of Law

Speaker: Usha R. Rodrigues, University of Georgia School of Law

Speaker: Angela Walch, St. Mary's University School of Law

### Sessions Information

- **January 5, 2019**  
10:30 am - 12:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

It has been a decade since the Financial Crisis of 2007-8, and some academics and policymakers are now starting to wonder what the next financial crisis might look like. In particular, questions have been raised about the limitations of regulation implemented in the wake of the last Financial Crisis, in terms of anticipating and addressing future threats to stability. At the same time, other academics and policymakers have expressed concerns that the financial stability regulation implemented post-Crisis is stifling economic growth. These concerns have informed the Trump Administration's regulatory agenda. This program will explore these conflicting views and other topics related to the stability of our financial system.

A virtual business meeting was held prior to the Annual Meeting.

#### Date & Time

Start Date: 01/05/2019, 10:30 am

End Date: 01/05/2019, 12:15 pm

Room: Grand Salon Section 3

Floor: First Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Moderator: Hilary J. Allen, American University, Washington College of Law

Speaker: Mr. Richard Berner, New York University Stern School of Business

Speaker: Jeffrey N. Gordon, Columbia Law School

Speaker from a Call for Papers: Paolo Saguato, Antonin Scalia Law School at George Mason University

Speaker: Heidi M. Schooner, The Catholic University of America, Columbus School of Law

Speaker from a Call for Papers: Steven L. Schwarcz, Duke University School of Law



## Agency, Partnership, LLC's and Unincorporated Associations Co-Sponsored by Business Associations and Transactional Law and Skills

[Go Back](#)

### Sessions Information

- **January 5, 2019**  
1:30 pm - 3:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

This program will explore the evolution of the limited liability company (LLC), including subjects such as the LLC's rise to prominence as a leading entity choice (including public LLCs and PLLCs), the role and impact of series LLC, and differences in various LLC state law rights and obligations. The program will also consider ethics and professional responsibility and governance issues raised by the LLC. The Section is particularly seeking papers that discuss the role of the LLC as a unique entity (or why it is not).

A virtual business meeting was held prior to the Annual Meeting.

#### Date & Time

Start Date: 01/05/2019, 1:30 pm

End Date: 01/05/2019, 3:15 pm

Room: Royal

Floor: Third Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker from a Call for Papers: Christopher G Bradley, University of Kentucky College of Law

Moderator: Joshua P. Fershee, West Virginia University College of Law

Speaker: Elizabeth Stone Miller, Baylor University School of Law

Speaker: Mr. Thomas E. Rutledge, Stoll Keenon Ogden PLLC

### Sessions Information

- **January 5, 2019**  
1:30 pm - 3:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

American antitrust law came of age in an era when two-sided markets—markets where a firm competes to attract both providers and end users of a product or service—were relatively rare. Now, many of America's biggest and most influential companies are platforms that bring together advertisers and eyeballs, taxi drivers and riders, merchants and purchasers. Competition problems are acute because two-sided products tend to feature network effects, leading to market concentration and entry barriers. Some maintain that market power and anticompetitive effects on one side of a two-sided market can be justified by benefits provided to purchasers on the other side. How can antitrust law be used to protect competition in two-sided markets? Do traditional notions of market power and competitive effects need to be modified for these markets? This panel will feature perspectives on these questions from both academia and legal practice.

Business meeting at program conclusion.

#### Date & Time

Start Date: 01/05/2019, 1:30 pm

End Date: 01/05/2019, 3:15 pm

Room: Grand Salon Section 12

Floor: First Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker: Harry First, New York University School of Law

Speaker: Rebecca Haw Allensworth, Vanderbilt University Law School

Speaker: John B. Kirkwood, Seattle University School of Law

Speaker: John M. Newman, The University of Memphis, Cecil C. Humphreys School of Law

## Employee Benefits and Executive Compensation, Co-Sponsored by Aging and the Law, Disability Law, and Securities Regulation

[Go Back](#)

### Sessions Information

- **January 6, 2019**  
10:30 am - 12:15 pm  
Event: [2019 Annual Meeting](#)  
**Session Type:** Section Programs  
**Session Capacity:** N/A

Fiduciary duties abound throughout the law. Employee benefit plan administrators, investment managers, financial advisors, trustees, executives, directors, controlling shareholders, guardians, physicians, and lawyers, among others, have fiduciary duties. This panel of experts will explore fiduciary obligations in a variety of settings, including the provision of retirement advice, surrogate decision-making, the doctor-patient relationship, and securities regulation in the United States. Panelists will consider how the law is changing and has changed under the Trump Administration.

Business meeting at program conclusion.

#### Date & Time

Start Date: 01/06/2019, 10:30 am

End Date: 01/06/2019, 12:15 pm

Room: Grand Salon Section 10

Floor: First Floor

Hotel: Hilton New Orleans Riverside

#### Speakers

Speaker: Nina A. Kohn, Syracuse University College of Law

Speaker: Arthur B. Laby, Rutgers Law School

Moderator: Kathryn L. Moore, University of Kentucky College of Law

Speaker: Ms. Dana Muir, University of Michigan Ross School of Business

Speaker: Christopher T. Robertson, The University of Arizona James E. Rogers College of Law

Speaker: Natalya Shnitser, Boston College Law School