CYPEN & CYPEN

NEWSLETTER

for

April 5, 2018

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Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. SUPREME COURT OF THE UNITED STATES HOLDS THAT SLUSA DID NOTHING TO STRIP STATE COURTS OF THEIR LONGSTANDING JURISDICTION TO ADJUDICATE CLASS ACTIONS BROUGHT UNDER THE 1933 ACT:

In the wake of the 1929 stock market crash, Congress enacted two laws, in successive years, to promote honest practices in the securities markets. The Securities Act of 1933

(1933 Act) creates private rights of action to aid the enforcement of obligations pertaining to securities offerings. The Act authorizes both federal and state courts to exercise jurisdiction over those private suits and, more unusually, bars the removal of such suits from state to federal court. The Securities Exchange Act of 1934 (1934 Act), which regulates not the original issuance of securities but all their subsequent trading, is also enforceable through private rights of action. But all suits brought under the 1934 Act fall within the exclusive jurisdiction of the federal courts. In 1995, the Private Securities Litigation Reform Act (Reform Act) amended both Acts, in order to stem perceived abuses of the class-action vehicle in securities litigation. The Reform Act included both substantive reforms, applicable in state and federal court alike, and procedural reforms, applicable only in federal court. Rather than face these new obstacles, plaintiffs began filing securities class actions under state law. To prevent this end run around the Reform Act, Congress passed the Securities Litigation Uniform Standards Act of 1998 (SLUSA), whose amendments to the 1933 Act are at issue in this case. As relevant here, those amendments include two operative provisions, two associated definitions, and two "conforming amendments." First, 15 U. S. C. §77p(b) completely disallows (in both state and federal courts) "covered class actions" alleging dishonest practices "in connection with the purchase or sale of a covered security." According to SLUSA's definitions, the term "covered class action" means a class action in which "damages are sought on behalf of more than 50 persons." §77p(f)(2). And the term "covered security" refers to a security listed on a national stock exchange. §77p(f)(3). Next, §77p(c) provides for the removal of certain class actions to federal court, where they are subject to dismissal. Finally, SLUSA's "conforming amendments" add two new phrases to §77v(a), the 1933 Act's jurisdictional provision. The first creates an exception to §77v(a)'s general removal bar through the language "except as provided in section 77p(c)." The other—the key provision in this case—expresses a caveat to the general rule that state and federal courts have concurrent jurisdiction over all claims to enforce the 1933 Act. With this conforming amendment, §77v(a) now provides that state and federal courts shall have concurrent jurisdiction, "except as provided in section 77p with respect to covered class actions." The Court refers to this provision as the "except clause." Respondents, three pension funds and an individual (Investors), purchased shares of stock in petitioner Cyan, Inc., in an initial public offering. After the stock declined in value, the Investors brought a damages class action against Cyan in state court, alleging 1933 Act violations. They did not assert

any claims based on state law. Cyan moved to dismiss for lack of subject matter jurisdiction, arguing that SLUSA's "except clause" stripped state courts of power to adjudicate 1933 Act claims in "covered class actions." The Investors maintained that SLUSA left intact state courts' jurisdiction over all suits—including "covered class actions"—alleging only 1933 Act claims. The state courts agreed with the Investors and denied Cyan's motion to dismiss. The Supreme Court granted certiorari to decide whether SLUSA deprived state courts of jurisdiction over "covered class actions" asserting only 1933 Act claims. The Court also addressed a related question raised by the federal Government as *amicus curiae* and addressed by the parties in briefing and argument: whether SLUSA enabled defendants to remove 1933 Act class actions from state to federal court for adjudication. Justice Kagan delivered the opinion for a unanimous court: SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions brought under the 1933 Act: SLUSA's text, read most straightforwardly, leaves this jurisdiction intact. The background rule of §77v(a)—in place since the 1933 Act's passage—gives state courts concurrent jurisdiction over all suits "brought to enforce any liability or duty created by" that statute. And the except clause—"except as provided in section 77p of this title with respect to covered class actions"—ensures that in any case in which §77v(a) and §77p conflict, §77p will control. The critical question for this case is therefore whether §77p limits state-court jurisdiction over class actions brought under the 1933 Act. It does not. Section 77p bars certain securities class actions based on *state* law but it says nothing, and so does nothing, to deprive state courts of jurisdiction over class actions based on *federal* law. That means §77v(a)'s background rule—under which a state court may hear the Investors' 1933 Act suit—continues to govern. Cyan argues that the except clause's reference to "covered class actions" points the reader to §77p(f)(2), which defines that term to mean a suit seeking damages on behalf of more than fifty persons—without mentioning anything about whether the suit is based on state or federal law. But that view cannot be squared with the except clause's wording for two independent reasons. First, the except clause points to "section 77p" as a whole—not to paragraph 77p(f)(2). Had Congress intended to refer to §77p(f)(2)'s definition alone, it presumably would have done so. Second, a definition, like §77p(f)(2), does not "provide" an "except[ion]," but instead gives meaning to a term—and Congress well knows the difference between those two functions. Not one of the 30-plus provisions in the 1933 and 1934 Acts using the phrase "except as provided in" cross-references a *definition.* Structure

and context also support the Court's reading of the except clause. Because Cyan treats the broad definition of "covered class action" as altering §77v(a)'s jurisdictional grant, its construction would prevent state courts from deciding any 1933 Act class suits seeking damages for more than fifty plaintiffs, thus stripping state courts of jurisdiction over suits about securities raising no particular national interest. That result is out of line with SLUSA's overall scope. Moreover, it is highly unlikely that Congress upended the 65-year practice of state courts' adjudicating all manner of 1933 Act cases (including class actions) by way of a mere conforming amendment. Cyan's reliance on legislative purpose and history is unavailing. Cyan insists that the only way for SLUSA to serve the Reform Act's objectives was by divesting state courts of jurisdiction over all sizable 1933 Act class actions. Specifically, it claims that its reading is necessary to prevent plaintiffs from circumventing the Reform Act's procedural measures, which apply only in federal court, by bringing 1933 Act class actions in state court. But Cyan ignores a different way in which SLUSA served the Reform Act's objectives—which the Court's view of the statute fully effects. The Reform Act included substantive sections protecting defendants in suits brought under the federal securities laws. Plaintiffs circumvented those provisions by bringing their complaints of securities misconduct under state law instead. Hence emerged SLUSA's bar on state-law class actions (and its removal provision to ensure their dismissal)—which guaranteed that the Reform Act's heightened substantive standards would govern all future securities class litigation. SLUSA's preamble states that the statute is designed "to limit the conduct of securities class actions under state law, and for other purposes," and this Court has underscored, over and over, SLUSA's "purpose to preclude certain vexing state-law class actions." That object—which SLUSA's text actually reflects—does not depend on stripping state courts of jurisdiction over 1933 Act class suits, as Cyan proposes. For wherever those suits go forward, the Reform Act's substantive protections necessarily apply. SLUSA also went a good distance toward ensuring that federal courts would play the principal role in adjudicating securities class actions by means of its revisions to the *1934* Act. Because federal courts have exclusive jurisdiction over 1934 Act claims, forcing plaintiffs to bring class actions under the 1934 statute instead of state law also forced them to file in federal court. Cyan finally argues that the except clause would serve no purpose at all unless it works as Cyan says. But Congress could have envisioned the except clause as the ultimate fail-safe device, designed to safeguard §77p's class-action bar come whatever might. Congress has been

known to legislate in that hyper-vigilant way, to “remove any doubt” as to things not particularly doubtful in the first instance. If ever it had reason to legislate in that fashion, it was in SLUSA—whose very impetus lay in the success of class action attorneys in “bypass[ing]. The Reform Act.” And regardless of any uncertainty surrounding Congress’s reasons for drafting the except clause, there is no sound basis for giving that clause a broader reading than its language can bear, especially in light of the dramatic change such an interpretation would work in the 1933 Act’s jurisdictional framework. SLUSA does not permit defendants to remove class actions alleging only 1933 Act claims from state to federal court. The Government argues that §77p(c) allows defendants to remove 1933 Act class actions to federal court as long as they allege the kinds of misconduct listed in §77p(b). But most naturally read, §77p(c) refutes, not supports, the Government’s view. Section 77p(c) allows for removal of “[a]ny covered class action brought in any State court involving a covered security, as set forth in subsection (b).” The covered class actions “set forth” in §77p(b) are state-law class actions alleging securities misconduct. Federal-law suits are not “class action[s]. As set forth in subsection (b).” Thus, they remain subject to the 1933 Act’s removal ban. This Court has held as much, concluding that §§77p(b) and 77p(c) apply to the exact same universe of class actions. The “straightforward reading” of those two provisions is that removal under §77p(c) is “limited to those [actions] precluded by the terms of subsection (b).”

2. TIME TO PUT END TO WRONG-HEADED PENSION BILL:

The pension bill stumbled in the Kentucky Senate last week and was sent back to committee. It is the latest in a nearly year-long series of missteps. The attack on pensions is failing mostly because teachers and other public employees are fighting back. It is also been hampered by facts that contradict proponents’ claims about what is needed and why. Backers say their ideas are about saving money and protecting benefits already earned. But their proposals are not a cost saver, and their crisis claims are deeply exaggerated. For most of the last year, proponents argued that we must end defined benefit pensions in favor of 401k-style defined contribution plans. My organization put out a report in August 2017 showing it would cost more money to make that switch even while workers would receive lesser benefits. Input on this issue by us and others was dismissed until February, when legislative leaders finally admitted it was true. Despite that mistake, legislative leaders continue pushing ideas they inaccurately claim will save money and are needed to

rescue the plans. Now the focus is on the $3.2 billion in cost reductions over 20 years the actuary projects in the Teachers' Retirement System due to Senate Bill 1. Actuaries do not opine on legality, and most of that comes from cutting already-earned benefits protected by the inviolable contract — primarily teachers' cost of living adjustments. Also, the hybrid cash balance plan proposed for new teachers in Senate Bill 1 is no cheaper than the modest current defined benefit plan, even while providing less retirement security. The bill "saves" money by shifting some of the cost to local school districts, the poorer of which simply cannot afford it. The bill also cuts long-term costs by unnecessarily front-loading the payment schedule on unfunded liabilities, causing even more harmful budget cuts to schools and other public services in just two years. Moreover, there are other very real costs from Senate Bill 1 that are not measured by an actuarial analysis. Lower retirement benefits will make it harder to attract and keep qualified public servants, harming services and thereby weakening our economy over time. A reduction in benefits will come back in lower tax revenue due to less local spending from pension checks — which last year injected $3.4 billion into the Kentucky economy. Then there is what the actuarial analysis to Senate Bill 1 says about its impact on Kentucky Retirement Systems. It estimates the bill would add $5 billion in costs for that system over the next 35 years. This cost comes from a provision that extends the time period to pay off the unfunded liability by six years. Just like if you asked your bank for six more years to pay off your mortgage, that change will increase costs over the long term. Its inclusion in the bill exposes as empty the constant rhetoric over the last year that we must no longer "kick the can down the road" — which is exactly what that proposal does — and that we are in a "crisis" where pensions will run out of money in a few years unless we cut them. Those claims were fabricated to build support for ending pensions. While our pension plans are underfunded, our liabilities are not owed immediately. We have time to steadily nurse the plans back to better health with targeted and consistent funding — as the six-year extension admits. We do not have to make panicked benefit cuts. And we do not have to rush paying off liabilities that are owed far into the future and never all at once. It is time to put an end to Senate Bill 1. Lawmakers should start over with a process that involves those who receive public pensions, rather than shutting them out. And they should gather all of the facts about the issue — including those that disprove ideas they believe to be true. Author Jason Bailey is the founder and executive director of the Kentucky Center for Economic Policy.

3. FIFTH CIRCUIT VACATES DOL FIDUCIARY RULE:

On March 15, 2018, in a 2-1 decision, a 3-judge panel of the Fifth Circuit Court of Appeals ruled for plaintiffs in *Chamber Of Commerce of the United States of America, et al. v. United States Department of Labor*, vacating *in toto* the Department of Labor's Fiduciary Rule. In this article, Octoberthree.com briefly reviews the decision and considers its implications.

Background

After considerable controversy, in April 2016 DOL finalized (quoting the court) "an overhaul of the investment advice fiduciary definition, together with amendments to six existing exemptions and two new exemptions to the prohibited transaction provision in both ERISA and the [Tax] Code." The regulation "package" implementing this overhaul is generally called the "Fiduciary Rule." On February 3, 2017, President Trump issued an executive memorandum instructing DOL to "examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice." DOL was instructed to consider whether the rule: (i) "has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings;" (ii) "has resulted in dislocations or disruptions within the retirement services industry;" and (iii) "is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay." On April 7, 2017, DOL delayed the rule's applicability date until June 9, 2017. DOL also delayed compliance with certain requirements of the Best Interest Contract Exemption (BICE) (and other exemptions) that were part of its "regulation package" until January 1, 2018 (the "limited applicability period"). Until that date, "fiduciaries relying on these exemptions for covered transactions [are required to] adhere only to the Impartial Conduct Standards (including the "best interest" standard), as conditions of the exemptions." Thus, generally, the exemptions' written contract, disclosure and pay policy requirements do not apply during the limited applicability period. On November 27, 2017, DOL finalized a regulation extending the limited applicability period another 18 months, to July 1, 2019. In 2016, the U.S. Chamber of Commerce, the American Council of Life Insurers, and the Indexed Annuity Leadership Council filed a lawsuit in the United States District Court for the Northern District of Texas challenging the Fiduciary Rule on a number of grounds. On February 8, 2017, the district court ruled in favor of DOL. The Fifth Circuit's decision

reverses that lower court decision. The Fifth Circuit held that the Fiduciary Rule (1) conflicts with the "plain text" of ERISA and (2) fails the "reasonableness" test applicable when courts are asked to defer to agency statutory interpretations. The court found that, as a general matter, ERISA is to be interpreted based on "the well-settled meaning of the common-law terms it uses" and that at common law "fiduciary status turns on the existence of a relationship of trust and confidence between the fiduciary and client." Thus, ERISA's identification of an advice fiduciary as someone who renders investment advice for a fee "comports with common law and the structure of the financial services industry" which distinguishes "between investment advisers, who were considered fiduciaries, and stockbrokers and insurance agents, who generally assumed no such status in selling products to their clients." This understanding – which the Fiduciary Rule, in effect, overturns – is, as noted, reflected in the statute. It is also reflected in DOL's original (1975) rule, which only applied where advice was given on a "regular basis" and served as the "primary basis" for investment decisions. And it "harmonizes" with the other two prongs of the fiduciary definition, which require the exercise of "authority or control." Thus, the court concluded:

The Fiduciary Rule conflicts with the plain text of the "investment advice fiduciary" provision as interpreted in light of contemporary understandings, and it is inconsistent with the entirety of ERISA's "fiduciary" definition. DOL therefore lacked statutory authority to promulgate the Rule with its overreaching definition of "investment advice fiduciary."

While the foregoing holding would in itself be sufficient to vacate the rule, the court went on to consider whether DOL's interpretation of ERISA was entitled to deference. It rejected that argument, finding DOL's interpretation unreasonable. In addition to its finding that the rule "conflicts with the statutory text," the court found that the fact "that it took DOL forty years to 'discover' its novel interpretation further highlights the Rule's unreasonableness." The court itemized the following objections to the rule's reasonableness:

1. It ignores the distinction in ERISA between DOL's authority over ERISA plans and IRAs.
2. The new definition of fiduciary is so broad that "it comprises nearly any broker or insurance salesperson who deals with IRA clients."
3. The creation of an overbroad rule and then narrowing it by exemptions, including the BICE, is an impermissible regulatory "tactic."

4. The Fiduciary Rule (via the BICE) grafts “novel and extensive duties and liabilities on parties otherwise subject only to the prohibited transactions penalties.”
5. The BICE impermissibly creates a private right of action – the ability to sue under state law based on the required contract.
6. The rule “outflank[s] two Congressional initiatives [under Dodd-Frank] to secure further oversight of broker/dealers handling IRA investments and the sale of fixed-indexed annuities.”
7. And, finally, “the Supreme Court has been skeptical of federal regulations crafted from long-extant statutes that exert novel and extensive power over the American economy.”
Based on the foregoing, and its finding that “this comprehensive regulatory package is plainly not amenable to severance,” the court vacated the Fiduciary Rule in toto (that is, in its entirety). As a legal matter, the Fifth Circuit’s decision means that the pre-April 2016 five-part rule for determining when a person becomes an ERISA advice fiduciary “snaps back” into effect. The critical question the Fifth Circuit’s decision raises is -- what will be DOL’s response? It can ask for a rehearing of the case by the full Fifth Circuit, appeal the decision to the Supreme Court or do nothing. Even if DOL decides to acquiesce in the court’s decision, it is conceivable that a third party may attempt to get a further review of it, either in the Fifth Circuit or in another court. There is an ongoing project at the Securities and Exchange Commission on broker-dealer conduct. And, finally, there are, at the state level, emerging legislative initiatives to regulate investment advice. Bottom line: at this point it is too early to tell what will happen next.

4. FIDUCIARY RULE STATUS IN DOUBT FOLLOWING CONFLICTING COURTS OF APPEALS DECISIONS:

Todd Castleton and Sterling Perkinson write that the status of the Department of Labor’s (DOL) final regulation expanding the scope of fiduciary status due to “render[ing] investment advice for a fee” and its accompanying prohibited transaction exemptions (the “Fiduciary Rule”) is in doubt following conflicting decisions handed down this week from two U.S. Courts of Appeals. The Tenth Circuit upheld the Fiduciary Rule following a procedural challenge regarding its application to fixed indexed annuity sales. However, the Fifth Circuit quickly followed with a decision rejecting the premise of the Fiduciary Rule, and vacating it entirely. A three-judge panel of the Tenth Circuit issued a unanimous decision on March 13, 2018, finding that the DOL acted within its regulatory authority in

issuing certain aspects the Fiduciary Rule. The case was focused on the DOL's decision to exclude the sales of fixed indexed annuities from the scope of Prohibited Transaction Exemption 84-24, which was revised as part of the Fiduciary Rule, and requiring instead that the sale of these products meet the more rigorous BIC Exemption requirements. In upholding the regulation under the relatively narrow facts presented, the Tenth Circuit found that the DOL had met its procedural obligations under administrative rule making requirements, including providing adequate notice of the scope of its rule, and had not acted arbitrarily in treating fixed index annuities differently from fixed rate annuities. In a more sweeping decision issued March 15, 2018, a panel majority of the Fifth Circuit (based in New Orleans) vacated the Fiduciary Rule "*in toto*" after ruling that the DOL had exceeded its rulemaking authority. This ruling echoed much of the criticism of the Fiduciary Rule that it improperly bootstrapped its authority over prohibited transaction interpretations and exemptions to provide substantive regulations over broker-dealers and other entities outside of DOL regulatory purview. But the ruling is particularly noteworthy for attacking the foundation of the Fiduciary Rule—the expansive concept of what it means to provide investment advice for a fee that renders one a fiduciary. The majority opinion found that the Fiduciary Rule's interpretation of the statutory provisions underlying "investment advice fiduciary" relies too narrowly on a purely literal construction that disregards the common law notion of a "fiduciary" as requiring "a relationship of trust and confidence between the fiduciary and client." The majority noted a historical distinction between "investment advisors, who were considered fiduciaries, and stockbrokers and insurance agents, who generally assumed no such status in selling products to their clients." The investment advisor relationship was one of trust and confidence, whereas the selling of investment products for a commission was not. The DOL's prior regulation, which the Fiduciary Rule replaces, employed a five part conjunctive test, which the majority noted recognized this distinction. Further, the majority doubted that "investment advice for a fee" was intended to encompass stockbrokers and insurance agents who receive commissions only for completed sales rather than for delivering pitches. By ignoring these distinctions, the court found the Fiduciary Rule "fatally conflicts with the statutory text and contemporary understandings" as well as the statutory context created by Congress in which the interpreted provisions reside. In view of these considerations (and many others detailed in the lengthy opinion), the majority found the Fiduciary Rule must be vacated entirely. In a dissenting option, the court's Chief Judge found the

Fiduciary Rule to be a permissible reinterpretation of the statutory text and was supported by a reasoned explanation warranting judicial deference. Accordingly, the dissent would have upheld the Fiduciary Rule entirely. As a result of these conflicting decisions, the future of the Fiduciary Rule is uncertain. While the Tenth and Fifth Circuit opinions create a potential circuit split inviting resolution by the Supreme Court, either decision could be reviewed *en banc* by their respective full courts. Contrary decisions in either case could cause the split to resolve itself before ever reaching the high court. Moreover, as the DOL continues its review of the Fiduciary Rule during the transition period, it may decide to revise certain aspects of the Fiduciary Rule or retreat from the rule altogether. DOL officials have already responded to the Fifth Circuit's decision by saying that the DOL will not be enforcing the Fiduciary Rule pending further review. So while the Fifth Circuit's decision is a significant development in the Fiduciary Rule saga, it undoubtedly will not be the final battle of this controversy.

5. CASES IN THE NEWS:

This month's *Securities Class Action Services* highlights four cases currently in the news. These cases reinforce the continued flurry of class actions activity taking place in early 2018 and the outlook for investor recoveries.

Yahoo! - $80 Million Tentative Settlement

An $80 million settlement was announced in early March and stems from the well-publicized Yahoo! data breach of user accounts from a few years ago. This is a significant case, as it is the first substantial data breach-related shareholder lawsuit recovery. As a recap, Yahoo! announced two data breaches back in 2016; the complaint alleges that following the company's September 2016 disclosure, the stock price declined more than 3%, and following the company's December's 2016 disclosure, the stock price further declined by more than 6%. This case is pending in the United States District Court for the Northern District of California. Click here to view the case factsheet.

comScore - $110 Million Settlement

This large settlement is a combination of cash ($27,231,527) and stock ($82,768,473) and settles allegations of accounting fraud against the data and metrics provider for media, advertising and marketing industries. This case is pending in the United States District

Court for the Southern District of New York, and has an upcoming claim deadline date of May 29, 2018. Eligible shareholders will include both those of comScore and Rentrak Corporation. As such, it is critically important for investors to review all eligible security identification and the class definition.

Foreign Exchange Benchmark Rates Antitrust Litigation - $2.3 Billion Settlement

By now, most investors are aware of the Foreign Exchange Benchmark Rates case due to its size, scope, uniqueness and complexity. In fact, SCAS created a factsheet on its website to keep investors up-to-date, and hosted a webinar in September 2017. During the past few months, SCAS has filed thousands of claims within this settlement on behalf of hundreds of institutional investors. Just recently there was good news for investors who have been unable to obtain the required historical data to participate within this settlement. Recently, the initial claim deadline date of March 22, 2018 was extended to May 16, 2018. This added two months will, no doubt, assist a number of investors in their participation.

3D Systems Corporation - $50 Million Settlement

Most readers are aware of the low settlement totals from 2017. In fact, less than a dozen cases settled for $50 million or higher. Thus, the 3D Systems settlement brings welcome relief to shareholders. The original filing date was June 12, 2015, and the upcoming claim deadline date is July 11, 2018. Interestingly, the institutional lead plaintiff is KBC Asset Management NV, a Belgium based organization. The case is pending in the United States District Court for the District of South Carolina.

6. HERE IS HOW TO GET PRIOR-YEAR TAX INFORMATION:

As people are filing their taxes, the IRS reminds taxpayers to hang onto their tax records. Generally, the IRS recommends keeping copies of tax returns and supporting documents at least three years. Taxpayers should keep some documents — such as those related to real estate sales — for three years after filing the return on which they reported the transaction. Taxpayers using a tax filing software product for the first time may need their adjusted gross income amount from their prior year's tax return to verify their identity. Taxpayers can learn more about how to verify their identity and electronically sign tax returns at Validating Your Electronically Filed Tax Return. Those who need a copy of their tax return should check with their software provider or tax preparer first, as prior-year tax

returns are available from the IRS for a fee. Taxpayers who cannot get a copy of a prior-year return may order a tax transcript from the IRS. A transcript summarizes return information and includes AGI. They're free and available for the most current tax year after the IRS has processed the return. People can also get them for the past three years. The IRS reminds people ordering a transcript to plan ahead, because delivery times for online and phone orders typically take five to 10 days from the time the IRS receives the request. Taxpayers who order by mail should allow 30 days to receive transcripts and 75 days for tax returns. There are three ways for taxpayers to order a transcript:

- **Online Using Get Transcript**. They can use Get Transcript Online on IRS.gov to view, print or download a copy of all transcript types. Those who use it must authenticate their identity using the Secure Access process. Taxpayers who are unable to register or prefer not to use Get Transcript Online may use Get Transcript by Mail to order a tax return or account transcript type. Please allow five to 10 calendar days for delivery.
- **By phone**. The number is 800-908-9946.
- **By mail**. Taxpayers can complete and send either Form 4506-T or Form 4506T-EZ to the IRS to get one by mail. They use Form 4506-T to request other tax records: tax account transcript, record of account, wage and income and verification of non-filing. These forms are available on the Forms, Instructions and Publications page on IRS.gov.

Those who need an actual copy of a tax return can get one for the current tax year and as far back as six years. The fee per copy is $50. Taxpayers can complete and mail Form 4506 to request a copy of a tax return and mail the request to the appropriate IRS office listed on the form. If taxpayers need information to verify payments within the last 18 months or a tax amount owed, they can view their tax account. Issue Number: Tax Tip 2018-43

7. TAX TIME GUIDE: CONTRIBUTE TO AN IRA BY APRIL 17, CLAIM IT FOR 2017: The Internal Revenue Service reminded taxpayers that it is not too late to contribute to an Individual Retirement Arrangement (IRA) and still claim it on a 2017 tax return. Anyone with an IRA may be eligible for a tax credit or deduction on their 2017 tax return if they make contributions by April 17, 2018. This is the sixth in a series of nine IRS news releases called the Tax Time Guide, designed to help taxpayers navigate common tax issues. This year's

tax-filing deadline is April 17. An IRA is designed to enable employees and the self-employed to save for retirement. Most taxpayers who work are eligible to start a traditional or Roth IRA or add money to an existing account. Contributions to a traditional IRA are often tax deductible, but distributions are generally taxable. Contributions to a Roth IRA are not deductible, but qualified distributions are tax-free. To count for a 2017 tax return, contributions must be made by April 17, 2018. In addition, low- and moderate-income taxpayers making these contributions may also qualify for the Saver's Credit. Generally, eligible taxpayers can contribute up to $5,500 to an IRA. For someone who was 50 years of age or older at the end of 2017, the limit is increased to $6,500. The same general contribution limit applies to both Roth and traditional IRAs. However, a Roth IRA contribution might be limited based on filing status and income. An individual can't make regular contributions to a traditional IRA in the year they reach 70½ and older. However, they can still contribute to a Roth IRA and make rollover contributions to a Roth or traditional IRA regardless of age. If neither the taxpayer nor their spouse was covered for any part of the year by an employer retirement plan, they can take a deduction for total contributions to one or more traditional IRAs up to the contribution limit or 100 percent of the taxpayer's compensation, whichever is less. For 2017, if a taxpayer is covered by a workplace retirement plan, the deduction for contributions to a traditional IRA is generally reduced if the taxpayer's modified adjusted gross income is between:

- $0 and $10,000; married filing separately
- $62,000 and $72,000; single and head of household
- $99,000 to $119,000; married filing jointly or a qualifying widow(er)
- $186,000 to $196,000; married filing jointly where the IRA contributor is not covered by a workplace retirement plan but is married to someone who is covered

The deduction for contributions to a traditional IRA is claimed on Form 1040, Line 32, or Form 1040A, Line 17. Any nondeductible contributions to a traditional IRA must be reported on Form 8606. Even though contributions to Roth IRAs are not tax deductible, the maximum permitted amount of these contributions is phased out for taxpayers whose modified adjusted gross income is above a certain level:

- $0 to $10,000; married filing separately
- $118,000 to $133,000; single and head of household

- $186,000 to $196,000; married filing jointly

For detailed information on contributing to either Roth or Traditional IRAs, including worksheets for determining contribution and deduction amounts, see Publication 590-A, available on IRS.gov. Also known as the Retirement Savings Contributions Credit, the Saver's Credit is often available to IRA contributors whose adjusted gross income falls below certain levels. Eligible taxpayers get the credit even if they qualify for other retirement-related tax benefits. Like other tax credits, the Saver's Credit can increase a taxpayer's refund or reduce the taxes they owe. The amount of the credit is based on several factors, including the amount contributed to either a Roth or traditional IRA and other qualifying retirement programs.
For 2017, the income limit is

- $31,000; single and married filing separate
- $46,500; head of household
- $62,000; married filing jointly.

Taxpayers should use Form 8880 to claim the Saver's Credidt, and its instructions have details on figuring the credit correctly. Taxpayers can find answers to questions, forms and instructions and easy-to-use tools online at IRS.gov 24 hours a day, seven days a week. No appointments required and no waiting on hold.

8. NEW OFFICE ADDRESS: Please note that Cypen & Cypen has a new office address: Cypen & Cypen, 975 Arthur Godfrey Road, Suite 500, Miami Beach, Florida 33140. All other contact information remains the same.

9. CLEVER WORDS:
Misty: How golfers create divots.

10. LEXOPHILES:
A boiled egg is hard to beat.

11. INSPIRATIONAL QUOTES:
If you hear a voice within you say "you cannot paint," then by all means paint and that

voice will be silenced. – Vincent Van Gogh

12. TODAY IN HISTORY:
On this day in 1992, several hundred-thousand abortion rights demonstrators march in Washington, D.C.

13. THINK YOU KNOW EVERYTHING?:
Glass takes one million years to decompose, which means it never wears out and can be recycled an infinite amount of times!

14. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.

15. ERRATUM:
Last week's newsletter was inadvertently dated March 22, 2018. It should have been dated March 29, 2018. We apologize for the error.