



New York 2016

**Standby & Guarantee
Forum**

27 October

**Letter of Credit Law
Summit**

28 October



JENNER & BLOCK LLP

Standby & Guarantee Forum

Jenner & Block LLP • 919 Third Avenue • New York, NY 10022-3908

Thursday, 27 October 2016

9:00-9:25

Check In & Registration

9:25-9:35

Welcoming Remarks from Jenner & Block

9:35-11:30

Major Standby Issues

- The Myth of Strict Compliance: 2016 Poll Results Detailed by Carter Klein (Jenner & Block)
 - Does “Strict Compliance” have Meaning in LC Practice
- The New PRC Guarantee Rules

11:30-12:00

Networking Break

12:00-1:30

Structuring Transactions

- Structuring Payment Outside a LC; Lessons from *Societe Anonyme Marocain De L'Industrie Du Raffinage v. Bank of America, N.A.*
- IIBLP EPA Hard Rock Mining Standby Draft
- Forged LCs: *Dorchester Fin. Holdings Corp. v. Banco BRJ S.A. & Compass Bank v. Morris Cerullo World Evangelism*
- Counting the Date for Giving Notice of Non Extension; Impact of Statutory and Practice Rules

1:30-2:15

Lunch

2:15-4:15

Practical Issues

- ICC Opinion TA 841 & Extend or Pay
- Syndicated Loans and LCs: Anna Sutti (Jenner & Block)
- How to Structure ePresentations Under Standbys
- Negative Stipulations: The Aussie Heresy Compounded:
 - Name of the Beneficiary: *Avenue Bank v. Guarantee Ins. Co. and New South Wales Land and Housing Corporation v. Australia and New Zealand Banking Group Ltd* [Australia]
- Pre Advice: *Transerve Pte Ltd v. Blue Ridge WA Pty Ltd* [Australia]

4:15-4:30

Networking Break

4:30-6:00

Important Lessons from Key Court Cases

- Are Nominated Banks Agents of the Issuers? *Grains and Industrial Products Trading Pte Ltd v. Bank of India* [Singapore]
- Injunction: Fraud & Beyond - *Boustead Singapore Ltd. v. Arab Banking Corp.* [Singapore]
- Who can Draw? *Repko v. County of Georgetown & Navana Logistics, Ltd. v. TW Logistics Pty Ltd. v. ICICI Bank Ltd.* [Australia]
- Injunction: Must There have been a Drawing? Name of the Undertaking? *Fiberex Technologies v. Bank of Montreal* [Canada]

6:00-6:30

Critical Issues Affecting Standbys & Guarantees

6:30

Reception

Letter of Credit Law Summit

Jenner & Block LLP • 919 Third Avenue • New York, NY 10022-3908

Friday, 28 October 2016

8:00-8:30

Check-in and Registration

8:30-10:30

Hot Legal Issues

- **West Virginia's Statutory Override of §5-103(d);** *Leary v. McDowell Cty. Nat. Bank*, 210 W. Va. 44, 552 S.E.2d 420 (2001); UCC §5-106(3): Its significance for LC jurisprudence
 - *International Union of Operating Eng'rs, Local Union 132 Health and Welfare Fund v. L.A. Pipeline Constr. Co.*, 786 S.E.2d 620 (W. Va. May 2016)
 - *Golden West Refining Co. v. SunTrust Bank*. 538 F.3d 1233, 66 UCC Rep. Serv. 2d 867 (9th Cir. 2008)
 - *Wichita Eagle & Beacon Publ'g Co. v. Pacific Nat'l Bank*, 343 F. Supp. 332, 342 (N.D. Cal. 1971), rev'd on other grounds, 493 F.2d 1285 (9th Cir. 1974) (per curiam)
- **Considerations in Using URDG 758:** A checklist of potential problems
- **Avoiding the UCC §5-115 One Year Statute of Limitations** - *Harrison v. Wells Fargo Bank*, No. 3:13-CV-4682-D, 2016 WL 1392332 (N.D. Tex. Apr. 8, 2016) [USA]; Applicant Wrongful Dishonor Case Analogy from UCC 4-111 & *PSI Res., LLC v. MB Fin. Bank, Nat. Ass'n*, 2016 IL App (1st) 1152204
- **Making Sense Out of:**
 - Blockchain Finance;
 - Art 55 of BRRD (2014/59/EU);
 - This Engagement Clause: to Pay "Endorsers and Bonafide Holders"

10:30-11:00

Networking Break

11:00-12:30

Lessons from LC Practice

- **Replacing a Standby:** Lessons from *National Union Fire Ins. Co. v. Monarch Payroll, Inc.*, No. 15-cv-3642, 2016 WL 634083 (S.D.N.Y. Feb. 17, 2016)
- **Bankruptcy & LCs: Recent Cases**
 - *In re SelectBuild Illinois*, No. 09-12085, 2015 WL 3452542 (D. Del. May 28, 2015)
 - *In re Circuit City Stores*, 62 Bankr. Ct. Dec. 141 (E.D. Va. Apr. 2016) (excess proceeds)
 - *In re Stone & Webster*, 547 B.R. 588 (Bankr. D. Del. 2016)
- **Facets of Confirmation: Is "ADDED" Enough?** U.C.C. § 5-107; UCP Article 8; ISP98 Rule 2.01(d)
 - Can the Confirmer Change the Terms of a LC it Confirms? How? Amount? Expiry Date?
 - Can the Confirmer Require Presentation to it where LC Requires Presentation to Issuer?
 - Dealing with an Automatic Extension Clause: Can the Confirmer Change the Source of the Notice of Non Extension from "Received from Issuer" to "Received from Confirmer"?

12:30-1:15

Lunch

Letter of Credit Law Summit

1:15-3:15

AML & Governments Actions

- Anti-Money Laundering & CTF Update by Lee H. Davis, U.S. Federal Reserve Bank
- Due Diligence by Advising/Confirming Bank & Vice Versa by Negotiating Banks who Elect to Act or Not to Act.
- US Treasury Takes a Stand for Transparency: Neil M. Barofsky, Jenner & Block. US Treasury's Proposed Rule Requiring Banks to get Information about Owners of Shell Company Bank Accounts.

3:15-3:30

Networking Break

3:30-5:00

Recent LC Cases

- Injunctions, Bonds, & U.C.C. §5-109 - *Arrowhead Gen. Ins. Agency, Inc. v. Lincoln Gen. Ins. Co.*, No. 1:16-CV-1138, 2016 WL 3522959 (M.D. Pa. June 28, 2016); 2016 Dutch Case Involving Injunction: *CKT Marine Services B.V. v. N.V. Nationale Borg-Maatschappij* (Neth.)
- What to Do About a False Statement when it is Too Late to Obtain an Injunction? - *Int'l Cards Co., Ltd. v. Mastercard Int'l Inc.*, No. 13 CIV. 2576 (LGS), 2016 WL 3039891 (S.D.N.Y. May 26, 2016); *Weiss v. Benetton U.S.A. Corp.* 124 A.D.3d 633 (N.Y. App. Div. January 14, 2015)
- Drawing for Market Loss. Is there a §5-111 Warranty Claim? *Republic Steel v. ProTrade Steel Co.*, No. 5:16CV660, 2016 WL 2944237, (N.D. Ohio May 20, 2016)
- Can there be an Action for Unjust Enrichment? *Merchants Commercial Bank v. Oceanside Village, Inc.*, No. ST-2011-CV-653, 2014 WL 9855658 (V.I. Dec. 18, 2015); U.C.C. §5-115
- Agreeing to LC Terms in a Contract - *Ask Re LTD. v. Grain Mineral Resources PTE LTD.*, [2015] HKCU 1639 [Hong Kong]
- Singapore International Commercial Court
- Lessons in Supersedeas Bonds/Standbys:
 - o *Barfield v. Sho-Me Power Elec. Coop.*, No. 2:11-cv-04321-NKL, 2015 WL 4159988 (W.D. Mo. July 9, 2015)
 - o *Swift Spindrift Ltd. v. Alvada Ins. Inc.*, No. 09-cv-9342, 2016 WL 1271061 (S.D.N.Y. Mar. 29, 2016)
 - o *DIF III Global Co-Investment Fund LP v BBLP LLC* [2015] VSC 484 (Supreme Court of Victoria September 11, 2015) [Australia]
 - o *Cleal Holding Pty Ltd v JG King Developments* [2015] VSC 414 (Supreme Court of Victoria); [2015] VSC 573 (Supreme Court of Victoria) [Australia]
 - o *Alessandra Yarns, l.l.c.c. v. Tongxiang Baoding Textile Co.* 2015 QCCS 346 (Québec Superior Court February 6, 2015) [Canada]

5:00-5:30

Critical Issues Affecting LC Law

Host Sponsor

JENNER & BLOCK LLP

Founded in 1914, Jenner & Block LLP is a law firm of international reach with more than 500 lawyers and offices in Chicago, London, Los Angeles, New York and Washington, DC. We are defined by the exceptional results we produce, the values we share, the clients we serve and most importantly, our lawyers. Jenner & Block lawyers consistently deliver excellence in the most complex and demanding legal matters, both litigation and transactions. No matter what legal challenge is presented, our powerful combination of experience, professionalism and teamwork helps clients achieve their goals.

The firm has handled a number of the most sensitive and highest-profile investigations of record, many of which have drawn international headlines and involved multiple government actors including Capitol Hill, the Justice Department and the SEC, as well as state legislatures. Our lawyers have developed compliance programs for major multi-national companies across numerous sectors of the economy, including defense, financial institutions, oil & gas, media, government contracts and retail establishments,

With two former U.S. attorneys and a number of assistant U.S. attorneys, the former associate attorney general of the United States (who also served as vice-chair of the Executive Committee of the Attorney General's Financial Fraud Enforcement Task Force), former U.S. Treasury Department officials and state prosecutors among our ranks, we are particularly noted for our compliance, internal investigations and white collar defense work, including representing the court-appointed examiner in the Lehman Brothers bankruptcy, the largest bankruptcy in U.S. history. We provide compliance training for businesses in a practice that literally spans the globe. We have conducted dozens of FCPA investigations, compliance reviews and due diligence counseling for major corporate clients in 58 jurisdictions from Afghanistan to Zimbabwe.

Jenner has a robust transactional practice. For more information, visit our website at www.jenner.com and for transactional matters <https://jenner.com/practices/107/ourwork>. Also, feel free to contact Neil Barofsky (NY Office), Thomas Perrelli (DC Office) or Joseph Gromacki (Chicago Office).

Co-Sponsor



Coastline Solutions is the technology partner of the ICC responsible for the delivery of online training and information services. Banks, traders, logistics companies and law firms from over 100 countries use these services to save time, reduce costs, and keep their staff up to date with the latest international trade practices.

Coastline's services include:

New

Going Global - ICC Training on Trading Internationally
Available in English, Spanish and Portuguese

New

URBPO Online Training: Online training in the new BPO Rules

New

ISBP Online: Comprehensive training in the revised ISBP 745

Collections Online Training: Comprehensive training in collections and URC 522

Mentor 600: Comprehensive training in letters of credit and UCP 600

DC Master: Advanced training in letters of credit

ISP Master: Advanced training in ISP98 and independent undertakings

URDG Master: Comprehensive training in Demand Guarantees and URDG 758

Incoterms 2010® Online Training: Online Training in the revised Incoterms

ICC Arbitration: Online Training in ICC Rules of Arbitration

Contact: www.coastlinesolutions.com

Co-Sponsors



www.georgemasonjicl.org

Invited Panelists

Mike AVIDON is a partner at Moses & Singer LLP, a New York City law firm, where he co-chairs the Banking and Finance Group and the International Trade Group.

Buddy BAKER has over 30 years of experience in international trade finance and now works as a consultant to banks and exporters.

Jim BARNES practices law in the Chicago office of Baker & McKenzie LLC.

NEIL M. BAROFSKY is a partner at Jenner & Block LLP in New York. A former Federal prosecutor, Mr. Barofsky was appointed Special Inspector General for the \$700 billion TARP Program and appointed by the NY Dept. of Financial Services as Monitor for Credit Suisse.

James BYRNE is the Director of the Institute of International Banking Law & Practice, Inc.

Christopher S. BYRNES is Executive Editor of the LC industry's monthly journal publication, Documentary Credit World.

Claude CAGNONCLE is President of CREDIMPEX France, the French association of Trade Finance Specialists.

Christopher CRAWFORD is an attorney in the Bank Activities & Structure Division at the Office of the Comptroller of the Currency.

Lee DAVIS is a Supervisory Financial Analyst for the Board of Governors of the Federal Reserve System's BSA/AML Compliance Section where he works on a range of issues related to anti-money laundering regulation and supervision.

Jason DESROCHES is Senior Legal Counsel at National Bank of Canada.

Dean Xiang GAO is the Dean of the College of Comparative Law at China University of Political Science & Law (CUPL).

Pamela GOTCHER is an Assistant General Counsel of JPMorgan Chase Bank, N.A.

Paula GREAVES, CDCS, is SVP & Global Policies & Procedures Technical Consultant, Global Trade Operations, at Bank of America Merrill Lynch in Seattle.

Fabián GUEVARA is an Assistant General Counsel in the Corporate and Investment Bank at JPMorgan in New York. His practice is in global trade finance, with a focus on Latin America.

Sam JEBAMONY is a VP with JPMorgan Chase Bank N.A. with more than 30 years of LC operations experience with various U.S. and foreign banks, and currently manages the North America Standby LC operations at JPMorgan Chase.

Saibo JIN, lawyer, litigator, and arbitrator of PRC, is a partner at Jincheng Tongda & Neal in Beijing.

Richard KATZ is a Transactional Financial Services Attorney.

Carter KLEIN is a partner at Jenner & Block LLP where he has practiced for the past 42 years in the areas of financial services, Uniform Commercial Code, credit enhancements and commercial law.

Walt LEWANDOWSKI is a Director overseeing the North America Trade Services Products at Citi.

Jacob MANNING is a Partner at the law firm of Dinsmore & Shohl, and is an Associate Fellow of the IIBLP.

Rick MARTINEZ is a Partner at Haynes and Boone, LLP in New York.

Invited Panelists

Matt McALPINE is Director & Associate General Counsel at Citigroup.

Michael NISSIM is a Shareholder in the New York office of Vedder Price P.C. and a member of the firm's Finance & Transactions Practice Group.

Dennis L. NOAH is a retired senior international banking officer and was employed by three different banks during his 39 year career.

Frank PETRASSI is Global Product Manager for Standby Letters of Credit and Guarantees at JPMorgan Chase Bank, N.A. in Chicago.

David RABINOWITZ is a partner at Moses & Singer LLP and Co-Chair of its Litigation Practice Group.

Rita RICCI is Global Head of the Trade Expertise Desk of BNP Paribas with over 35 years of experience in trade finance operations.

Harriette RESNICK is Managing Director and Associate General Counsel at JPMorgan Chase, N.A. in New York.

Paul M. RODER is a partner in the Banking and Finance practice group of Moses & Singer LLP, a New York City law firm.

Mary ROSEN is Senior Counsel in the Wells Fargo Law Department based in Minneapolis.

Samuel SANTIAGO is Associate General Counsel and Director for Bank of America Merrill Lynch, heading up the team of lawyers that support Global Transactions Services in the Asia Pacific Region.

Hermann SCHUTTERLE is a Vice President & Senior Operations Manager for Global Trade Operations at Bank of America Merrill Lynch's (BAML) Trade Operations unit based in Los Angeles.

Donald R. SMITH is President of Global Trade Advisory, Ltd., providing services to firms involved in international trade, typically importing and exporting companies and banks.

Lorna STRONG is Deputy General Counsel, HSBC Global Trade & Receivables Finance, based in London.

Anna SUTTI is an attorney with Jenner & Block LLP in Chicago with a focus on Corporate Finance.

TOH Kian Sing is a Partner and Head of the Shipping and Admiralty Practice Group of Rajah & Tann LLP in Singapore.

Debra WHITTAKER is Executive Director, JPMorgan Chase Bank, N.A., Global Trade Standby Product Manager, based in New Jersey.

Charnell C. WILLIAMS is a Director and Citi's Global Transactions Services Product Manager, responsible for global risks, controls, and deployment of AML processes.

Jun XU is Senior Product Manager in the Global Trade Services Department, Bank of China Jiansu Branch, a member of ICC DOCDEX, team leader of ICC China Banking Committee Translation Expert Team.

Ready to Register?

Credits Awarded

CDCS: 7 PDUs Awarded for Standby Forum
PDUs Pending for Law Summit
CLE: NY CLE Credits Pending

CSGP: 7 CEUs for Standby & Guarantee Forum