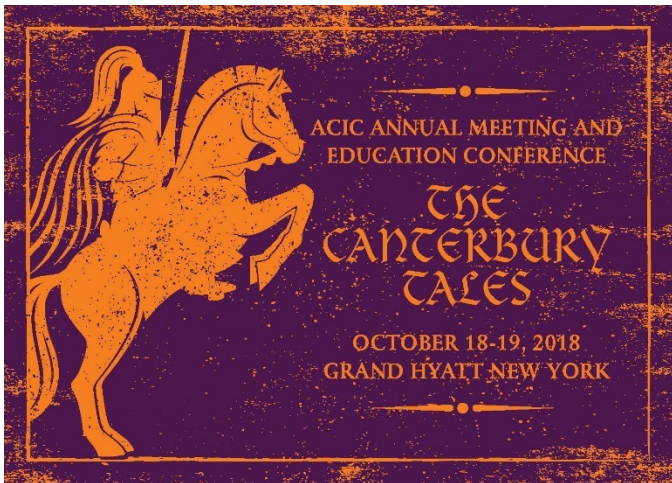


2018 Annual Meeting and Educational Conference The Canterbury Tales



2018 ACIC Annual Meeting and Educational Conference • October 18-19

By Charles Calloway, *Chapman and Cutler LLP*

At this year's ACIC Annual Meeting and Educational Conference (the "Conference") attendees were treated to a literary adventure of sorts in which current events and topics of investment law were carefully paired with stories from *The Canterbury Tales* written by Geoffrey Chaucer. At first glance, it seems a conference focused on investment law located at the Grand Hyatt New York, over 3,500 miles away from St. Augustine's Abbey or any other Canterbury monument, would not easily relate to the various stories of *The Canterbury Tales* and its depictions of the medieval church. However, a closer look, at least in theme, shows how the two are related.

The Canterbury Tales artfully paints an ironic and critical snapshot of the medieval church and its role in English society, while each presenter's CLE session aimed to provide a snapshot of the investment markets and various legal issues affecting the institutional investors. Although no presenter dared to deliver their presentation in verse or prose, this year's premise proved to be a witty and entertaining central theme to the Conference.

Ten CLE sessions were presented in the Manhattan Room of the Grand Hyatt New York, which a record-breaking 202 attendees filled to near capacity. Attendance for the annual meeting continues to grow each year, due in large part to the excellent programming and educational value for members. Meeting co-chairs Michael Shepherd of *Genworth Financial, Inc.* and Sarah Smith of *Akin Gump LLP*, along with the Education Committee and Development Committee and the many speakers and moderators, deserve much credit for orchestrating an outstanding program. All indications are that it was extremely well received.

Adding continuity to the program, each session included clever references to some of the various stories featured in *The Canterbury Tales*, and the popular real-time audience-polling feature returned for a repeat performance, enabling attendees to react to and answer questions posed by the speakers via laptop or mobile device. The results were projected on a screen, and audience members watched their responses recorded instantaneously. Leaving no stone unturned, attendees were supplied with their very own knapsack branded with the ACIC logo, stocked with trail mix, hand sanitizer, and phone chargers to aid them during their literary adventure.



Thursday, Day One



Session 1 – The Prologue: After a breakfast buffet, introductions, and announcements, the annual meeting began with the first session, the annual **Market Update**, at 8:30 am ET. This session featured a particularly insightful overview of US and European private placement markets in 2018. Like the Prologue in *The Canterbury Tales*, this presentation served as the framework for many of the discussions that would take place in other sessions during the Conference. Topics included an overview of the legal impact of Brexit on choice-of-law issues, insolvency scenarios, passporting, derivatives, and international relations, and further explored the practical realities of Brexit. The session was ably moderated by Nicole Windsor, *Chapman and Cutler LLP*, who presided over panelists Conrad Owen, *MUFG Securities*, and Sam Brodie, *Akin Gump LLP*.

Christopher Dallas, *Pacific Life Insurance Company*. In brief remarks, Armando Gamboa thanked attendees for his appointment and also shared warm words of gratitude regarding the worthwhile service of Carolyn Alford, *King & Spalding LLP*, as president in the prior term.



Session 2 – The Canon's Yeoman's Tale: A reminder of the detrimental consequences of the Canon's costly pursuit of alchemy in the cautionary story of *The Canon's Yeoman's Tale* set the stage for the next session: **Blockchain: Payment Applications and Other Uses**. Moderator Quinn Moss, *Orrick, Herrington & Sutcliffe LLP*, and panelists John Casanova, *Sidley Austin LLP*, Kathleen Fuentes, *AIG*, Tom Pearson, *Conway MacKenzie, Inc.*, and Glynna Christian, *Orrick, Herrington & Sutcliffe LLP*, discussed the emergence of blockchain and its applications in smart contracts, healthcare, cross-border transactions, payment systems (including the EU Payment Services Directive), and cryptocurrencies, as a disruptive technology with great potential but also many risks. The session proved timely for a topic that seems to continuously be atop the current news cycle. The session was packed with information that addressed topics such as how blockchain technology works, the benefits anticipated from blockchain technology, the uses of blockchain technology, and cryptocurrencies. A central theme throughout was that investors must avoid surrendering reason to faith and instead evaluate all risks involved in the potential uses of blockchain when making investment decisions.



Business Meeting: Before the morning sessions began, the ACIC conducted its annual business meeting proceedings, which included the announcement of the following new slate of officers to serve the next term: **President:** Armando Gamboa, *Prudential Financial, Inc.*; **Vice President:** Tina Smith, *Thrivent Financial*; **Vice President:** Anthony Yager, *Chapman and Cutler LLP*; **Secretary:** Renée Dailey, *Akin Gump*; **Treasurer:**



Session 3 – The Pardoner’s Tale: The Pardoner’s Tale is an exemplum used to illustrate that greed is the root of all evil (*radix malorum est cupiditas*). Whether or not it holds true in the context of the recent *Hovnanian* case and *McClatchy* case was the main subject of next session: **Derivatives: Credit Default Swap Case Studies.** Raymond Ramirez, *Eversheds Sutherland*, led panelists Bruce Fox, *Genworth Financial, Inc.*, Fabien Carruzzo, *Kramer Levin Naftalis & Frankel LLP*, and Robert Pickel, *Rutter Associates LLC*; former CEO, *ISDA*, through a poignant discussion touching on the use of single-case credit default swaps to the detriment of protection sellers, a new evolution in the credit default swap market. The conversation centered on topics relating to the implications of the unconventional use of credit default swaps, the potential benefits provided to protection buyers, reactions from the International Swap and Derivatives Association, and negotiation strategies that protection sellers can use to protect themselves.



Session 4 – The Man of Law’s Tale: After a typical English lunch of shepherd’s pie and fish and chips, the next session, **Restructuring Mini Debates**, featuring panelists Barry Russell, *Akin Gump LLP*, Katherine Lindsay, *Morgan, Lewis & Bockius LLP*, Aleksandar Zivanovic, *John Hancock/Manulife* and Anders Maxwell, *PJ Solomon*,

moderated by leading man Jeffrey Jonas, *Brown Rudnick LLP*, presented a series of debates during which pairs of panelists squared off over restructuring issues with which issuers and investors deal on a regular basis. The panelists’ interactions reiterated that, like Constance’s meandering adventures in *The Man of Law’s Tale*, company restructurings often involve twists and turns and bittersweet endings. The group also analyzed the nuances of valuation disputes and judicial valuations as the key drivers in chapter 11 outcomes.



Session 5 – The Friar’s Tale: The next session, **Sanctions**, delved into the recent Iranian and Russian sanctions, the applicability of the OFAC sanctions language in the Model Form and other investment agreements, and appropriate pre-commitment sanctions diligence. Topical discussions also included the difference between US OFAC sanctions and European Union sanctions, how sanctions are enforced, and how enforcement of sanctions arises for institutional investors. The panel then provided an introspective discussion of current trends in Washington and gave attendees a glimpse into sanctions issues that could arise in the near future. Like the many contradictions of the corrupt summoner in *The Friar’s Tale*, the panelist discussion highlighted how some sanctions are borne from similar contradictions; some cases of sanctions are clear-cut, while others are more political in nature and double-edged. The session was astutely moderated by Ryan Heinemann, *The Northwestern Mutual Life Insurance Company*, with panelists Sanjay Mullick, *Kirkland & Ellis LLP*, Steve Shine, *Prudential Financial, Inc.*, and Jasper Helder, *Akin Gump LLP*.



Session 6 – Chaucer’s Retraction: At the end of *The Canterbury Tales*, Chaucer invokes a number of his books and asks for mercy and forgiveness for his wrongdoings. This pairs well with the next session: **Amendments: What’s the Protocol**, which examined best practices and protocols in amendment scenarios when issuers request the same clemency for covenant breaches. Presented by moderator Mark Sternberg, *Schiff Hardin LLP*, and panelists Kevin Carey, *The Guardian Life Insurance Company of America*, Amy Judd, *AllianceBernstein*, Colin Pennycooke, *Principal Financial Group*, and William Hannay, *Schiff Hardin LLP*, the panel addressed issues and questions arising from amendment requests coupled with an issuance of a new deal, antitrust and confidentiality issues around noteholder communications, and amendment best practices for placement agents, issuers, and noteholders. The panel’s analysis of when an amendment becomes a workout sparked a lively discussion amongst attendees, which underscored the timely nature of the topic.



Session 7 - The Wife of Bath’s Tale: The last session of the day was the well-attended **Ethics: #MeToo**. Presented by moderator Tina Smith, *Thrivent Financial*, and panelists Rhonda Barnat, *Abernathy MacGregor*, Samantha Mehrotra, *Thrivent Financial*, and Mari Kaluza,

Maslon LLP, the panel examined the current development and path of the #MeToo movement. This interactive presentation asked attendees to react to several eye-opening and thought-provoking hypothetical scenarios to discuss how organizations should deal with #MeToo issues, both legal and publicly. The group borrowed the bawdy tone from *The Wife of Bath’s Tale* to weave through the tough implications of the #MeToo movement and offered best practices to avoid potential negative consequences moving forward.



Following this session, attendees enjoyed a reception held at the Gallery on Lex, which offered a more private space than has been provided in past years. Juilliard graduate Nick Berry played Renaissance-period music with a classical guitar while guests dined on miniature tea sandwiches, filo tartlets, and filet mignon. Cocktails were served in ACIC-engraved glasses. The event was punctuated when newly elected ACIC President Armando Gamboa, *Prudential Financial, Inc.*, raffled off ten copies of the book *1,000 Places to See Before You Die* by Patricia Schultz.



Friday, Day Two



Session 8 – The Monk’s Tale: Following breakfast, attendees began the second day with a session focused on the **Retail** sector. With moderator Margot Mendelson Hammond, *Holland & Knight LLP*, and panelists Stuart Shepetin, *Genworth Financial, Inc.*, Sushmita Dharan, *Hartford Investment Management Company*, John Jasey, *MetLife*, and David Kaplan, *Sullivan & Worcester LLP*, the group presented how new

developments in the retail sector have altered retail investment and lending strategies in connection with REITs, CTLs, and private placements. The central theme of the presentation was that the retail sector, while facing changes, was not destined to be another tragedy-ridden story to be added to *The Monk’s Tale*. However, while the retail sector continues to show growth, e-commerce has altered consumer behavior, disrupting the traditional retail ecosystem. Specific discussions probed the understanding of REIT issuers in the private placement market, the nature of CTLs and consequences in bankruptcy, the structuring of private placement financial covenant packages, and lessons learned from recent distressed retail companies.



Session 9 – The Nun’s Priest’s Tale: Just as the discussion of potential impact and meaning of Chauncleer’s dream took center stage in *The Nun’s Priest’s Tale*, the recently effected US tax law changes took center stage for the second session of the day. Moderator Mary Voce, *Greenberg Traurig LLP*, and panelists Pamela Petree, *TIAA-CREF*, Olga Bogush, *Schiff Hardin LLP*, and Joy Tegtmeier, *PricewaterhouseCoopers LLP*, delivered an impressive discussion of what lies ahead for issuers and investors, touching on tax distributions for pass-throughs, deemed dividend analysis, and controlled foreign corporations. In particular, the panel for **Effect of US Tax Law Changes** examined the background and context of the tax law changes as market drivers and how such changes could potentially affect future investment decisions of issuers and investors. The panel then offered a glimpse into the future by examining global regulatory developments, their potential implications, and how issuers and investors can prepare.



Session 10 – The Miller’s Tale: The annual ACIC fall meeting concluded with an intriguing ethics session, **Ethics: Opinions and Advance Waivers**, which was aptly paired with *The Miller’s Tale*, a cautionary parable of characters each of whom assumed too much and failed to take account of reservations. Led by moderator Thomas Donahue, *Prudential Financial, Inc.*, panelists Michael Kelly, *Greenberg Traurig LLP*, Chip Fisher, *Morgan, Lewis & Bockius LLP*, and Tim Conduit, *Allen & Overy LLP*, the panel presented certain ethical and liability considerations relating to third-party legal opinions and advanced waivers from both a domestic and cross-border perspective. For the purposes of presentation relating to US legal opinions, the panelists updated attendees on the relevant rules of the ABA Model Rules of Professional Conduct and the Restatement (Third) of the Law Governing Attorneys, addressing topics such as when a lawyer may provide a legal opinion for use by a third person, the role that conflicts of interests can potentially play in giving a legal opinion, and how to correctly provide an advanced waiver in a legal opinion vis-à-vis a discussion of the Galderma advanced waiver. To round out the presentation, Tim Conduit provided a brief but wholesome analysis of legal opinions and advanced waivers under UK law and how they differ from the ABA approach.