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2008 BUSINESS REFORM COMMITTEES
MEETING OF THE LLCS AND PARTNERSHIPS LAW STUDY GROUP

July 31, 2008
11:00 A.M.

Secretary of State's Office
700 North Street
Jackson, Mississippi

AGENDA

1. Welcome – David Grishman

2. Roll Call – Cheryn Baker

3. Approval of minutes of July 10, 2008 Meeting

4. Discussion of Adoption of RULLCA

5. Sub-Group Assignments

    a. Model Registered Agent Act Joint Committee
    b. Conversion and Junction Box Statutes Joint Committee
    c. Possible Amendments to MSLLCA
        i. Fiduciary Duties
        ii. Default Provisions
        iii. Who has authority to bind LLCs
        iv. Whether to require written operating agreements
        v. Other
    d. Forms/Filing Fees
        i. Expedited/Online Filings
        ii. Annual Report Requirement
        iii. Payment Methods

6. Other Business

7. Format of Upcoming Meetings – Cheryn Baker

8. Adjourn 1:00 P.M.

Upcoming Meeting Dates

August 14

August 28

September 8, No Meeting -- Recommendations Due

Materials for this Meeting:

1. Minutes of July 10, 2008 Meeting
2. MORAA Committee Roster
3. Article on Series LLCs from July/August 2008 Issue of *Business Law Today*

Mississippi Secretary of State
2008 Business Reform Committees
Minutes of the LLC/Partnership Study Group, Meeting # 2
July 10, 2008

The second meeting of the LLC/Partnership Study Group was called to order on Thursday, July 10, 2008 at 11:30 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present in person or by telephone is attached at Exhibit A.

Introduction

The minutes from the first meeting were approved and Cheryn Baker, Assistant Secretary of State, Policy and Research Division, introduced the panelists for the meeting. The panelists (who were present by teleconference) were:

- Thomas E. Rutledge
- Elizabeth S. Miller
- Scott E. Ludwig
- Robert R. Keatinge

Biographies of the four panelists are attached as Exhibit B.

Presentation by the Panelists

- <u>Overview of the Revised Uniform Limited Liability Company Act ("RULLCA")</u>

The panelists described RULLCA as an act containing many provisions that are more specific than those contained in earlier uniform limited liability company ("LLC") statutes. Furthermore, the panelists explained that were some provisions in RULLCA which are not found in any other statutes. Scott Ludwig noted that one of the best aspects of RULLCA was its inclusion of provisions regarding what can and cannot be modified or eliminated in a written operating agreement. He stated that the drafters of RULLCA attempted to de-couple the idea of management being statutorily authorized so that the authority to bind the company would be contained in the operating agreement. Mr. Ludwig explained that any LLC act must be reviewed and updated on a yearly basis.

- <u>Written Operating Agreement Requirement</u>

The panelists agreed that any LLC statute should be flexible enough to allow both written and implied operating agreements. Moreover, the panel cautioned against adopting a provision stating that an unwritten operating agreement would serve no function. Mr. Keatinge explained that courts increasingly analyze the parties' course of conduct to determine the terms of verbal or implied operating agreements. Ms. Miller added that certain provisions of an operating agreement that are regulated by the statute of frauds must be in writing in order to be enforceable.

- Default Provisions

The panel agreed that in the event that an issue was not addressed by a written or verbal operating agreement, then default provisions in the LLC would act to fill in any gaps that were left.

- Conversion Statutes

Mr. Keatinge explained that Colorado had faced the problem of its corporation conversion provisions and LLC conversion provisions being inconsistent with one another. He stated that Colorado solved the problem by creating a separate statute which served as a "junction box" and contained one conversion provision that was consistent for corporations and LLCs. In relation to post-conversion documents, Mr. Keatinge noted that there was not much that could be done to address this issue by statute. Mr. Ludwig added that a corporate conversion to an LLC dramatically changes the shareholder's rights; therefore, a shareholder's rights should be carefully considered before such a conversion is made.

- Series LLCs

The panel explained that a significant problem with series LLCs is that across the county there is no uniform understanding of what constitutes a series LLC. The panel listed several questions which are still outstanding in the area of series LLCs, including:

- Whether a series LLC is a separate entity;
- How series LLCs are to be treated in bankruptcy;
- How state revenue commissions should look at series LLCs;
- How real estate can be transferred from one series to another;
- Whether, if a single series of a multiple-series LLC transacts business in a state that does not recognize series LLCs, there is a tax nexus.

Mr. Rutledge suggested that it would better to take Colorado's approach of studying these issues, but waiting to see how other states resolve the problems which have arisen in regard to series LLCs. As for Texas, Ms. Miller explained that the state had determined that the time was not yet ripe to adopt series LLC provisions.

- Fiduciary Duties

The panel explained that there are two main schools of thought in regard to fiduciary duties: one whose aim is to protect all of the LLCs participants, and second, a school which first and foremost values the freedom of contract. Furthermore, Mr. Ludwig explained that choosing between the two depended on the state and the state’s thought process. Mr. Keatinge added that the idea of eliminating fiduciary duties becomes more of an issue than it should more often than not. He explained that Delaware has a baseline that one can not eliminate the duties of good faith and fair dealing.

Conclusion of Meeting

Mrs. Baker concluded by stating that certain group members had been assigned to the Model Registered Agent Act subcommittee. She indicated that the subcommittee would have a separate notebook with information explaining how the act pertained to each type of business entity. Steve Hendrix, Co-Chairman of the LLC/Partnership Study Group, noted that there was a great deal of information which the group needed to digest. He explained that in the next meeting the group would discuss which areas of the LLC act it should address. Mr. Hendrix opined that subcommittee assignments should be held off until the next meeting. With no further business, the meeting was adjourned at 12:45 P.M.

Respectfully submitted,

Cheryn Baker
Assistant Secretary of State
Policy and Research Division

EXHIBIT A
To the Minutes of LLC/Partnership Committee Meeting

<u>In Attendance:</u>
Mark Buys
Chad Davidson
George Fair
Robert Gage
Ronnie McMillan
Jim Nippes
Ben Roberson
Joseph Stinson
Paul Varner
Ashley Wicks
Margaret Williams
Martin Willoughby
Eric Wooten
David Webb
Stephen Hendrix
David Grishman

In Attendance by telephone:

Jody Varner
Jack Turner
Rusty Russell
Chris Wilson
Stephen Burrow

<u>Secretary of State Staff:</u>
Delbert Hosemann, Secretary of State
Cheryn Baker, Assistant Secretary of State, Policy and Research
Doug Jennings, Senior Attorney, Policy and Research
Phillips Strickland, Division Coordinator
Brian Bledsoe, Intern
Jeff Lee, Intern

Business Law Today

Volume 17, Number 6 July/August 2008

Series LLCs

Let's Give the Frog a Little Love

By Dominick T. Gattuso

We are all familiar with the story of the frog prince. A handsome prince turned into a frog by a wicked witch wanders the swamp waiting to be kissed by a fair maiden in order to regain his human form. One can only imagine the maiden's parents' response to the idea of their daughter running through the swamp kissing amphibians. You do not know where that frog has been! It's unseemly. What would the neighbors think? Thankfully, at least for the frog, the fair maiden had a rebellious streak. She kissed; he transformed; they lived happily ever after.

What is the moral of the story? Perhaps, it is "nothing ventured, nothing gained" or "with great risk comes great reward." Whichever moral one chooses, both are particularly apt when we talk about a series limited liability company (Series LLC), because this frog is a prince, warts and all.

History of the Series LLC

For the uninitiated, the Series LLC is the next step in the evolution of unincorporated entities. The concept was derived from the offshore mutual fund and captive insurance industries, which have used segregated portfolio companies and protected cell companies established in locations such as the Cayman Islands, the British Virgin Islands, Belize, Bermuda, Guernsey, and Mauritius.

Like an ordinary limited liability company (LLC), a Series LLC is a separate legal entity. However, unlike an ordinary LLC, a Series LLC has the ability to partition its assets, debts, obligations, liabilities, and rights among distinct series. A series is akin to a cell or vault maintaining assets and liabilities separate and distinct from those held within other series. Each series may have a different business purpose, and different rights, powers, and duties with respect to the assets held within the series. The debts, obligations, and liabilities incurred by each series are enforceable only against that series. In this way, "series" are different from traditional classes or series of stock or partnership interests. Though the Series LLC first arrived on the scene more than a decade ago, it has garnered little attention, and much of that has been negative.

Delaware was the first to adopt a provision authorizing the Series LLC in 1996. Rather than create a stand-alone statute, Delaware added the Series LLC provision, 6 Del. Code Ann. § 18-215, to the Delaware Limited Liability Company Act (DLLCA). Today, Illinois, Iowa, Nevada, Oklahoma, Puerto Rico, Tennessee, and Utah have added provisions to their LLC statutes authorizing the Series LLC. With the exception of Illinois, these states adopted provisions similar to Delaware's Series LLC provision.

The drafters of the 2006 Revised Uniform Limited Liability Company Act (RULLCA) chose not to include a Series LLC provision in the RULLCA, citing the uncertainties presently associated with the form and the availability of established alternatives, such as multiple single-member LLCs housed within an LLC holding company.

Formation and Operation

Several steps are necessary to form a Series LLC. Though the steps are similar in each of the states that have Series LLC-enabling language in their LLC statutes, there are some differences. Using Delaware as an example, section 18-215 requires that the LLC operating agreement establish or provide for the establishment of one or more series; allocate the property, rights, assets, liabilities, and obligations of the LLC to specific series; identify a member, manager, or limited liability company interest with managerial authority over the series; and set forth the manner in which profits and losses from the series will be allocated. Other states have similar provisions, though Illinois also requires that the LLC operating agreement identify the business purpose of each series to the extent the business purpose of a series differs from the business purpose of the LLC. This additional requirement likely stems from Illinois' treatment of a series as a separate legal entity, which is unique to Illinois.

Next, the LLC operating agreement must set forth a method to account for the assets of each series independent from the LLC and the other series. The accounting requirement is a critical step to establishing and maintaining the internal liability shield. Section 18-215(b) of the DLLCA was amended in 2007 to provide guidance on how a series should "account" for its assets: "Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series from other assets of the limited liability company, or any other series thereof." No other state has adopted a provision similar to section 18-215(b).

The LLC operating agreement also must expressly provide for an internal liability shield, and the LLC's certificate of formation must provide notice of "the limitation of liabilities of a series as referenced" in section 18-215(b). The notice contained in the certificate is effective for all purposes, even if the Series LLC has not established any series when the certificate is filed.

Illinois requires several additional steps. An Illinois Series LLC must file a separate certificate of designation for each series with limited liability to satisfy the notice requirement of 805 Ill. Comp. Stat. 180/37-40. The certificate of designation also must list the names of the series members, if member-managed, or the names of the managers, if manager-managed. And the name of a series with limited liability must contain the full name of the LLC and be distinguishable from other series within the LLC.

The Power of a Series to Act in its Own Name. The ability of a series to contract, sue, and hold title to property in its own name has been somewhat controversial. Some commentators have answered this question in the negative, citing the absence of express language in Series LLC provisions authorizing a series to act independently of the Series LLC. Indeed, the court in GxG

Management LLC v. Young Bros. and Co., Inc., 2007 WL 551761, *7-8 (D. Me. Feb. 21, 2007), noted the absence of such enabling language in section 18-215 of the DLLCA. GxG involved a tort and contract dispute between a Delaware Series LLC and a third party. Though a series of the plaintiff LLC was listed as the "owner" of the asset in question, the plaintiff LLC was identified as the "managing owner." In denying the plaintiff LLC's motion to join the series as a real party in interest, the court reasoned that, as the managing owner of the asset, the plaintiff LLC had a sufficient interest in the asset to maintain the action. Upon a motion for reargument, the court further explained that the "unique relationship between a Delaware LLC and its series does not create a truly separate legal entity capable of independently pursuing its own legal claims . . . but merely [creates] a 'series of interest' maintained by the LLC . . ." The LLC did not forfeit its legal rights in relation to the vessel simply because it chose to take advantage of the limited liability afforded under the DLLCA by transferring the asset to a series and operating the asset through the series.

In mid-2007, section 18-215 of the DLLCA was amended by adding new subsection (c), thereby enabling a series of a Delaware LLC "to, in its own name, contract, hold title to assets (including real, personal, and intangible property), grant liens and security interests, and sue and be sued." In doing so, the drafters of section 18-215(c) went further than Utah, which permits a series to "contract on its own behalf and in its own name," but not as far as Illinois. In an apparent effort to clothe an Illinois Series LLC with tremendous flexibility, the Illinois Limited Liability Company Act (ILLCA) at 805 Ill. Comp. Stat. 180/37-40(b) accords separate legal entity status to a series.

Taxation of a Series LLC. The lack of guidance by the federal and state tax authorities concerning the manner in which a Series LLC will be treated for tax purposes has led to a great deal of speculation and concern. The drafters of the ILLCA sought to avoid much of this with 805 Ill. Comp. Stat. 180/37-40(b), which provides that the LLC "and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business purpose for qualification to do business in this or any other state." An election to act jointly "shall not affect the limitation of liability" afforded under section 180/37-40 "except to the extent that the series have specifically accepted joint liability by contract." No other state has adopted a similar provision at the time this article was written.

Ownership and Management of the Series. Generally, a series may be owned by one or more members. The LLC operating agreement also may provide classes of members or managers within a series with different rights, powers, and duties, including different or no voting rights, and the rights, powers, and duties of one series may be senior to another. Furthermore, if expressly set forth in the LLC operating agreement, the agreement may be amended without the approval of a class of members and/or managers of a series. A series is member-managed, unless a contrary provision is set forth in the LLC operating agreement.

Distributions, Dissolution, and Winding Up of a Series. Most states' Series LLC provisions permit a series to make distributions to its members, even when the LLC itself is insolvent and, therefore, unable to make a distribution. For example, section 18-215(i) of the DLLCA provides that "[n]otwithstanding § 18-607(a) of this title, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section." Additionally, a member may withdraw from one series without altering the member's interest in another series or the LLC, and withdrawal of a member will not result in dissolution of the series. A series may be dissolved without causing dissolution of the LLC, though dissolution of the LLC automatically triggers dissolution of each series.

Registering to Do Business in a Foreign Jurisdiction. Generally, those states with a Series LLC provision require a foreign Series LLC to register to transact business in the state. Illinois, however, permits either the LLC, acting on its own behalf or that of a series, or the series itself to register to do business in Illinois. This unique feature of the Illinois statute likely stems from the statute's treatment of a series as a separate legal entity. The LLC or the series registering to do business in Illinois must file a certificate of designation disclosing the limitation of liability. Section 180/37-40(n) permits a series to register to do business as an LLC in a foreign jurisdiction in accordance with the laws of the foreign jurisdiction, even if the LLC itself does not register in that jurisdiction.

Advantages of Using the Series LLC

Today, the Series LLC offers immense advantages to sophisticated investors involved in capital investments, oil and gas deals, hedge funds, fractional share arrangements, securitization of assets, and real estate. Indeed, real estate investors frequently utilize Series LLCs to hold multiple parcels of real estate. Consider, however, the proliferation of small and medium-sized businesses over the past two decades, such as organic farms, restaurants, and software and bio-tech start-ups, to name a few. These businesses, sometimes owned and operated by less-sophisticated investors, might benefit from using the Series LLC form.

By way of example, consider an organic farm or a bio-tech start-up. Organic farms often have varied operations. Some raise livestock for milk and slaughter, grow the grain fed to the livestock, and own the real property on which the operations are run. Some of the larger farms also manufacture and distribute their products, keeping the entire operation under one roof. The real property, manufacturing, and distribution segments could be allocated to separate series.

A bio-tech start-up might have multiple vaccines in various phases of research and development at any given time. Some vaccines may have a better chance of success than others, and certain vaccines may have higher research and development costs. Each vaccine could be allocated to a separate series, with each series having different investors. Given the different risks, and different degrees of risk, associated with these types of operations, a Series LLC is a viable business entity form, affording owners flexibility and enhanced asset protection at a fraction of the cost of using multiple entities.

Thus, the Series LLC should be an option available to most investors seeking flexibility and asset protection, by segregating high risk from low risk assets. Unfortunately, that is not the case presently. Many practitioners are reluctant to suggest the Series LLC because, in the words of some commentators, the Series LLC is untested, unpredictable, and too risky to employ for anyone but the most sophisticated individuals.

Risks Associated with the Series LLC

Commentators and practitioners cite several risks and uncertainties in downplaying the attractiveness of Series LLCs. How will a Series LLC be treated for tax purposes? How will bankruptcy courts respond to Series LLCs? Will Series LLCs be respected in states that have not adopted Series LLC statutes? And will courts, particularly federal courts and those in states without a Series LLC statute, respect the internal liability shield of a Series LLC?

Tax Treatment. Series LLCs raise interesting, though not necessarily novel, federal and state tax questions. The state tax-related issues include franchise taxes, the filing of composite returns, withholding requirements, net operating losses, and apportionment as well as sales and use tax considerations, among others. However, most commentators and practitioners have focused on the federal tax issues, wondering aloud whether series of a Series LLC will be treated as separate taxable entities in the same way the Internal Revenue Service (IRS) has dealt with series of a series trust.

The IRS has ruled in numerous private letter rulings that each series of a series trust is to be treated as a separate taxable entity. These private letter rulings share three common points: (1) the interest holders in each series were limited to the assets of that series upon redemption, liquidation, or termination; (2) the interest holders of a specific series shared only in the income stream of that series; and (3) the expenses, liabilities, and obligations of each series were limited to the assets of that series under state law. These private letter rulings frequently cite National Securities Series-Industrial Stock Series v. Commissioner, 13 T.C. 884 (1949), and Revenue Ruling 55-416, 1955-1 C.B. 416, as the precedent for tax treatment of series trusts.

On January 18, 2008, the IRS issued the first private letter ruling (the Tax Ruling), P.L.R. 2008 WL 163064 (Jan. 18, 2008), concerning the tax treatment of a Series LLC. Perhaps not surprisingly, the IRS ruled that series of a Series LLC would be treated as separate taxable entities. In the Tax Ruling, a business trust, operating as an open-end management investment company, proposed to reorganize its business operations into a Series LLC. The beneficial interest in the business trust was divided into transferable shares, which were subdivided into trust portfolios. To effectuate the reorganization, each trust portfolio would transfer its assets to a corresponding LLC portfolio (or series) in exchange for the membership interest in the series and the series' assumption of the trust portfolio's liability. Each series would consist of a separate pool of assets, liabilities, and stream of earnings; the payment of the expenses, charges, and liabilities of a series would be limited to that series' assets; a series' members would share only in the income of that series; the ownership interests of a series' members would be limited to the assets of that series upon redemption, liquidation, or termination of the series; and creditors of a series would be limited to the assets of that series for recovery of expenses, charges, and liabilities. The IRS ruled that a series with one member would be treated as a disregarded entity for tax purposes, while a series with more than one member could elect to be treated as a partnership or as an association taxable as a corporation for federal income tax purposes.

At the time this article was written, California was the only state to address the tax issue at the state level. The California Franchise Tax Board has taken the position that each series is a separate entity for state tax purposes, apparently unwilling to risk losing tax revenue. Each series, therefore, must file its own Form 568 Limited Liability Company Return of Income and pay a separate LLC annual tax and filing fee if the series is registered to do business in California.

Treatment of Series LLCs by Bankruptcy Courts. Though federal case law makes clear that an LLC, though not expressly included in the definition of "person" in the bankruptcy code, may be a debtor, it is uncertain whether a Series LLC will be accorded similar treatment. It is possible, even likely, that this determination will depend, at least in part, on whether the series is treated as a separate legal entity at the state level. In the event the bankruptcy courts consider this status determinative, a series cloaked with separate legal entity status may file as a debtor in a bankruptcy. The LLC and the other series would be unaffected and not subject to the reach of the creditors of the bankrupt series. By contrast, in those states that do not accord specific, separate legal entity status to a series, such as Delaware, an insolvent series may force the LLC and all of its series into bankruptcy. The obvious risk is that the bankruptcy court may disregard the internal liability shield to make cred-itors whole, where the LLC and the series are before it.

Even if the separateness of a series is respected by federal bankruptcy courts, bankruptcy courts may consolidate the assets of multiple series under the equitable doctrine of "substantive consolidation." This doctrine permits bankruptcy courts to disregard the separateness of legal entities where the entities appear to operate more as a single entity, rather than separate entities. Substantive consolidation frequently occurs where creditors extended credit to entities with interrelated activities. Series LLCs may be at a greater risk for substantive consolidation than individual LLCs operating under a master LLC because the internal liability shield of a Series LLC dissipates where any of the statutory criteria for formation have not been satisfied. Thus, should a series fail to separately account for its assets or keep separate records, a bankruptcy court may disregard the internal liability shield. By contrast, a court must undertake a veil-piercing analysis to disregard the separate legal existence of multiple LLCs operating under a master LLC. In the veil-piercing analysis, sharing assets is only one of several factors a court must consider, and that factor alone is not dispositive. The risk of substantive consolidation may be reduced by maintaining separate books and records, by properly documenting asset transfers, by generally acting independently of the other series within the LLC, and by not commingling assets, preparing consolidated financial statements, obtaining joint financing, or entering into loan guarantees with other series.

Disregarding the Liability Shield. Courts also may disregard the internal liability shield of a Series LLC to fashion a remedy for third parties injured by a series. This risk may be greater in states that have not adopted Series LLC provisions, particularly where the litigation involves personal injury, wrongful death, or environmental claims. In looking to fashion an "appropriate" remedy for the injured citizen or the state, a court may turn to veil piercing. As in the bankruptcy context, courts may not even need to struggle with a veil-piercing analysis if the Series LLC fails to adhere to the statutory prerequisites to formation and operation. For example, posit a scenario where a Series LLC seeks additional financing and the lender requires cross-collaterization among the series, or where multiple series maintain common bank accounts without clearly allocating the amount of the account balance that belongs to each series. The liability shield may be disregarded without a second thought. This risk may be lessened somewhat, at least with respect to disputes with creditors, where the promissory note or guarantee expressly discloses the existence of the liability shield and the statutory prerequisites to formation and operation are adhered to scrupulously.

Treatment by Non-Series LLC States. Clearly, there are a host of unknowns associated with doing business in states that have not adopted Series LLC provisions, notwithstanding the Full Faith and Credit Clause. For example, will a non-Series LLC state permit a series standing alone to register to transact business in the state? If so, and the series is later sued in a civil court of that state, is the LLC subject to personal jurisdiction in the state? What about the other series? Will the state respect the internal liability shield? These are but a few questions; certainly, there are others.

Conclusion

Some commentators and practitioners will continue to argue that the Series LLC is a novelty whose risks far exceed its benefits and that other existing alternatives are safer. Undoubtedly, there are risks and uncertainties, but they are hardly new or novel. Indeed, many commentators and practitioners may recall the wealth of articles published in the years following Wyoming's adoption of the first LLC statute in 1977. Those articles highlighted the risks and uncertainties of LLCs. Some of those practitioners and commentators went so far as to advise others to eschew LLCs in favor of limited liability partnerships, because limited liability partnerships had a well-developed body of law to which courts could turn. Despite all of the hand-wringing in the early years, the LLC is the most popular entity form employed today and has been for several years running.

Perhaps Larry Ribstein framed the dilemma best in his 2003 article, LLCs: Is the Future Here?, BUSINESS LAW TODAY, Vol. 13, No. 2 (Nov. 2003), when he wrote that "[c]larification would come as more LLCs were formed, but who would form LLCs until important issues were clarified? For want of an egg the chicken was lost." As history evinces, the "chicken-egg" problem was solved largely by the proliferation of LLC statutes. By 1996, every state had adopted an LLC statute, forcing courts and regulators to address these issues.

As with then, the risks today are manageable. Given the body of case law, statutory law, and regulatory law that has developed as a result of the growth of LLCs, regulators and legislators should catch up quickly. Indeed, there is great value in a timely response at the federal and state level. As long as regulatory and entity law remains out of synch, everyone suffers from the uncertainty. Clients are forced to incur unnecessary costs and expenses. Courts are compelled to legislate. Federal and state agencies are left to respond without clear direction from the legislature. And perhaps most unfortunate is the flight of business to other havens.

The question, then, is not whether to use Series LLCs, but how to spur the development of the law to resolve the issues that exist. The answer is as simple as it is obvious: encourage timely development of the law by bringing practitioners, academics, regulators, and legislators together to develop proposals for legislative and regulatory reform. In the interim, practitioners should not avoid using Series LLCs. The key is proper planning.

- Advise the client of the formation requirements.

- Maintain separate accounts and records for the LLC and each series.
- Utilize a separate operating agreement for each series as well as the LLC.
- Clearly reference the internal liability shield in the operating agreements as well as in contracts, etc., with third parties.
- Avoid cross-collateralization among series, if possible.

With proper planning, investors of all types can benefit from the Series LLC.

Gattuso is special counsel with Proctor Heyman LLP, in Wilmington, Delaware, and practices in the areas of corporate, alternative entity, and commercial litigation. His e-mail is dgattuso@proctorheyman.com. The views expressed herein do not necessarily represent the views of Proctor Heyman LLP or its clients.