

Mintz Levin Energy & Sustainability

Energy & Sustainability Connections Newsletter

Your Law Firm Link to Industry News

JULY 2017

A Note from the Editors

Energy & Sustainability Connections brings the latest developments in energy investing, legal insights, company activity, and industry events straight to your inbox. This month's **Leader in the News** is our client **Bain Capital Double Impact**, which announced the completion of the fund's first two investments in mission-driven companies. If you're a public company in the US, be sure to check our **Legal Feature** for a step-by-step guide to calculating your public float. Learn the where, when, and how of **Cleantech Open Northeast's NYC Business Clinic: Finance, Funding & Legal** in the **Event Highlights** section. Finally, with the reintroduction of the *Energy and Natural Resources Act* (ENRA) and other energy spending policy changes potentially under way, you won't want to skip our analysis in the **Washington Update!**

For links to industry grant opportunities and stories from the business, policy, and research sectors of the energy and clean technology industry, please [see our Energy Navigator](#).

You can [subscribe to our Energy & Sustainability Matters blog here](#).

Leaders in the News – Bain Capital Double Impact

This month we feature our client Bain Capital Double Impact, the impact investing fund of **Bain Capital**, led by former Massachusetts Governor Deval Patrick and Managing Directors Greg Shell and Warren Valdmanis. Formed in 2016, the fund aims to scale financial and impact growth for partner companies, which are addressing critical social problems with sustainable business models. **Bain Capital Double Impact** focuses its investments around three core impact themes: sustainability, health and wellness, and community building. Of particular note, the fund's sustainability investments will focus on companies with sustainable products and operations that minimize environmental impact and promote ecologically beneficial water, energy, and agriculture practices through efficiency gains and sustainable alternatives. Investments in this \$390 million fund will be made primarily into businesses in North America, and most are or will be lower middle market buyouts with equity check sizes of from \$10 to 50 million.

On July 18th, **Bain Capital Double Impact** [announced](#) the completion of the fund's first two investments in mission-driven companies, **Living Earth** and **Impact Fitness**. Falling under the fund's sustainability focus, **Living Earth** is the largest commercial recycler of organic landscaping materials in Texas, diverting waste from landfills that would otherwise release harmful greenhouse gasses.

Founded in 1985 in Houston and headquartered in Dallas, **Living Earth** receives organic waste materials that would ordinarily go to landfills and processes them into high quality compost, mulch, and soil products, which are then sold to landscape contractors, nurseries, retailers, and



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homeowners. By recycling and composting these materials, **Living Earth** saves landfill space, helps reduce greenhouse gas emissions, promotes water conservation, and returns organic matter back to the earth for beneficial use, while at the same time lowering disposal costs for its customers.

Regarding **Bain Capital Double Impact's** investment, Patrick explained, "We believe there are attractive opportunities to expand **Living Earth's** reach, given its approach to reducing landfill waste, and to do so in a more energy and resource efficient way." Mark Rose, President and CEO of **Living Earth**, agreed, noting, "This investment will support our accelerated growth and allows our upcoming entry into new markets around the U.S."

Bain Capital Double Impact's investment in **Impact Fitness** is likewise noteworthy for its mission of improving access to health and promoting wellness in underserved communities with historically poor wellness outcomes.

To support growth in its portfolio companies, the **Bain Capital Double Impact** fund employs a unique strategy for driving meaningful, measurable impact in its investments. Harnessing **Bain Capital's** proven value-added approach, **Bain Capital Double Impact** utilizes the firm's operational capabilities to help mission-oriented companies like **Living Earth** achieve scale and maximize mission potential, helping to deliver both competitive financial returns and measurable social and environmental good. Congratulations to **Bain Capital Double Impact** on the completion of its first investments and its new partnership with **Living Earth!**

Legal Feature

U.S. Public Companies, Calculating Your Public Float – What You Need to Know

If you are a year-end U.S. public company, your second fiscal quarter has recently come to an end, which means that it's time to calculate your public float to see if your reporting status has changed.

A public float is the aggregate number of your company's outstanding shares available for trading by public investors, multiplied by the current sale price of the shares. The dollar value of your public float determines your filer status, which establishes the deadline by which your company must file its annual and quarterly reports with the SEC.

Your public float can also impact your eligibility to register shares on a short-form registration statement, which can make raising capital more difficult. If it has decreased below \$75 million, you may be limited in the amount of equity that you can sell in a primary offering on Form S-3. General Instruction I.B.6 to Form S-3 provides that a registrant with a public float of less than \$75 million may only sell under a Form S-3, during any 12-month period, securities having an aggregate market value of not more than **one-third** of the public float of such registrant.

For a complete overview of how to calculate your company's public float and key factors to keep in mind, [view our full post here](#). If you have questions on how this is calculated or need further details please [contact Sahir Surmeli](#).

Event Highlights

Cleantech Open Northeast NYC Business Clinic: Finance, Funding & Legal

We are excited to host Cleantech Open Northeast's [NYC Business Clinic: Finance, Funding & Legal](#) on August 2nd in our New York Office. This interactive business clinic will cover critical topics such as financial modeling and funding information. Our own [Sam Effron](#) and [Cliff Silverman](#) will serve as the presenters of the legal session, providing tips on what to address and roadblocks to avoid as well as covering company formation, terms sheets, and corporate structures. Sam Effron will also moderate the Financial Panel, taking place at 7:00 pm. To register to attend the panel and networking portion of this event, [click here](#). Mintz Levin is a proud sponsor of Cleantech Open Northeast.

Washington Update

Congressional Schedule

The House of Representatives and Senate have been scheduled to wrap up their work on July 28 ahead of the annual August recess, with both chambers returning to Washington on September 5. However, Senate Majority Leader McConnell (R-KY) announced earlier this month that the Senate would remain in session for a couple of weeks in August to allow for time to advance Affordable Care Act (ACA) repeal and replace legislation, along with other items like raising the federal government's debt limit. With the ACA effort having stalled when the Senate GOP was unable to secure the votes to approve the repeal and replace bill, there is some uncertainty as to when the Senate will adjourn for August. The House is still planning to leave DC on July 28, with the caveat that it could be in session during August should the Senate pass an ACA repeal bill.

House Budget Resolution & Tax Reform

Despite widespread skepticism that the House Budget Committee would be able to produce a Fiscal Year 2018 budget resolution, the committee released on July 18 a proposal titled *Building a Better America* with overall discretionary spending set at \$1.132 trillion, with \$621.5 billion in defense discretionary spending and \$511 billion in non-defense discretionary spending. The budget resolution calls for spending reductions and savings of \$203 billion, and also sets the stage for comprehensive tax reform using budget reconciliation. The Budget Committee approved the plan on July 19 after an arduous 12 ½-hour markup. The budget resolution was approved 22-14 with all Republicans on the committee voting in favor.

Reconciliation is a "fast track procedure" used to make changes to mandatory spending and revenue. Under reconciliation, the budget can avoid a filibuster in the Senate by lowering the threshold for approval from 60 votes to a simple majority of 51.

By including reconciliation instructions for "deficit-neutral, fundamental tax reform" the budget is intended to pave the way for "broad-based tax reform that will make our tax code more competitive internationally and expand opportunities for job creation and business formation in the United States."

The budget proposal calls for the 11 House authorizing committees to achieve a minimum of \$203 billion mandatory savings and reforms over the 10-year budget window, the largest deficit reduction in more than 20 years, with the expectation of higher savings. Calling the savings

target “a floor, not a ceiling,” the budget calls for the House Energy and Commerce Committee to produce savings of \$20 billion.

Similar to the divide over repeal of the *Affordable Care Act*, while Democrats and some Republicans will object to the significant spending reductions called for in the budget resolution, the conservative wing of House Republicans is already saying that it doesn’t go far enough. In short, approval of the budget resolution by the full House is far from certain. Democrats are expected to offer their own alternative budget, as is the conservative Freedom Caucus.

Fiscal Year 2018 Appropriations

On July 20, in a party line vote, the Senate Appropriations Committee established spending levels for the 12 subcommittees for Fiscal Year 2018. As there is not yet an approved budget resolution the committee chose to use the Fiscal Year 2017 enacted top-line funding levels, which total \$1.07 trillion. The Energy and Water Development Subcommittee has been allocated \$38.4 billion in funding, which is \$629 million above the FY2017 enacted level and \$4.1 billion above the president’s request.

The House and Senate Energy and Water Development Appropriations Subcommittees have both advanced their FY2018 spending bills during July. There are some significant differences between the House and Senate bills.

- The House bill would eliminate the Advanced Research Projects Agency-Energy (ARPA-E), while the Senate bill gives ARPA-E \$330 million, an 8 percent increase and a record level of funding for the program.
- The House bill funds the DOE Office of Science at FY2017 levels, while the Senate bill provides a 3 percent increase.
- Energy efficiency and renewable energy programs are funded at \$1.1 billion in the House bill, a nearly fifty percent reduction over last year’s funding of \$2.1 billion, while the Senate provides \$1.9 billion – a smaller reduction from FY2017 levels.
- Both bills eliminate the DOE loan guarantee program.

The House is expected to vote the week of July 31 on a minibus package of four spending bills made up of Energy and Water Development, Defense, Military Construction and Veterans Affairs, and Legislative Branch.

No date is set yet for floor consideration of the Senate bill, but it is expected to be one of the first appropriations bills taken up in that chamber.

Energy and Natural Resources Act (ENRA)

Senators Murkowski (R-AK) and Cantwell (D-WA) on June 29 reintroduced the *Energy and Natural Resources Act* (ENRA) ([S. 1460](#)), the successor to the bipartisan legislation from the previous Congress.

ENRA has 11 titles focused on 1) efficiency, 2) infrastructure, 3) supply, 4) accountability, 5) conservation, 6) federal land management, 7) National Park System management, 8) sportsmen’s issues, 9) water infrastructure, 10) natural hazards, and 11) Indian energy.

The bill was placed directly on the Senate calendar for expedited floor consideration.

While ENRA is not on the list of Senate Majority Leader McConnell’s priority bills for

consideration before the start of the August recess, committee staff are prepared for floor consideration whenever the bill is called up. The details of the floor amendment process are still under discussion.

Recent M&A Activity

- **July 20, 2017:** [DC Appellate Court Greenlights Exelon-Pepco Merger](#)
- **July 20, 2017:** Abu Dhabi National Oil Company, or Adnoc, has tapped a local bank and three foreign banks to act as bookrunners for its anticipated initial public offer of its retail unit ADNOC Distribution, Reuters [reported](#) Thursday. The banks chosen are Abu Dhabi Bank, HSBC, Bank of America Merrill Lynch, and Citigroup. The IPO could raise between \$1.5 billion and \$2 billion, the report said.
- **July 20, 2017:** [SEC Says Asset Manager Overvalued Renewable Energy Co.](#)
- **July 20, 2017:** [Novacap Closes \\$840M Tech, Media, Telecom Fund](#)
- **July 19, 2017:** [Alpha Natural Resources Unloads Inactive Coal Properties](#)
- **July 19, 2017:** [Select Energy Services And Rockwater Energy Agree To Merge](#)
- **July 19, 2017:** Avista reached a definitive agreement to be [acquired](#) by Hydro One (TSX: H) for CAD 6.7 billion
- **July 19, 2017:** [Bracewell, Kirkland Guide \\$5.3B Hydro One-Avista Merger](#)
- **July 18, 2017:** Rockwater Energy Solutions reached a definitive [agreement](#) to be acquired by Select Energy Services (NYSE: WTTR)
- **July 17, 2017:** Houston Fuel Oil Terminal was [acquired](#) by SemGroup (NYSE: SEMG) for \$1.5 billion
- **July 14, 2017:** Forest Homes-Maple Park Public Water District was [acquired](#) by American Water (NYSE: AWK) for \$900,000
- **July 14, 2017:** [Halcon Sells Oil Assets for \\$1.4B to Bruin E&P Partners](#)
- **July 12, 2017:** [Shell Sells \\$1.23B Irish Gas Venture Stake To Pension Board](#)
- **July 11, 2017:** [Consol To Split Coal and Gas Operations In Two](#)
- **July 11, 2017:** eCap Network was [acquired](#) by CPower for an undisclosed amount
- **July 10, 2017:** Great Plains Energy (GXP) reached a definitive [agreement](#) to be merged with Westar Energy (NYSE: WR)
- **July 10, 2017:** Solar Alliance Energy reached a definitive agreement to [acquire](#) ARIES Solar (a subsidiary of Thompson Machinery Commerce) for \$1 million
- **July 7, 2017:** Energy Future Holdings entered into a definitive agreement to be [acquired](#) out of bankruptcy for \$9 billion by Berkshire Hathaway Energy
- **July 5, 2017:** Summit ESP was [acquired](#) by Halliburton (NYSE: HAL) for an undisclosed amount
- **July 5, 2017:** Power Standards Lab was [acquired](#) by Power Survey for an undisclosed amount

- **July 5, 2017:** U.S. Gas & Electric was [acquired](#) by Crius Energy Trust (NTSX: KWH UN) for \$172.5 million
- **July 3, 2017:** Greensmith Energy was [acquired](#) by Wartsila (Nasdaq OMX Helsinki: WRT1V) for \$170 million
- **July 3, 2017:** RockPile Energy Services was [acquired](#) by Keane Group (NYSE: FRAC) for \$254 million
- **July 3, 2017:** Baker Hughes (NYSE: BHGE) was [acquired](#) by General Electric (NYSE: GE) for \$32 billion
- **July 1, 2017:** Verde Energy was [acquired](#) by Spark Energy (NASDAQ: SPKE) for \$85.8 million
- **July 1, 2017:** Alon USA Energy was [acquired](#) by Delek US Holdings (NYSE: DK) for \$523 million

*Sources: *Law360*; Pitchbook

Upcoming Events

3rd New York Energy REVolution, presented by Infocast

August 1-3, 2017
New York, NY

[More Info »](#)

NY Clean Energy Standard Briefing, presented by Infocast

August 1, 2017
New York, NY

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Cleantech Open Northeast's NYC Business Clinic: Finance, Funding & Legal

August 2, 2017 (Mintz Levin)
New York, NY

[More Info »](#)

NECEC's Annual Legislative Roundup

August 3, 2017
Boston, MA

[More Info »](#)

Urbantech NYC Agency Briefing

August 8, 2017
New York, NY

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Energy Storage North America

August 8-10, 2017
San Diego, CA

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Mass Innovation Nights 101

August 9, 2017
Cambridge, MA

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Energy Storage: A Vital Element in a Lower Carbon World

August 10, 2017
Boston, MA

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Summer Greenbuild Mixer

August 10, 2017
Boston, MA

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