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MAYER BROWN AND KBW INVESTMENT BANK FINANCIAL SERVICES M&A FORUM

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REGULATORY, POLICY AND TAX UPDATES

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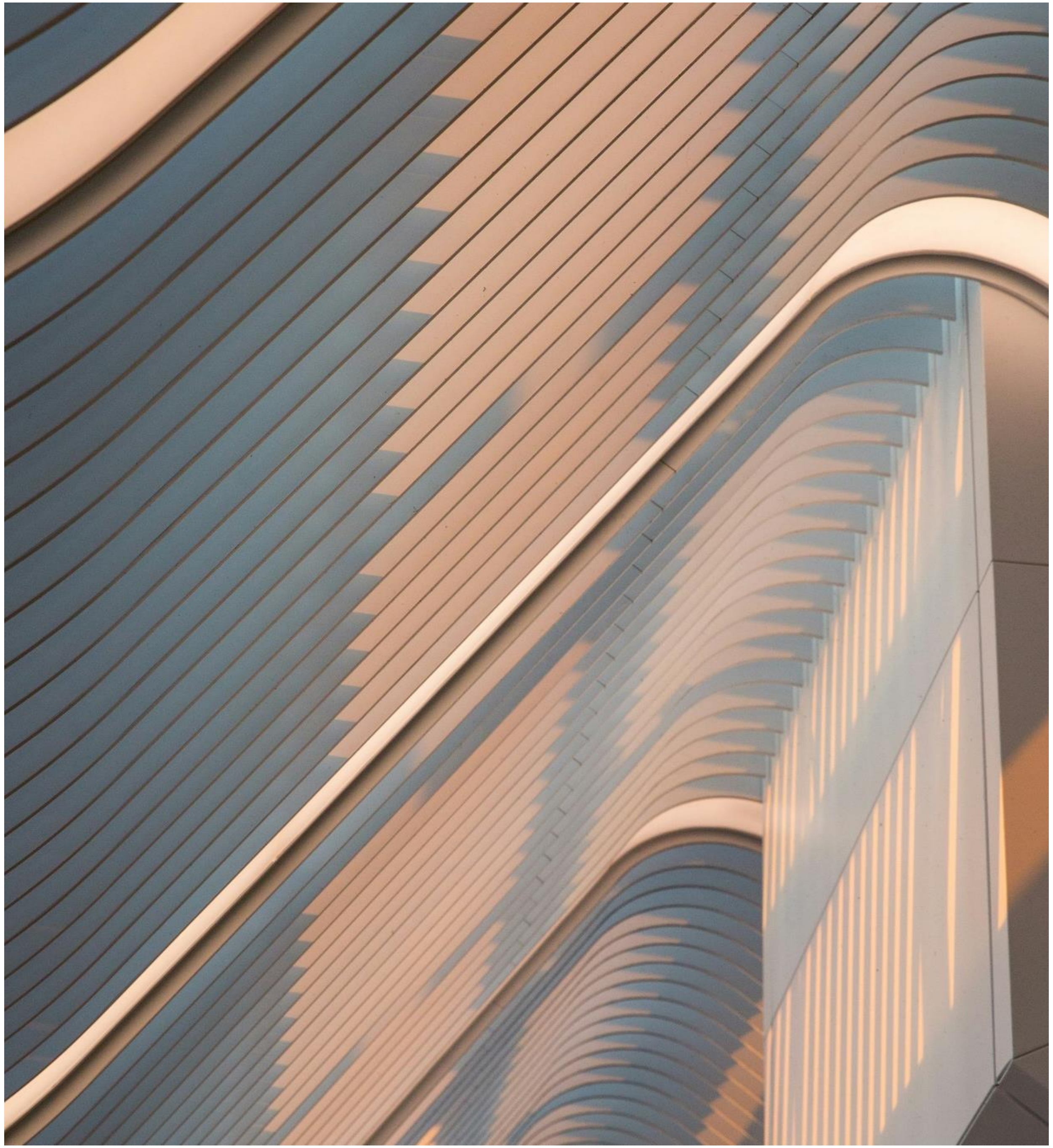
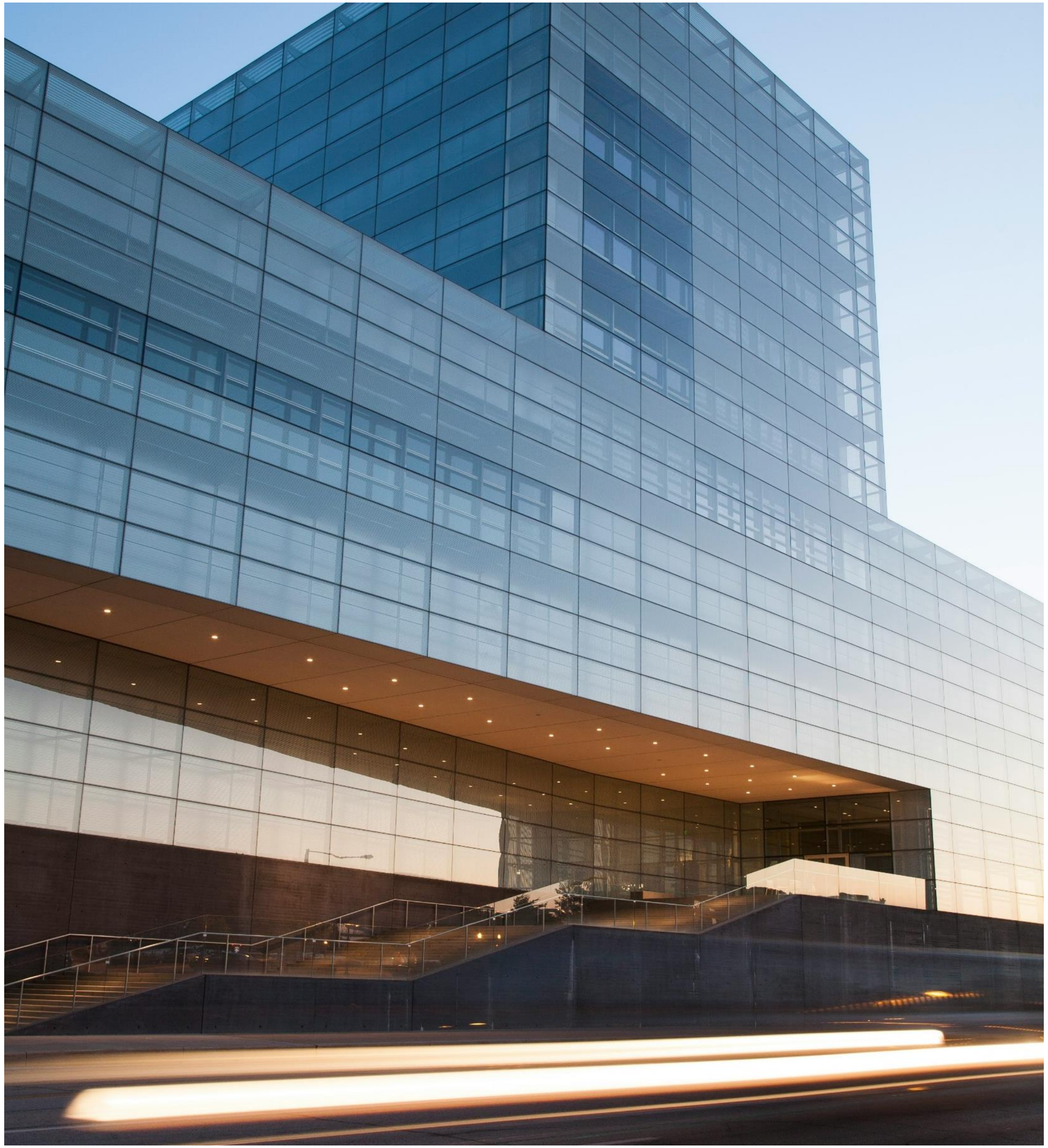
REGULATORY APPROVALS FOR BANK ACQUISITIONS AND INVESTMENTS

- Bank Merger Act
  - The Bank Merger Act prohibits an insured depository institution from engaging in a merger transaction without prior regulatory approval. This generally includes merging with another insured depository institution or a non-bank or assuming the deposit liabilities of another insured depository institution.
- Change In Bank Control Act
  - Change in Bank Control Act requires prior written notice to the appropriate federal banking agency before anyone can acquire "control" of an insured depository institution.
    - Acquiring 25 percent or more of any class of voting securities of the institution constitutes control.
    - There is a rebuttable presumption of control if acquiring 10 percent or more of any class of voting securities of the institution and (i) the institution has registered securities or (ii) no other person will own, control, or hold the power to vote a greater percentage of that class of voting securities.
- Sections 3 and 4 of the Bank Holding Company Act also require prior approvals from the banking agencies for certain acquisitions.
- Regulatory approval process elongates time frames for transactions and creates uncertainty, which leads to higher costs.



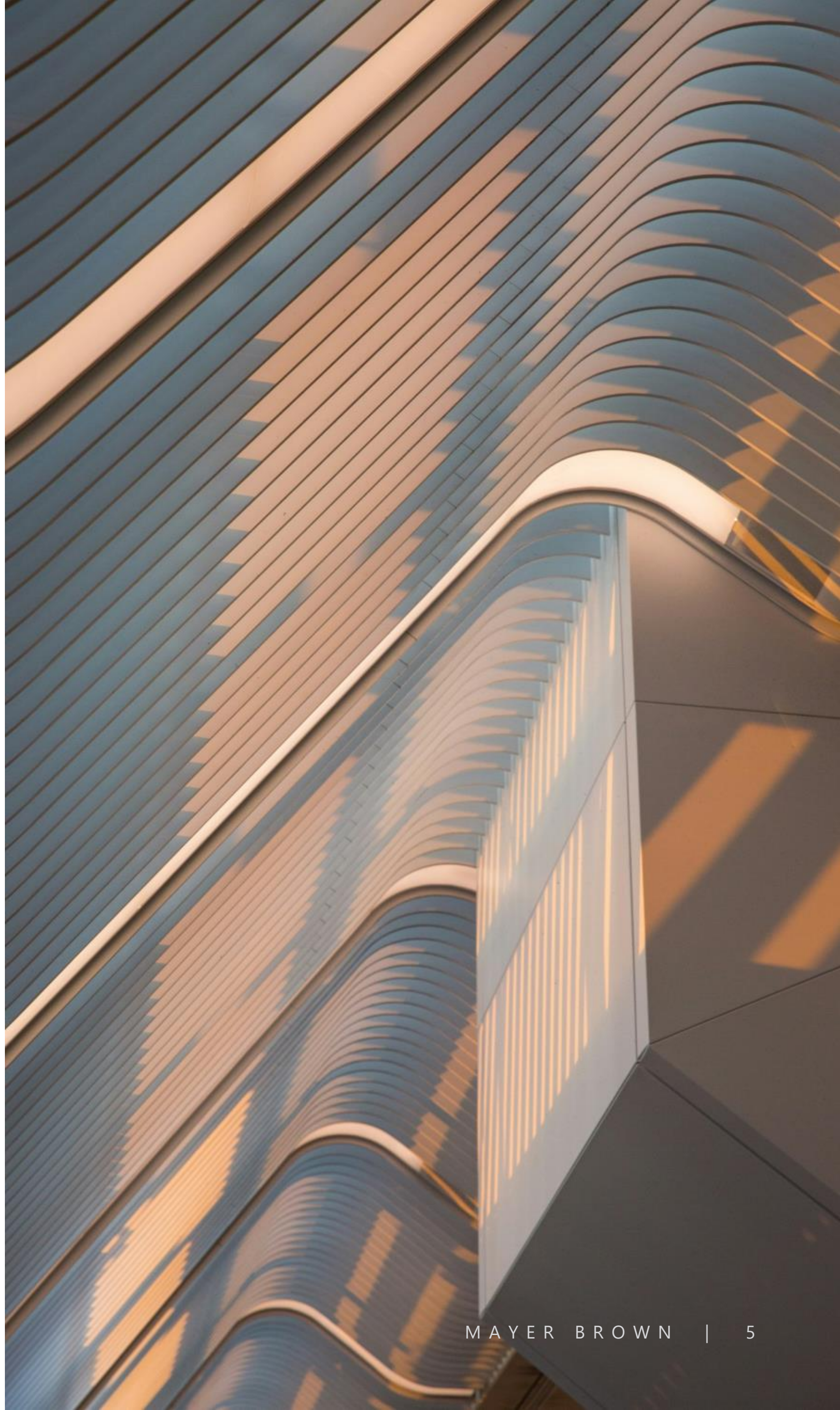


AGENCY GUIDELINES FOR BANK MERGERS

- FDIC and OCC issued updated merger policies.
  - FDIC Statement of Policy on Bank Merger Transactions.
    - In September 2024, the FDIC approved changes focusing on the scope of transactions subject to approval, the process for evaluating merger applications, and the principles that guide the consideration of the applicable statutory factors as set forth in the Bank Merger Act.
  - OCC Policy Statement on Bank Mergers (2024).
    - In September 2024, OCC approved a final rule updating its regulations for business combinations involving national banks and federal savings associations and a policy statement clarifying its review of applications under the Bank Merger Act.
- FRB has publicly stated that it does not plan to issue new merger guidance.
- DOJ withdrew from 1995 bank merger guidelines and will apply 2023 general merger guidelines to bank mergers going forward.

RECENT M&A ACTIVITY AND PROSPECTS FOR 2025

- Bank merger activity over the past few years has declined and application process timelines have significantly lengthened.
- Although the OCC and the FDIC have recently updated their guidelines for reviewing merger transaction, we expect more banks mergers for several reasons –
  - Shorter and higher likelihood for regulatory approvals.
  - Increased demand due to stagnant market and greater need to achieve economies of scale (especially with smaller and mid-size banks).
- While the outlook is positive, there are some possible speed bumps in the road.
  - First, acquisitions by large banks will be subject to heightened scrutiny and face continued difficulty.
  - Second, state authorities could increase their scrutiny of transactions.
  - Finally, the economy remains strong and foreign and domestic political uncertainty remains low.
- Distressed acquisitions of banks and bank assets may see broader types of buyers, including non-banks.

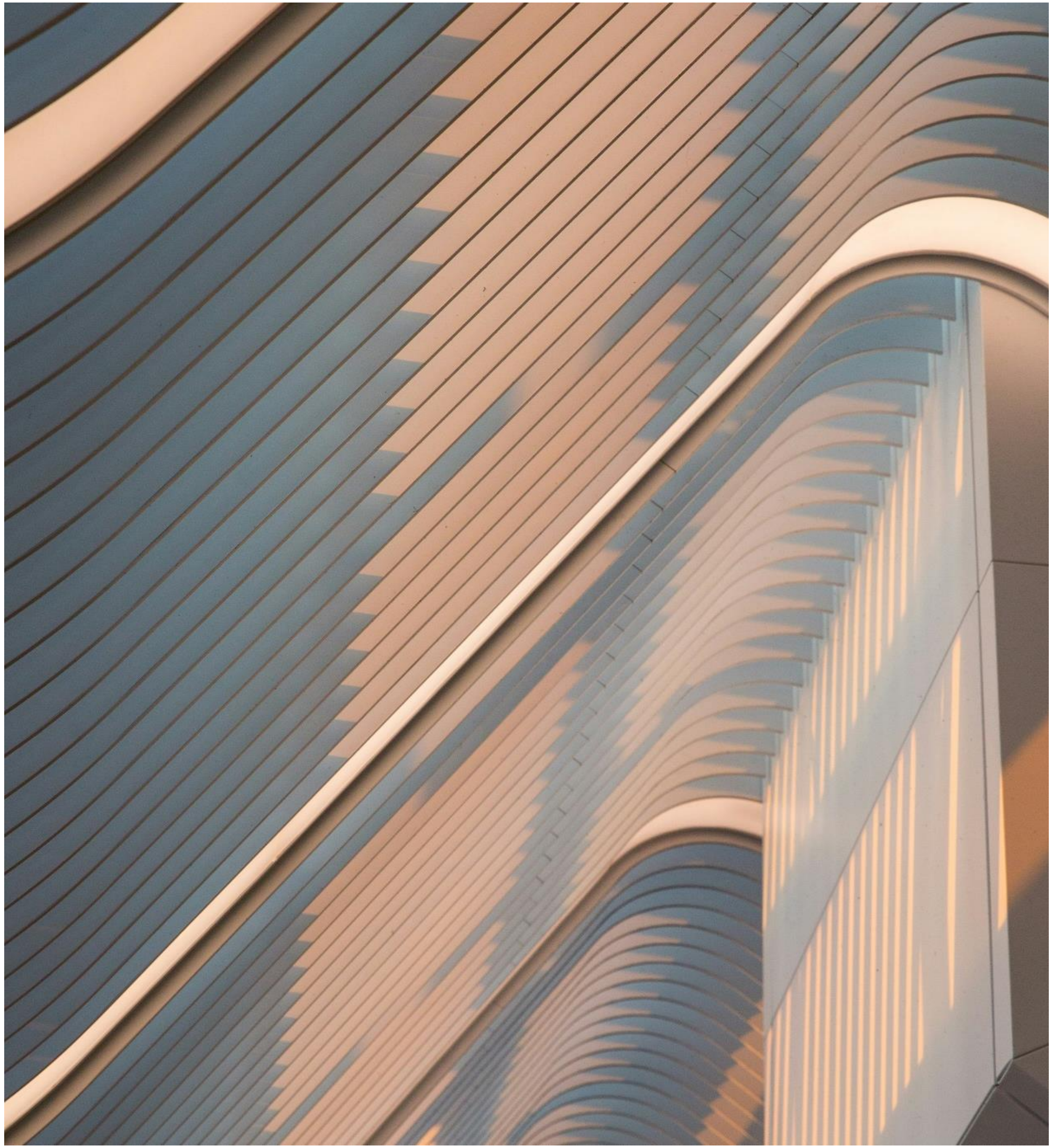


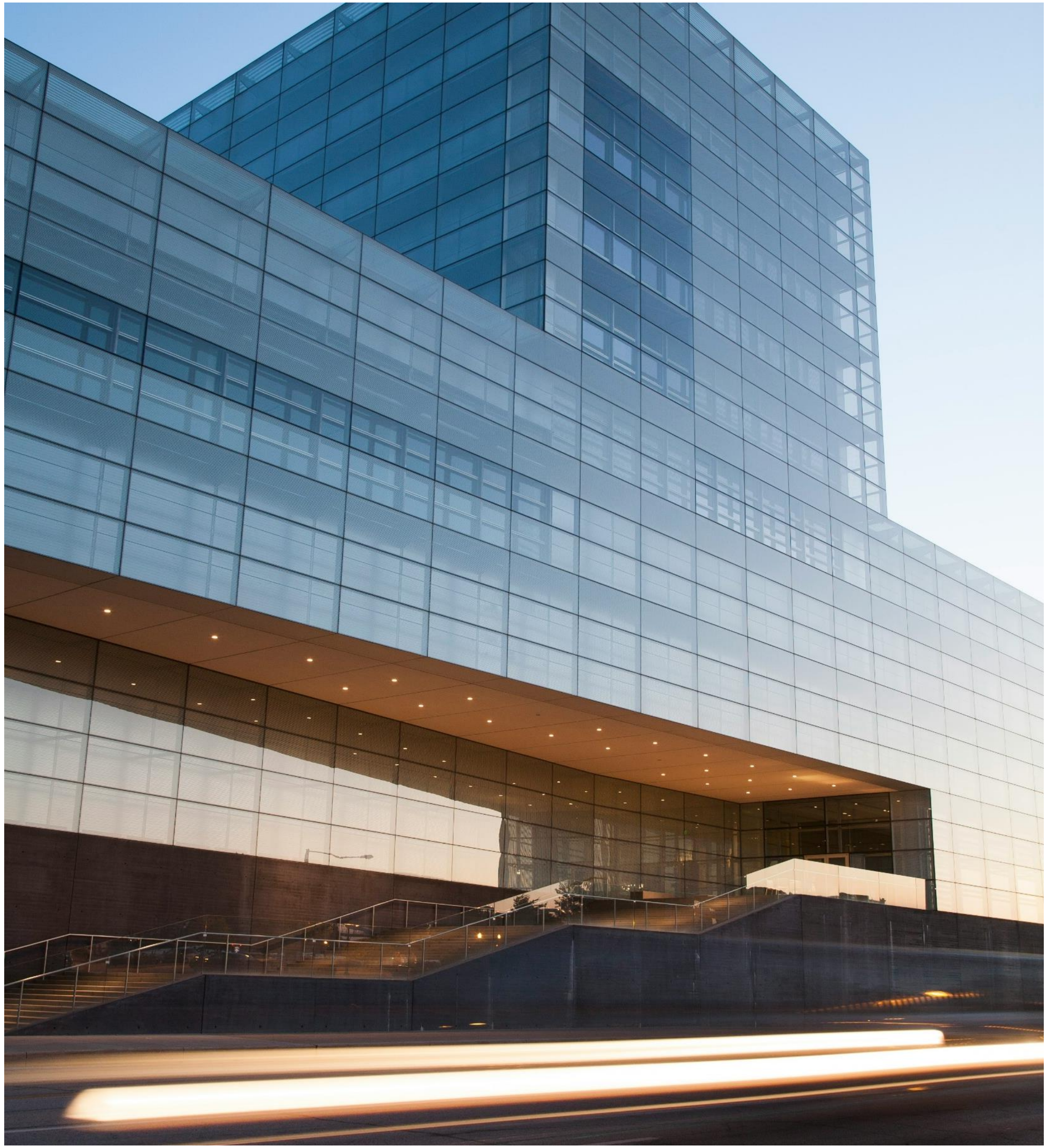
M&A ALTERNATIVES

- **Bank Charters**
  - Limited number of new charter applications have been approved in recent years and timeline for approval can be lengthy and uncertain.
  - State non-bank bank and trust company charters could provide opportunity for de novo entry into banking without Bank Holding Company Act restrictions.
  - FinTechs have generally pivoted to acquisition of existing banks abandoning the new charter application process.
- **Bank Partnerships**
  - FinTechs and others have used the bank partnership model to originate loans or offered banking services through banking as a service (BaaS) programs.
  - Regulatory scrutiny has caused certain bank partnership arrangements to unwind so the increased regulatory environment may renew interest in bank charter.
  - State licenses still required.
- **Lenders and Money Services Businesses**
  - In lieu of a bank charter, some lenders have obtained state licenses to originate consumer loans or act as money transmitter.

WHY IS 2025 BEING REFERRED TO AS THE "SUPERBOWL OF TAX"

- A huge range of tax policy issues must be addressed in 2025, including:
- Large chunks of the individual side of the Code expire, including:
  - Lower individual tax rates and brackets for individuals,
  - 199A deduction for pass-through businesses,
  - Expanded child tax credit, and
  - Cap on state and local tax deduction.
- Permanently extending all the expired and expiring provisions of the 2017 Tax Cuts and Jobs Act (TCJA) costs somewhere between $4 and $5 trillion.
- Campaign pledges by candidate Trump (e.g., expanded Child Tax Credit, no tax on tipped income, overtime wages or Social Security benefits), lower corporate rate on American manufacturers - continue to grow the total estimated cost of all the tax provisions that could be debated in 2025.
- Even for Washington, DC that is real money.
- There are not enough tax increases on the table to offset the cost of all the desired tax cuts.



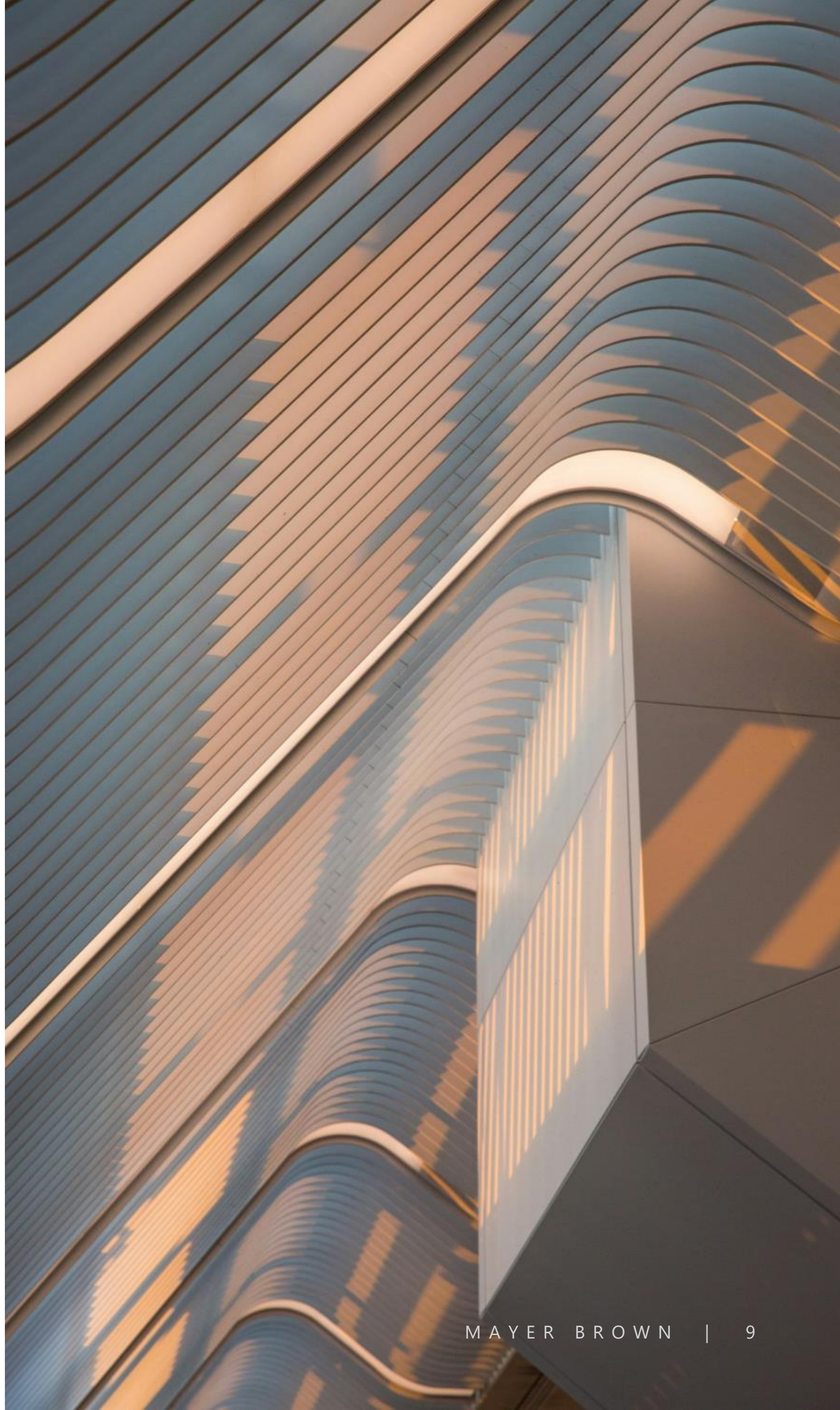


UNDERSTANDING THE PROCESS

- With the election giving the GOP full control, Trump Administration and GOP control of both the Senate and the House of Representatives, the GOP will control the process and substance of the debate.
- GOP expected to use the budget reconciliation process to advance tax legislation. This special process allows the GOP to avoid the Senate filibuster and pass legislation through the Senate with only 51 votes.
- This is the same special process Congress used to originally enact TCJA and the IRA.
- However, there are budget rules that constrain what the GOP can do in this process. These budget constraints are why several parts of TCJA are scheduled to expire.
- These budget constraints will limit the ability of the GOP to make permanent changes/extensions and may prompt the GOP to look for other, non-traditional sources of revenue to help offset the cost of the tax cut extensions.
- Congress currently debating whether to do everything in one bill or split into two bills with tax in the second bill.

SUMMARY OF KEY POLICY ISSUES:

- TCJA extension: Applies primarily to “individual” side portions of the code as well as the special deduction for small businesses.
- IRA: No prospect of full repeal, however, changes to criteria, particularly more buy America/anti-China in any election outcome.
- International: OECD Pillar 1 and Pillar 2 supposed to start kicking in, bipartisan opposition to key portions of those agreements.
- Campaign promises: No taxes on tips, lower corporate rate of domestic manufacturers, overtime or Social Security, fundamental changes in tax credits for housing.
- Wild Cards: Tariffs, increase in stock buy back excise tax, carbon border measures, financial transaction tax, punitive taxes against corporations HQ’d in countries that implement OECD Pillar 2 ….



RAMIFICATIONS OF POTENTIAL CHANGES

- Changes to corporate rate will have significant ripple effects.
- Changes to criteria to qualify for energy credits.
- Repeal of transferability provisions from IRA and CHIPS Acts.
- Impact on supply chains from tariffs.
- Enactment of countermeasures against countries imposing UTPR or DSTs on US corporations.
- Impact on IRS audit and investigation ability if IRS funding is reduced.

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