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TAXTALK

Authored and Edited By
Thomas A. Humphreys
Anna T. Pinedo
Stephen L. Feldman
Remmelt A. Reigersman
Shiukay Hung
David J. Goett
Alexander I. Birkenfeld

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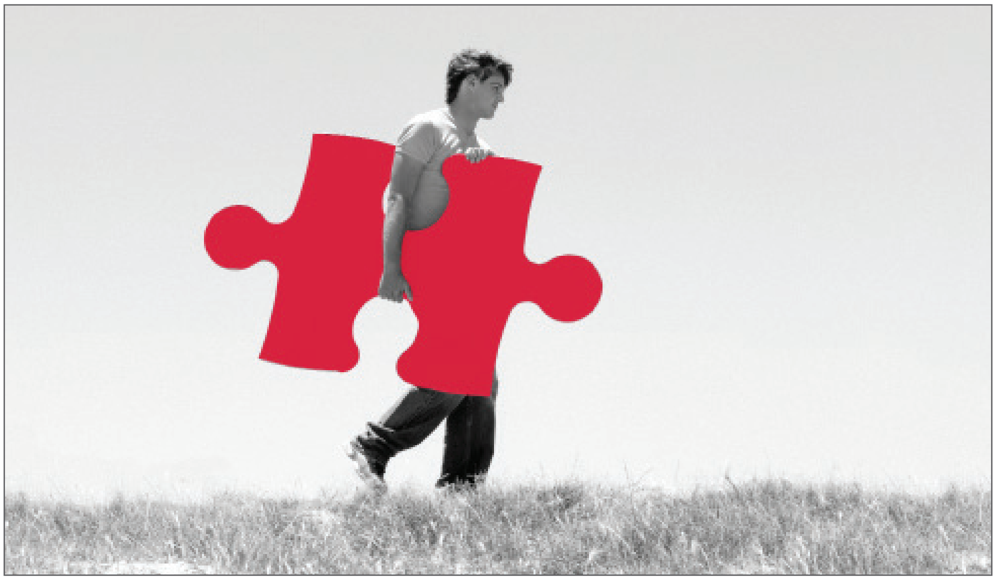

EDITOR'S NOTE

Has anyone noticed how we're in a seemingly endless discussion about tax reform? Ever since Representative Dave Camp (R. Mich.) issued his own tax reform "discussion" papers two years ago, U.S. tax reform has been an on and off "hot" tax topic. Currently, Sen. Orrin Hatch (R. Utah), chairman of the Senate Finance Committee, has convened five tax reform working groups; initial comments were due, appropriately enough, on April 15th (no extensions permitted). Of course, Tax Talk doesn't have to be a Washington insider to observe that the chief beneficiaries of all this tax reform talk are D.C. lobbyists, not without reason. As they say in Washington, if you're not at the table, you're on the menu. Anyway, hope springs eternal, even with a gridlocked Congress. This edition of Tax Talk doesn't bother with the nuts and bolts of income tax reform; instead, we focus on renewed interest in a U.S. value-added tax ("VAT"), at least among Washingtonian think tanks. The idea is that a VAT coupled with the existing income tax could permit significant tax reductions at the lower end of the tax tables (the folks that would be hurt by a regressive VAT) plus corporate tax reform. Of course, in the United States, every time a VAT is mentioned, so too is the name of former Ways & Means Committee Chairman Al Ullman (D. Ore.), who championed a VAT only to lose his House seat in the next election.

Juxtaposed against large-scale tax reform, Congress has returned to old budget tricks to pay for some obscure programs. Tax Talk reports on Senate Finance and House Ways & Means committee action approving bills paid for

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with artificial increases in the corporate estimated tax requirements right at the end of the budget horizon. These are offset by reductions beyond the budget horizon. We last reported on this in March 2010[1] and had hoped the practice had died. Apparently not.

Closer to home (*i.e.*, technical tax stuff), Tax Talk 8.1 reports on a new phenomenon: negative interest. In Europe, some borrowers are being paid interest because their adjustable rate loan indices have dropped below zero. This is obviously the twilight zone of financial instruments tax, but we try to guide you through the tax results when an issuer issues a negative interest bond. Tax Talk also discusses an IRS ruling that exchangeable debentures constituted a straddle transaction, a Fifth Circuit decision on the tax consequences of abandoning stock held as a capital asset, and the resumption of publicly traded partnership private letter rulings. Enjoy!

IRS RULES DEBENTURES ARE PART OF STRADDLE; INTEREST NON-DEDUCTIBLE

In a recent field attorney advice, the IRS held that a taxpayer's issuance of debentures that were exchangeable for a basket of reference shares owned by the taxpayer and traded on an SEC-regulated exchange created a "straddle" within the meaning of Section 1092(c)(1). As a result, according to the IRS the taxpayer could not deduct interest payments attributable to the debentures because the interest payments are allocable to "personal property which is part of a straddle" within the meaning of Section 263(g)(1).

According to the facts of FAA 20151201F, the taxpayer issued exchangeable debentures with quarterly coupon payments at a fixed annual rate. At maturity, subject to the holder's exchange right, the holder would receive a cash payment equal to the adjusted principal amount of the debenture plus accrued and unpaid interest and other distributions. The holder could exchange the debenture at any time for either a fixed amount of reference shares or their cash equivalent amount. The taxpayer, in turn, could determine whether the holder would receive reference shares or their cash equivalent amount. The taxpayer could redeem the debenture for either an amount of cash equal to the adjusted principal amount of the debenture or the value of the reference shares.

The IRS held that the taxpayer created a straddle by issuing the debentures and holding the reference shares. Section 1092(c)(1) provides that a "straddle" means "offsetting positions with respect to personal property." Section 1092(c)(3) provides that two or more positions are presumed to be offsetting if "the positions are in the same personal property." Section 1092(d)(3)(A)(i) provides that the term "personal property" includes stock that "is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock." The IRS held that due to the exchange feature, as the value of the reference shares increases, the debentures increase in value to the holders, and conversely become more costly to the taxpayer. Therefore, the reference shares and the debentures are presumed to be offsetting.

In addition, the IRS held that the taxpayer could not deduct interest payments attributable to the debentures because such interest payments are allocable to "personal property which is part of a straddle" within the meaning of Section 263(g)(1). Under Section 263(g)(1), "interest and carrying charges properly allocable to personal property which is part of a straddle" may not be deducted and must instead be capitalized. Section 263(g)(2) defines "interest and carry charges" to include "interest on indebtedness incurred or continued to purchase or carry the personal property." The IRS held that because the economics of the debentures reveal close relationships between the debentures and the corresponding reference shares, the interest payments attributable to such debenture qualified as "interest on indebtedness incurred to continue to purchase or carry the personal property."

STOCK ABANDONMENT PRODUCES ORDINARY LOSS

A recent tax case out of the Fifth Circuit upheld a taxpayer's strategy to make the best of a bad investment. According to the facts of *Pilgrim's Pride v. Commissioner*, the taxpayer purchased preferred stock from two corporations (the "Issuers") for a total of $98.6 million in 1999. By 2004, the stock had declined significantly in value and the Issuers offered to buy back the stock for $20 million. The taxpayer determined that the best course of action was to abandon the stock for no consideration because a $98.6 million ordinary abandonment loss would generate tax savings more valuable than the $20 million offered by the Issuers. Accordingly, the taxpayer surrendered the stock to the Issuers, terminating its ownership rights with respect to the Issuers. The taxpayer then claimed an ordinary loss of $98.6 million. The IRS disagreed with the character of the loss, arguing that the abandonment should be treated as a "sale or exchange," resulting in a capital loss (subject to limitation), rather than an ordinary loss.

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The U.S. Treasury regulations generally allow a deduction for losses sustained in the taxable year, including losses from the abandonment of property. However, an abandonment loss is not allowed with respect to losses sustained upon the sale or exchange of property. The Internal Revenue Code includes a provision that deems certain transactions to be "sales or exchanges" for tax purposes. At issue in *Pilgrim's Pride* was whether this provision applied to the abandonment of stock that is held as a capital asset.

In 2013, the U.S. Tax Court agreed with the IRS, rejecting the taxpayer's argument that this provision only applied to derivative or contractual rights and did not apply to property rights inherent in ownership.[2] However, the Fifth Circuit reversed the Tax Court's ruling, finding that this provision "applies to the termination of rights or obligations with respect to capital assets (e.g. derivative or contractual rights to buy or sell capital assets) [but] does not apply to the termination of ownership of the capital asset itself." The IRS attempted to argue that when a capital asset is abandoned, this provision applied because the inherent rights with respect to the abandoned asset were also being abandoned. The court disagreed, noting that "Congress does not legislate in logic puzzles."

The Fifth Circuit's decision may cause taxpayers to consider whether abandoning an asset and reaping a tax benefit is more beneficial than recouping a partial recovery and whether there are limits on such a strategy.

TAX CONSEQUENCES OF NEGATIVE INTEREST RATES

Over the last few months, the financial press has been filled with reports of "negative" interest rates. For example, on December 18, the Swiss National Bank announced that it would move from a zero-percent interest rate to a charge of 0.25% on deposits from commercial banks. This creates a "negative interest rate" on Swiss National Bank deposits. On January 15, rates fell further into negative territory as the Swiss National Bank lowered rates to negative 0.75%.

In early April, Switzerland sold a ten-year government bond at a negative interest rate of 0.055%. In late March, GDF Suez sold a two-year zero yield bond. The *Wall Street Journal* recently reported that some lucky Europeans were actually benefitting from negative interest rates on consumer loans.[3]

Why negative interest exists is "beyond scope," as we say at Tax Talk. (Something about deflation producing a positive return even taking into account the negative interest.) In Europe, one reads it exists because the European Central Bank is flooding Europe with liquidity under its equivalent of "quantitative easing." In the case of Switzerland, the move was aimed at weakening the Swiss franc, which ended its currency peg to the Euro in January.

Moving beyond the "why," negative interest isn't hard to define: at issuance it occurs when a lender lends money to a borrower and the borrower agrees to repay less than the amount loaned. Some view this as a "premium" for a loan or as a charge against the lender for holding its money. For an outstanding loan, negative interest can occur when a floating rate declines below zero. For example, if a mortgage loan in Spain was originally issued at a rate equal to one-month Euribor, that rate as of mid-April is below zero. Whether the lender must pay the borrower in this case depends on the underlying contract. Finally, a bond originally issued with a positive yield can trade at a negative yield. For example, right now in Europe a significant amount of sovereign debt trades at a negative yield.

As one might imagine, there is little authority on negative interest for federal income tax purposes. However, in a little-noticed change to the regulations under section 171 proposed in 2013 and finalized a year ago, the IRS seems for once to be ahead of the curve. Apparently what has been happening is that the U.S. Treasury has been issuing short-term debt at near-zero rates. We're told that the Treasury, however, does not have the systems ability to actually charge a negative interest rate. Instead, the obligations are sold to brokers with a small yield who then sell the obligations to their customers at a negative yield.[4] Anyway, section 171 treats the excess of a debt instrument's issue price over its stated redemption price at maturity as "bond premium." A holder can elect to amortize this bond premium under section 171. The amortized premium offsets interest income on the bond. If there is unamortized bond premium at maturity (e.g., if there is no interest on the bond against which to offset the premium), the holder would otherwise have a capital loss. The change in the regulations permitted holders to claim an ordinary loss for the unamortized premium.

Another alternative would be to treat negative interest as a fee. Thus, the "negative interest rate" would be viewed as akin to a fee paid for use of a safety deposit box. The fee paid by the depositor might be a trade or business expense (in the case of a corporation), which would be deductible under Section 162. In fact, JP Morgan recently announced that they would charge their largest customers a fee for holding large cash balances with the bank.[5]

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Another issue is whether a U.S. investor that buys a negative interest bond from a foreign issuer must withhold on the interest under section 1441. The Securities Industry and Financial Markets Association recently wrote a letter to the Treasury raising this question. It seems farfetched because the source of the borrower's income logically seems to be foreign; however, given the numbers, U.S. investors are hoping for some clarification.

We would advise our readers, however, not to hold their breath waiting for further U.S. government guidance on negative interest. Of course, it is possible that the IRS will resolve some of these issues quickly. But given how long any guidance takes these days, it is also possible negative interest will disappear before the IRS has a chance to act.

RENEWED DISCUSSION OF A FEDERAL CONSUMPTION TAX

Recent calls for tax reform have renewed discussion regarding a federal consumption tax.[6] Senate Finance Committee Member Ben Cardin (D. Md.) introduced a bill at the close of 2014 that would supplement the current income tax regime with a consumption tax. Sen. Cardin continues to discuss his proposal, which contains a 10% tax on goods and services at each stage of production and distribution. In conjunction with the consumption tax, the proposal modifies the income tax by setting the corporate income tax rate at 17% and the individual income tax rate at 15%-28% (with an exemption for individuals earning below a specific threshold). Finally, the proposal limits the total revenue collected by the consumption tax to 10% of gross domestic product.

Whether a consumption tax is part of tax reform efforts of the Senate Finance Committee at large remains to be seen. In January, Senate Finance Committee Chairman Orrin Hatch (R. Utah) and Ranking Member Ron Wyden (D. Ore.) launched five bipartisan working groups to examine current federal tax law and available reform options. Each working group is responsible for one of the following areas: 1) individual income tax; 2) business income tax, 3) savings and investment; 4) international tax; and 5) community development and infrastructure. The goal for these working groups is to submit targeted policy proposals to the Senate Finance Committee by May.

IRS RESUMES PTP RULINGS

On March 6, 2015, an IRS official announced that the IRS will continue its private letter ruling process on whether a publicly traded partnership satisfies the qualifying income requirements of Section 7704. The IRS temporarily stopped granting such private letter rulings beginning in March of 2014. During the past year, the IRS spent significant time studying the Section 7704 issues and have worked extensively with engineers in LB&I to develop workable standards to guide its ruling practices. According to the IRS, such standards will be incorporated into proposed regulations.[7]

HOUSE AND SENATE BILLS WOULD INCREASE THEN DECREASE ESTIMATED TAX PAYMENTS

On April 22, 2015, the Senate Finance Committee voted to approve a bill that would require large corporations to increase their estimated quarterly federal income tax in the third quarter of 2020, followed by an offsetting reduction of estimated tax in the fourth quarter of 2020. Generally, corporations are required to make estimated tax payments every quarter equal to 25% of their tax liability for the taxable year (or, in some cases, the preceding taxable year). The Senate proposal would require corporations with assets of more than $1 billion to increase their quarterly estimated federal income tax payments by 2.75% in July, August, or September of 2020, followed by a 2.75% decrease for the following estimated tax payment. A similar bill passed by the House Ways and Means Committee would require a 5.25% increase in estimated tax payments for the third quarter of 2020 (again accompanied by a corresponding decrease in the following estimated tax payment). In the case of the House bill, the provision pays for an extension to the African Growth and Opportunity Act, the Generalized System of Preferences, the preferential duty treatment program for Haiti, and for other purposes. In the Senate bill, the provision helps to pay for an extension to the Trade Adjustment Assistance Program and the health coverage tax credit.

This type of provision is a legislative device used to "increase" income within one time period (for example, the five-year budget horizon) while hiding the offsetting costs outside the relevant time period. The net effect is that large corporations are required to make a short-term interest-free loan to the government. These types of provisions are not uncommon. In 2017, large corporations will be required to increase their third quarter estimated tax payment by 0.25% and decrease the following estimated tax payment by 0.25%. In fact, the 2010 Hiring Incentives to Restore Employment Act and Health Care and Education Reconciliation

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Act increased the September 2014 estimated payment for large corporations by over 170% (followed by, you guessed it, an offsetting decrease for the next estimated tax payment).[8] However, the increased estimated tax payment for 2014 never actually came to pass. Section 7001 of the Middle Class Tax Relief and Job Creation Act of 2012 repealed estimated tax payment increases from prior legislation. Who knows whether this latest round of budgetary smoke and mirrors will eventually take effect. In the end, it's enough to make one wonder whether Congress ought to be subject to an economic substance doctrine.

MOFO IN THE NEWS; AWARDS

Please note that materials from any of the sessions listed are available on our website, or upon request by emailing hlawrence@mofo.com.

- **IFLR Americas Awards 2015**
  Team of the Year – Structured Finance & Securitization

- **Global Capital U.S. Derivatives Awards 2015**
  Shortlisted for Derivatives Law Firm of the Year

- **GARP Webinar: Derivatives Regulatory Update: Have Regulators Reduced Risk to the U.S. Financial System?** – March 31, 2015
  Webinar – Julian Hammar and James Schwartz
  Of Counsels Julian Hammar and James Schwartz were joined by Michael Piracci of Barclays and Jason Silverstein of CME Group, to discuss the risks posed by derivatives, both cleared and uncleared, in the context of the current, still-evolving regulatory landscape. Specific to cleared swaps, the panelists covered the mechanisms by which clearinghouses mitigate risks, and helped clarify the debate over potential additional risk-mitigating measures. Also discussed was the possible expansion of the mandatory clearing regime to cover certain foreign exchange transactions (NDFs) in both the U.S. and the EU. With regard to uncleared swaps, the panel reviewed the recently released margin proposals of the CFTC and the federal banking agencies, as well as the ways these rules, if implemented, could arguably increase systemic risks rather than decreasing them.

- **A Conflicts-Based Approach to SEC and FINRA Priorities** – March 31, 2015
  Seminar – Daniel Nathan
  Partner Daniel Nathan, joined by Julie K. Glynn of J.P. Morgan Chase, looked at FINRA's focus on its examinations and investigations through the lens of broker-dealers' efforts to address the conflicts inherent in their business. This session also provided suggestions about how firms can identify and address these conflicts in a way that will make regulators comfortable and lower the anxiety level around FINRA examinations.

- **Structured Investments Spring Conference 2015** – March 31, 2015
  Sponsorship – Remmelt Reigersman and Peter Green
  Structured Products Association's 11th annual spring conference on structured investments featured as the industry's benchmark event. Partners Remmelt Reigersman and Peter Green spoke on a panel entitled "Legal-Regulatory-Compliance-Tax: Evolving Issues for the Structured Investments Industry in 2015."

- **IFLR Webinar: Liability Management** – March 23, 2015
  Webinar – Anna Pinedo, David Lynn and Remmelt Reigersman
  Partners Anna Pinedo, David Lynn and Remmelt Reigersman discussed how an issued no-action letter may provide issuers and their advisers with greater flexibility for tender offers for non-convertible debt securities, including non-investment grade debt securities. The group also reviewed recent court decisions involving the application of the Trust Indenture Act in the context of liability management transactions.

- **Structured Thoughts Master Class: Proprietary or Research-Based Indices** – March 19, 2015
  Seminar – Anna Pinedo
  Partner Anna Pinedo led a master class on proprietary or research-based indices. During this seminar, Ms. Pinedo discussed regulatory developments involving indices, such as the ESMA-EBA, IOSCO and proposed European regulation of benchmark indices. She also discussed compliance, Investment Company Act and Investment Advisers Act issues related to indices.

- **Morrison & Foerster 5th Annual Financial Services and Regulatory Conference** – March 18, 2015
  Seminar – James Tanenbaum, Oliver Ireland, Remmelt Reigersman, Donald Lampe, Anna Pinedo, James Schwartz, Daniel Nathan, Julian Hammar and Thomas Humphreys

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Several Morrison & Foerster attorneys convened in Charlotte, North Carolina to offer their perspectives on navigating the roads and reading the road signs of the Financial Services and Regulatory landscape. Sessions included Dodd-Frank and Basel Implementation Overview; Liquidity Measures, Regulatory Capital Developments and Impact on Lending and Financing Approaches; Tax Developments and Emerging Issues; Enforcement and Compliance Priorities and Developments; Retail and Consumer Banking: Mortgages and More; Grappling with the Volcker Rule; and Derivatives Regulatory Update.

- **The 8th Annual IMN Global Covered Bonds Conference** – March 5-6, 2015
  Sponsorship – Jeremy Jennings-Mares and Peter Green
  This program sought to assist in the rejuvenation of the covered bonds market in an effort to generate creative new solutions for the current financial challenges facing those in the Eurozone. Partner Jeremy Jennings-Mares spoke on a panel titled "Outlook for the ABS/RMBS Market and Impact on Covered Bonds Issuance Appetite," and Partner Peter Green participated on a panel titled "Important Regulatory Developments: LCR Update."

- **PLI Webinar: Derivatives Regulatory Update** – March 4, 2015
  Webinar – Julian Hammar and James Schwartz
  Of Counsels Julian Hammar and James Schwartz updated the current state of play regarding the implementation of U.S. regulations under Title VII of Dodd-Frank. The speakers discussed the released proposals of the CFTC and the federal banking agencies that would require margin for uncleared swaps, efforts to harmonize the U.S. regulations with those of other jurisdictions, the legislation affecting the swaps push-out requirement, the ISDA 2014 Resolution Stay Protocol, the status of the SEC's rules for security-based swaps, and the possibility of the expansion of the mandatory clearing regime to cover certain foreign exchange transactions.

- **PLI Webinar: Credit Risk Retention: Dodd-Frank Final Rule** – February 26, 2015
  Webinar – Kenneth Kohler and Jerry Marlatt
  Senior Of Counsels Kenneth Kohler and Jerry Marlatt addressed the key provisions of the Final Rule adopted by the Joint Regulators, including standard risk retention methods; transaction-specific risk retention options; types of securitizations exempt from the Final Rule; exemptions from risk retention for securitizers of residential mortgages; and transfer and hedging restrictions on securitizers.

- **IFLR Bank Capital Seminar 2015** – February 26, 2015
  Sponsorship – Anna Pinedo and Jeremy Jennings-Mares
  Partners Anna Pinedo and Jeremy Jennings-Mares spoke on topics related to advice on meeting the requirements of the first Liquidity Coverage Ratio; the best practices for issuers and investors to navigate tax in regulatory capital markets; and discovering where banks are finding innovative features in Tier 1 and CoCos.

- **MoFo Classics Series: FINRA Research Rules** – February 24, 2015
  Teleconference – Anna Pinedo and Nilene Evans
  Partner Anna Pinedo and Of Counsel Nilene Evans reviewed the SEC's research rules, including Regulation AC, as well as FINRA's existing equity research rules, proposed amendments to the equity research rules, and proposed new debt research rules. The presentation also discussed changes arising as a result of the JOBS Act, recent enforcement matters, and other developments.

- **PLI Webinar: Moving Away from the C-corporation: Understanding REITs, MLPs, and PTPs** – February 17, 2015
  Webinar – Remmelt Reigersman and Thomas Humphreys
  Partners Remmelt Reigersman and Thomas Humphreys explained the structures, restrictions and pitfalls in the evolving hybrid world of C-corporations mixed with tax pass-throughs. Topics included master limited partnerships; REITS and alternative assets; and Up-C structures.

- **PLI Webinar: Green Bonds and Social Impact Investing** – February 12, 2015
  Webinar – Anna Pinedo
  Partner Anna Pinedo was joined by Lindsay Beck of NPX, to speak on the development of the market for green bonds, which has grown as issuers of debt securities reach a broader investor audience that seeks to promote sustainability and related initiatives.

- **7th Annual SPA and MoFo Structured Products Legal, Regulatory & Compliance Update 2015** – February 9, 2015
  Seminar – Anna Pinedo and Remmelt Reigersman
  Partners Anna Pinedo and Remmelt Reigersman gave a timely and important presentation on significant new developments in the legal-regulatory-

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compliance landscape. This presentation covered a wide range of topics related to structured products, including 871(m) tax issues; TLAC; covered funds; Morgan Stanley 2.0; and what to expect in 2015.

- **12th Annual European Structured Products & Derivatives Conference 2015** – February 5-6, 2015
  Sponsorship – Peter Green and Jeremy Jennings-Mares
  This program catered to both buy side (retail & private banking) and sell side, with various high-level panel industry discussions and a focus on educational interactive workshops: distribution, regulation, law and technology with the purpose of networking and engaging all delegates into active debate. Partner Jeremy Jennings-Mares gave the welcome address at the beginning of the second day, and Partner Peter Green participated in the "Law Firm Roundtable."

- **PLI Webinar: Private Placement Related Developments** – February 4, 2015
  Webinar – Anna Pinedo
  Partner Anna Pinedo and Tymour Okasha of Bank of America Merrill Lynch provided a brief update of how the world of private offerings has changed following the JOBS Act, including complying with the bad actor rule; documentation changes to engagement letters to address Rule 506 and Rule 144A changes; the CFTC's limited relief for funds that seek to use general solicitation and general advertising; investor verification; the SEC's proposed Exchange Act Section 12(g) threshold rules; and Accredited crowdfunding.

- **MoFo Classics: All Things Canadian** – February 3, 2015
  Teleconference – Nilene Evans
  Of Counsel Nilene Evans and Tim McCormick of Stikeman Elliott discussed the rules of the road for securities offerings by non-Canadian issuers selling into Canada. Presenters also discussed the prospectus regime applicable to Canadian issuers, with a focus on the shelf registration process and on dual-listed issuers.

- **The Knowledge Group Webinar: Margin Rules for Uncleared Swaps: What You Need to Know in 2015** – January 29, 2015
  Sponsorship – Julian Hammar
  Of Counsel Julian Hammar offered participants an overview of the latest trends and best practices with respect to the Prudential Regulator's Proposed Margin Rules for Uncleared Swaps as well as comparisons to rules proposed by the CFTC regarding margin for uncleared swaps that will apply to entities not otherwise subject to the Prudential Regulator's rules.

- **The 28th Annual Private Placements Industry Forum** – January 27-29, 2015
  Sponsorship – Brian Bates
  Partner Brian Bates spoke on a panel entitled "Cross-Border Forms/Documentation: Forming or Final?" on day 3 of the annual forum, which provided in-depth coverage of over 10 different deal sectors, as well as firsthand case studies relating to private placements, and discussion on regulatory challenges and market conditions.

- **NYC BAR Webinar: A "How to Guide" to Basic Derivatives, Swaps Clearing & Structured Products** – January 23, 2015
  Webinar – James Schwartz
  Of Counsel James Schwartz covered how the International Swaps Dealer Agreements ("ISDA") and Credit Support Agreements work; how to avoid common, costly mistakes and unintended consequences when negotiating ISDA contracts; and understanding the differences among the three contract types.

- **PLI Webinar: Shadow Banking Reform** – January 22, 2015
  Webinar – Peter Green and Jeremy Jennings-Mares
  Partners Jeremy Jennings-Mares and Peter Green focused their discussion on the development of the international reform of the shadow banking sector mandated by the G20 and spearheaded by the FSB. Areas of particular focus included the interaction of the regular banking system with shadow banking, securitisation activity, repos and stock lending and money market funds.

- **Regulatory & Legal Challenges and Opportunities for the Recovery of the Securitisation and Structured Credit Markets** – January 14, 2015
  Webinar – Peter Green, Jeremy Jennings-Mares, Jerry Marlatt and Kenneth Kohler
  Senior Of Counsels Jerry Marlatt and Ken Kohler, and Partners Jeremy Jennings-Mares and Peter Green, discussed some of the particular legal and regulatory challenges facing the recovery of the markets and opportunities for further growth, with a particular focus on the U.S. and European markets.

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- **Private Company M&A Brokers Relief from SEC Registration** – January 13, 2015
  Teleconference – Hillel Cohn
  Senior Of Counsel Hillel Cohn examined legislative proposals; the January 31, 2014 No-Action letter; qualifications for relief; and covered conduct and limitations of relief.

- **West LegalEdcenter Webinar: U.S. Regulators Finalize Credit Risk Retention Rules** – January 8, 2015
  Webinar – Melissa Beck, Kenneth Kohler and Jerry Marlatt
  Senior Of Counsels Jerry Marlatt and Ken Kohler, and Of Counsel Melissa Beck, focused on the key provisions of the Final Rule adopted by the FDIC, FHFA, and OCC, including how the Final Rule generally permits risk retention to be accomplished through one or a combination of methods; transaction-specific risk retention options; types of securitizations exempt from the Final Rule; exemptions from risk retention for securitizers of RMBS; and the restrictions on securitizers.

- **IFLR Webinar: Dodd Frank: Recap and What's Next?** – January 6, 2015
  Webinar – Oliver Ireland, James Schwartz and Kenneth Kohler
  Partner Oliver Ireland, Senior Of Counsel Ken Kohler and Of Counsel James Schwartz were joined by Gary Kalbaugh of ING Financial Holdings Corp., and focused on the thorniest implementation questions and highlighted the regulations that must still be finalized. The speakers addressed the Volcker Rule and related implementation questions; treatment of covered funds under the Volcker Rule; the final capital rules for U.S. banks and the intermediate holding company framework for foreign banks; the cross-border derivatives rules; the regulation of mortgage loan origination and securitization.

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1 http://media.mofo.com/files/Uploads/Images/100402TaxTalk.pdf.

2 For a discussion of the Tax Court's 2013 ruling in Pilgrim's Pride, *see* Tax Talk Vol. 6, No. 4, available at http://media.mofo.com/files/Uploads/Images/140124-MoFo-Tax-Talk.pdf.

3 "In Odd European Twist, Banks Owe Borrowers," Wall St. J., April 14, 2015 (p. A1).

4 According to the regulation's preamble: "Prior to the issuance of the temporary regulations, the IRS and Treasury Department had received questions about an electing holder's treatment of a taxable zero coupon debt instrument, including a Treasury bill, acquired at a premium and with a negative yield." T.D. 9653.

5 Glazer, Emily. "J.P. Morgan to Start Charging Big Clients Fees on Some Deposits." Wall St. J., Feb. 24, 2015.

6 *See* McKinnon, John D. "Tax Proposals Would Move U.S. Close to Global Norm." Wall St. J., Mar. 29, 2015.

7 The proposed regulations were released May 5, 2015 (and will be covered in the next Tax Talk).

8 *See* Tax Talk 3.1, available at http://media.mofo.com/files/Uploads/Images/100402TaxTalk.pdf.

CAPITAL MARKETS AND SECURITIES FREQUENTLY ASKED QUESTIONS

Announcing the 10th Anniversary Edition of the Capital Markets and Securities Frequently Asked Questions, Volumes 1 and 2. To obtain hard copies of both updated editions, please send an email to hlawrence@mofo.com.

ABOUT MORRISON & FOERSTER

We are Morrison & Foerster — a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, and Fortune 100, technology, and life sciences companies. We've been included on *The American Lawyer*'s A-List for 11 straight years, and the *Financial Times* named the firm number six on its 2013 list of the 40 most innovative firms in the United States. *Chambers USA* honored the firm as its sole 2014 Corporate/M&A Client Service Award winner, and recognized us as both the 2013 Intellectual Property and Bankruptcy Firm of the Year. Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger.

CONTACTS

United States Federal Income Tax Law

Thomas A. Humphreys
(212) 468-8006
thumphreys@mofo.com

Stephen L. Feldman
(212) 336-8470
sfeldman@mofo.com

David J. Goett
(212) 336-4337
dgoett@mofo.com

Remmelt A. Reigersman
(212) 336-4259
rreigersman@mofo.com

Shiukay Hung
(212) 336-4331
shung@mofo.com

Alexander I. Birkenfeld
(212) 336-4012
abirkenfeld@mofo.com

Corporate + Securities Law

Anna T. Pinedo
(212) 468-8179
apinedo@mofo.com

Lloyd S. Harmetz
(212) 468-8061
lharmetz@mofo.com