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TAXTALK

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MORRISON & FOERSTER'S NEW YORK OFFICE HAS MOVED.

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EDITOR'S NOTE

We can't think of a better way to end Q1 2014 than by bringing you the year's first issue of Tax Talk. Although Tax Talk is now in its seventh year (nothing to sniff at, especially if you're counting in dog years), we still strive to bring you the most interesting tax highlights and developments from the past quarter.

Although this issue of Tax Talk covers a lot of ground, we would be remiss if we didn't begin by sharing the latest from the Foreign Account Tax Compliance Act ("FATCA") front. With FATCA going "live" on July 1, 2014, the flurry of FATCA-related activity from the Treasury Department and Internal Revenue Service ("IRS") has reached a veritable fever pitch. To "complete" and "clarify" the existing FATCA regulatory framework (nothing short of a Herculean task), the government released two sets of FATCA-related regulations in February. The first set of regulations contains numerous amendments to the FATCA regulations previously issued in January 2013. According to the Treasury Department, these amendments are designed to reduce certain unnecessary compliance-related burdens without jeopardizing FATCA's compliance objectives. The second set of regulations seeks to coordinate the complicated due diligence, reporting and withholding regimes under FATCA with the traditional reporting and withholding obligations under Chapter 3 of the Code.[1] The IRS has also finalized a few (but not all) of the withholding forms it had previously released in draft form. Finally, the Treasury Department has continued to expand its network of Intergovernmental Agreements ("IGAs") and, as we go to print, has released a list of IGAs that are considered to be in

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effect, although they have not been formally finalized. Needless to say, there is a lot for Foreign Financial Institutions ("FFIs") and their tax advisers to digest in the waning weeks before FATCA officially kicks off. For more information on FATCA, please be sure to visit our website, at www.KNOWFatca.com.

FATCA is by no means the only area where the IRS has been busy as of late. In the publicly traded partnership sphere, the IRS has been churning out private letter rulings on "qualifying income" – especially with respect to MLPs that invest in energy and natural resource assets. However, the IRS has announced "pencils down" as it regroups to consider whether it has gone too far afield in issuing private letter rulings regarding the treatment of income generated by nontraditional assets.

Although the scope of the proposed regulations governing "dividend equivalent" payments continues to be a hot topic on Wall Street, issuers of certain equity-linked instruments may now breathe a (temporary) sigh of relief. In December, we had a scare when the IRS announced these rules (including the new "delta" test for measuring the equivalence of a derivative to the underlying stock) would take effect for instruments issued after March 4, 2014.[2] However, on March 4, 2014, the IRS released a notice indicating its intent to limit withholding to equity-linked instruments issued on or after the date that is 90 days after the date of publication in the U.S. Federal Register of final regulations addressing dividend equivalent withholding.

In this issue of Tax Talk, we also discuss newsworthy tax highlights impacting borrowers and lenders. For starters, we provide a brief analysis of Revenue Procedure 2014-20, which provides a safe harbor under which the IRS will treat indebtedness that is secured by 100% of the ownership interest in a disregarded entity holding real property as indebtedness that is secured by real property for purposes of Section 108(c)(3)(A). We also discuss recent IRS private guidance regarding the impact of underwriting costs incurred in connection with issuing debt.

Finally, we round out this issue of Tax Talk with a summary of *Validus Reinsurance Ltd. v. United States*, which addresses the federal insurance excise tax under Section 4371; the tax implications to REITs of the "Tax Reform Act of 2014," another tax reform proposal by Rep. Dave Camp; and recently released IRS guidance on virtual currency, such as Bitcoin.

As always, our regular section, MoFo in the News, concludes this issue of Tax Talk.

FATCA UPDATE: IRS RELEASES NEW REGULATIONS, NEW FORMS, AND NEW IGAS

The first quarter of 2014 has seen a flurry of FATCA activity. Withholding under FATCA is scheduled to take effect beginning July 1, 2014, and before you ask, the IRS has been adamant that there will be no more delays in FATCA implementation. However, this has not stopped speculation among practitioners who hold out hope for another six months to prepare.

The first FATCA milestone of 2014 came on January 1, the first day on which an FFI could finalize its registration with the IRS on the FATCA registration portal. Although the portal has been live since August 19, 2013,[3] information input by foreign financial institutions ("FFIs") in 2013 was not regarded as final.

On February 20, the IRS made good on its promise for more FATCA guidance and released two sets of final and (temporary) FATCA regulations. The first set of regulations (the "FATCA Regulations") makes changes to the FATCA regime to address comments received by the IRS and the Treasury Department. While the FATCA Regulations do not change the scope or timeline of FATCA implementation, they provide helpful clarification on a number of specific fact patterns. For example, the IRS and Treasury Department received comments that withholding agents may not know that an obligation that is grandfathered under FATCA (because, e.g., it was issued prior to July 1, 2014) has been materially modified by the issuer, causing the obligation to lose its grandfathered status and triggering a withholding obligation on the part of the withholding agent. To address this, the FATCA Regulations provide that a withholding agent (other than the issuer of the obligation) is required to treat a modification of an obligation as a material modification only if the withholding agent has actual knowledge of the material modification, such as when the withholding agent receives disclosure indicating that there has been or will be a material modification.

At the same time it released the FATCA Regulations, the IRS also released final and temporary regulations (the "Coordination Regulations") that coordinate FATCA with the pre-existing withholding regime on payments to non-U.S. persons under Chapter 3 and the backup withholding regime under Chapter 61. According to the preamble, the Coordination Regulations provide guidance "in order to develop a more integrated set of

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rules that reduces burdens (including certain duplicative information reporting obligations) and conforms with the due diligence, withholding, and reporting rules under these provisions to the extent appropriate in light of the separate objectives of each chapter." The Coordination Regulations generally remove inconsistencies in the documentation requirements under these three regimes, eliminate duplicative information reporting in certain instances, and eliminate duplicative withholding requirements in certain instances.

In addition to new regulations, the IRS also released finalized Forms W-8BEN, W-8BEN-E, and W-8ECI. Form W-8BEN may now only be used by non-U.S. individuals. Entities must use Form W-8BEN-E or W-8ECI depending on whether the entity is claiming that income is effectively connected with a U.S. trade or business. Foreign entities using Form W-8BEN-E must check a box indicating their FATCA status and provide additional information based on that status. The 30-part Form W-8BEN-E is considerably more complex than the prior W-8BEN that foreign entities would provide in order to indicate their foreign status.

Finally, on April 2, the IRS significantly expanded the list of foreign jurisdictions that will be treated as having an intergovernmental agreement ("IGA") in effect. Announcement 2014-17 (the "Announcement") provides that jurisdictions are treated as having an IGA in effect includes jurisdictions that, before July 1, 2014, have reached agreements in substance with the United States on the terms of an IGA, even if those agreements have not yet been signed. The complete list of jurisdictions that have signed IGAs and jurisdictions that have reached IGA agreements in substance can be found on the IRS's FATCA website.[3] The Announcement also extends the deadline by which an FFI can register on the IRS's FATCA portal in order to be included on the first FFI list, due to be released on June 2. The new deadline is May 5, rather than April 25, as originally announced.

For copies of the new regulations, the new IRS forms, and the Announcement, as well as updates on the latest FATCA news, see our FATCA website, KNOWFatca.com (www.KNOWFatca.com).

NO RULE POLICY ON MLPS

The IRS has announced, informally, that it has temporarily stopped issuing private letter rulings on whether income received by a publicly traded partnership ("PTP") constitutes "qualifying income." This hiatus, referred to by the IRS as a "pause," comes on the heels of a rash of ruling requests by PTPs, such as MLPs investing in energy and natural resource assets. This break in the action will allow the IRS to catch its breath and regroup so that it may reconsider the scope of what passive-type income may be distributed to investors (i.e., partners) without triggering an entity level tax for the PTP. We'll be sure to keep you posted as this story unfolds.

IRS INTRODUCES NEW GRANDFATHER RULE FOR EQUITY-LINKED INSTRUMENTS UNDER SECTION 871(M)

On March 4, 2014, the IRS released Notice 2014-14 (the "Notice"), announcing the intention of the IRS and the Treasury Department to modify proposed regulations under Section 871(m) (the "Proposed Regulations") when the regulations are finalized.

Under the Proposed Regulations, "dividend equivalent" payments under certain securities lending transactions, sale-repurchase transactions, specified notional principal contracts ("NPCs"), and specified equity-linked instruments ("ELIs") are treated as dividends from U.S. sources and potentially subject to U.S. withholding tax. The Proposed Regulations ask whether an NPC or ELI has a "delta" of .70 or greater. If so, the proposed regulations treat payments on the instrument made after January 1, 2016, that reference dividends paid on a U.S. corporation's stock as "dividend equivalents." An NPC's or ELI's delta is the ratio of the change in the fair market value of the instrument to the change in the fair market value of the underlying property referenced by the instrument.

The Notice announces the intention of the IRS and the Treasury Department to limit the definition of specified ELIs to ELIs issued on or after 90 days after the date of publication of final Section 871(m) regulations (the "Grandfather Date"). The Notice is a welcome announcement because the Proposed Regulations would have applied to ELIs acquired on or after March 5, 2014 including ELIs issued before that date but acquired on or after March 5, 2014 in the secondary market. The Notice indicates that the final Section 871(m) regulations will contain a provision that exempts ELIs issued prior to the Grandfather Date, regardless of when they are acquired. The Notice provides comfort to issuers and holders of ELIs who might otherwise be subject to withholding on ELIs issued before the rules were finalized. The Notice

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does not address the treatment of NPCs, and therefore, "dividend equivalents" in specified NPCs may become subject to withholding regardless of when they were issued.

REV. PROC. 2014-20: SAFE HARBOR FOR SECTION 108(C)(3)(A)

Under Section 108(a)(1)(d), a taxpayer (that is not a C corporation) may exclude discharge of indebtedness income from gross income if the indebtedness is "qualified real property business indebtedness." Under Section 108(c)(3), one of the requirements for "qualified real property business indebtedness" is that the indebtedness must be incurred or assumed by the taxpayer in connection with real property used in a trade or business and be "secured by such real property." The term "secured by such real property" is not defined in Section 108 or the legislative history. Rev. Proc. 2014-20 provides a safe harbor under which the IRS will treat debt as secured by real property for purposes of Section 108(c)(3)(A). The requirements of the safe harbor are as follows:

1. The taxpayer or a wholly owned disregarded entity of the taxpayer ("Borrower") incurs indebtedness.
2. Borrower directly or indirectly owns 100% of the ownership interest in a separate disregarded entity owning real property ("Property Owner"). Borrower is not the same entity as Property Owner.
3. Borrower pledges to the lender a first priority security interest in Borrower's ownership interest in Property Owner. Any further encumbrance on the pledged ownership interest must be subordinate to the lender's security interest in Property Owner.
4. At least 90% of the fair market value of the total assets (immediately before the discharge) directly owned by Property Owner must be real property used in a trade or business and any other assets held by Property Owner must be incidental to Property Owner's acquisition, ownership, and operation of the real property.
5. Upon default and foreclosure on the indebtedness, the lender will replace Borrower as the sole member of Property Owner.

The Rev. Proc. specifically states that a taxpayer is not precluded from arguing that its debt satisfies the "secured by" requirement even though it does not meet the requirements of the safe harbor.

FAA 20141001F: UNDERWRITING COSTS MUST BE CAPITALIZED

In a piece of heavily redacted private guidance, the IRS addressed the deductibility of certain underwriting costs.[4] At issue was whether payments made to compensate another party for underwriting costs associated with debt were deductible as repurchase premium under Treasury regulation § 1.163-7(c) or, alternatively, whether the payments should be capitalized under Treasury regulation § 1.263(a)-5.

Generally, under Treasury regulation § 1.163-7(c), if a debt instrument is repurchased by the issuer for a price that is greater than the debt instrument's adjusted issue price, that difference, known as repurchase premium, is deductible as interest in the taxable year in which the repurchase occurs. On the other hand, under Treasury regulation § 1.263(a)-5, certain costs incurred in connection with an issuance of debt must be capitalized and amortized on a straight-line basis over the term of the debt. All things being equal, then, repurchase premium is generally more beneficial because it gives rise to an immediate deduction. In short, the character of the payment – whether as part of a debt repurchase or debt issuance – matters.

Although the facts were completely redacted, it appears that the taxpayer had an outstanding debt obligation, "Debt M," which it wanted to repurchase. At the same time, the taxpayer evidently wanted to issue other debt, "Debt N." The question, therefore, came down to whether the payment was made in connection with the retirement of Debt M or, alternatively, the issuance of Debt N. The IRS ruled that the payments at issue, as a factual matter, were made to facilitate the issuance of Debt N, not the repurchase of Debt M. As a result, because the underwriting costs were associated with the issuance of Debt N, they had to be capitalized.

VALIDUS REINSURANCE LTD. V. UNITED STATES

In *Validus*, the U.S. District Court for the District of Columbia held that the insurance federal excise tax under Section 4371 does not apply to retrocessions. A retrocession is a secondary reinsurance where a reinsurer buys insurance from another insurance company to protect the reinsurer in the event that it is required to pay claims under the reinsurance policy. Section 4371 provides that an excise tax is imposed on each "policy of insurance" or "policy of reinsurance" issued by any foreign

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issuer or reinsurer. The court held that the definition of "policy of reinsurance" does not include retrocessions under a plain reading of the statute.

CHAIRMAN CAMP RELEASES "DISCUSSION DRAFT" TARGETING REITS

On February 26, 2014, House Ways and Means Chairman Dave Camp (R-MI) released a 979-page comprehensive tax reform "discussion draft." Among the numerous proposals set forth in Rep. Camp's "Tax Reform Act of 2014," the discussion draft contains several provisions targeting REITs.

There appear to be two general policies guiding the proposals. First, the discussion draft reflects Rep. Camp's concern that a number of taxable C corporations have converted into REITs simply to avoid an entity level income tax, although these companies do not necessarily fit the mold of a traditional real estate company engaged in the business of acquiring diversified and passive interests in real estate. To that end, the discussion draft contains proposals to reduce erosion of the corporate tax base, for example, by tightening the rules related to qualifying real estate assets. Second, the discussion draft includes provisions designed to make the existing rules more attractive to traditional REITs, such as eliminating the prohibition on distribution of preferential dividends by publicly offered REITs.

Although there is no substitute for wading through all 979 pages of the discussion draft itself, we will spare you the trouble by summarizing below a few of the key aspects of the REIT-related provisions.

Prevention of Tax-Free Spin-offs Involving REITs

To curb, in part, perceived abuses by corporations creating REITs by spinning off qualified real-estate related assets tax-free,[5] Rep. Camp's discussion draft contains provisions excluding REITs from being able to satisfy the active trade or business requirement for tax-free spin-off transactions. In addition, under the proposal, a distributing corporation or controlled corporation in the spin-off would not be able to elect to be treated as a REIT for 10 years following a tax-free spin-off.

Increased Waiting Period for REIT Election Following Revocation or Termination

Currently, after an election to be treated as a REIT has been revoked or terminated, a corporation may not elect to be treated as a REIT for five years. The discussion draft would extend this lockout period to 10 years.

Limitation on Fixed Percentage Rent and Interest Exceptions

Generally, rents received by a REIT that are based on a fixed percentage of receipts or sales – as opposed to rents that are contingent on income or profits – are treated as qualifying rental income. The discussion draft would alter this rule by carving out amounts that are based on a fixed percentage of receipts or sales to the extent they are received from a single corporate tenant and are more than 25% of the total amount of rent received by the REIT that is based on a fixed percentage of receipts or sales.

Preferential Dividend Rules for Publicly Offered REITs Repealed

Currently, a REIT may not claim a deduction for preferential dividends, such as dividends that are not distributed pro rata to all shareholders, without preference to any share of stock over others within the same class. The discussion draft would eliminate this rule, permitting publicly offered REITs to distribute preferential dividends.

Debt Issued by Publicly Offered REITs Treated as Real Estate Assets

The proposal would also expand the categories of assets that would qualify as real estate assets under the "75% assets test" to include debt instruments issued by publicly offered REITs, as well as *interests in* mortgages on interests in real property (an apparent expansion of current law that already permits ownership in mortgages secured by real property), although such instruments could not comprise more than 25% of the value of the REIT's assets. Likewise, income from debt instruments issued by publicly offered REITs would qualify as passive income under the "95% income test," but not the "75% income test" unless they already are treated as qualified income under current law.

Reduction in Ownership of a TRS

Currently, a REIT may not own more than 10%, by vote or value, of any one entity, other than a taxable REIT subsidiary ("TRS"), provided that subsidiary's stock does not represent more than 25% of the value of the REIT's assets. The discussion draft would reduce the 25% limitation to 20%.

Built-In Gain Immediately Taxed Upon REIT Conversion

When a C corporation elects to be treated as a REIT, the REIT is subject to tax on certain built-in gain attributed to property it held while operating as a C corporation. This tax is generally imposed on gain recognized within 10 years from when the C corporation elected to be

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treated as a REIT. Under the discussion draft, any built-in gain would be immediately recognized by the C corporation upon an election to be treated as a REIT.

REIT Interests Included in Definition of FIRPTA Company

Under the rules relating to dispositions of United States real property interests, gains and losses are treated as effectively connected, which generally results in certain withholding and reporting requirements. Where stock in a U.S. corporation that is a United States real property interest is sold by a foreign person, the gain is not subject to withholding, provided the U.S. corporation does not hold any interest in U.S. real property at the time of disposition and any disposition of any such interests occurs in fully taxable transactions. However, under the discussion draft, this exception would not apply to shares in a REIT that disposed of its interest in U.S. real property with respect to gain on which it claimed a dividends paid deduction.

The proposal also contains other provisions relevant to REITs, such as rules impacting timber REITs, tangible property held by a REIT with a class life of less than 27.5 years (which could impact certain non-traditional REIT assets, such as infrastructure REITs), REIT dividends, distributions of non-REIT E&P, hedging income, treatment of certain services provided by a TRS, and certain limitations on REIT dividends with respect to the indirect foreign tax credit.

IRS ISSUES GUIDANCE ON VIRTUAL CURRENCY

In Notice 2014-21, the IRS issued guidance on virtual currency, such as Bitcoin. The notice, which is in the format of answers to frequently asked questions, describes how existing tax principles apply to transactions involving virtual currency.

By way of background, the IRS explained that virtual currency behaves like "real" currency, in that it may be used and accepted as a medium of exchange, although it is not recognized as legal tender in any jurisdiction. The notice, however, applies only to "convertible" virtual currency, which the IRS describes as virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency. In other words, convertible virtual currency is virtual currency that may be purchased for, or exchanged into, U.S. dollars or euros, for example.

As a threshold matter, the notice provides that convertible virtual currency is simply property for U.S. federal income tax purposes, even if it may be exchanged for real currency. The IRS's conclusion, of little surprise, helpfully confirms that transactions involving virtual currency will not be subject to the rules governing foreign currency. Instead, taxpayers will be subject to the full gamut of tax principles generally applicable to property transactions. Although treatment of convertible virtual currency as property makes sense and, at first blush, seems relatively straightforward, even some of the most basic transactions involving virtual currency are rife with latent tax implications and may result in a record-keeping nightmare for holders of virtual currency.

As an example, virtual currency holders will be required to track their basis in the currency since any exchange is likely to result in the holder recognizing gain or loss. The character of the gain or loss, in turn, will depend on whether the virtual currency is a capital asset in the hands of the taxpayer. In this vein, complex valuation issues abound. In anticipation of these valuation questions, the notice provides that if a virtual currency is listed on an exchange and the exchange rate is established by market supply and demand, the taxpayer may use the fair market value of the virtual currency as determined by converting the virtual currency into U.S. dollars at the exchange rate. Of course, this begs the question of which exchanges will be considered adequate marketplaces with respect to the relevant virtual currency – a question well outside the scope of our expertise.

Furthermore, if a virtual currency is received as payment for goods or services, the recipient will be required to include the fair market value of the virtual currency in gross income. Indeed, to the extent virtual currency is received as wages, it may be subject to employment taxes in appropriate circumstances. Moreover, transactions involving virtual currency may implicate certain information reporting and backup withholding obligations. Finally, "mining" – the process of creating or issuing the currency by solving what essentially amounts to complicated math problems – may give rise to gross income, in cases where the taxpayer receives virtual currency as compensation for these activities.

In sum, although virtual currency may be commonplace in cyberspace, it continues to pose new and unexpected tax challenges. For now, however, virtual currency holders will have to make do with the guidelines set forth in the notice. As the IRS continues to navigate these uncharted waters, we promise to keep you in the loop.

Morrison & Foerster is hosting on May 8 a CLE focused on legal and regulatory issues surrounding Bitcoin. For more information, please visit http://www.mofo.com/bitcoin-legal-and-regulatory-considerations-05-08-2014/.

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MOFO IN THE NEWS

On January 6, 2014, MoFo partners Oliver Ireland and Jay Baris participated in a West LegalEdcenter webcast called "The Volcker Rule: Impact of the Final Rule on Banking Institutions." The webcast summarized certain impacts of the Final Rule on banking institutions, including foreign banking organizations. It also addressed various other aspects of the Final Rule.

Also on January 6, 2014, MoFo partners Anna Pinedo and David Lynn participated in a teleconference called "Regulation A+ (Section 3(b)(2)) Offerings: Stepping Stone to IPO, or IPO Alternative?" The teleconference discussed the proposed Reg A+ rules and provided a perspective on the utility of Regulation A+ and on the Regulation A+ market.

On January 7, 2014, MoFo partner Anna Pinedo and MoFo of counsel Nilene Evans participated in a PLI webcast called "FINRA – Essentials for Deal Lawyers." This webcast provided a review of the FINRA rules applicable to public offerings, including FINRA's new review process.

On January 8, 2014, MoFo partners Anna Pinedo and Lloyd Harmetz and MoFo senior of counsel Jerry Marlatt participated in a seminar called "Capital Markets and Regulatory Reform Update for Canadian Entities." This seminar consisted of three sessions, which covered Dodd-Frank implementation, practical impacts of the JOBS Act, and other U.S. capital markets developments and cross-border derivatives issues.

On January 10, 2014, MoFo partners Anna Pinedo and Jay Baris participated in a PLI webcast called "FINRA – Use of Social Media in Offerings and Corporate Communications and by Registered Entities." This briefing focused on the considerations for issuers, broker-dealers, registered investment advisers and commodity pools in using social media, whether for corporate communications or in the context of securities offerings.

On January 14, 2014, MoFo hosted a Structured Products Association conference in New York. MoFo partner Anna Pinedo participated in the conference, which presented the significant new developments in the legal-regulatory-compliance landscape.

On January 15, 2014, MoFo partners Remmelt Reigersman and David Strong participated in a webcast called "Understanding 'Up-C' IPO Structures – The Tax Benefits Explained." This webcast explained the various economic and tax benefits associated with "Up-C" structures, including an explanation of the key terms of the "Tax Receivable Agreement" that is typically entered into by the selling shareholders and the public company.

On January 17, 2014, MoFo partner Anna Pinedo participated in the NYC Bar seminar "How to Guide to Derivatives, Structured Products & Clearing Platforms and Regulations." Ms. Pinedo gave a presentation that discussed key considerations in derivatives and structured products and collateral.

On January 22, 2014, MoFo of counsel Brad Berman participated in a West LegalEdcenter webcast called "Bank Note Programs." This presentation provided an overview of the Section 3(a)(2) exemption for issuances of bank securities.

MoFo senior of counsel Jerry Marlatt participated in the American Securitization Forum 2014 from January 26-29, 2014. This conference covered the most relevant topics and challenges relating to structured finance.

On January 28, 2014, MoFo partners Peter Green, Jeremy Jennings-Mares, and Anna Pinedo and MoFo of counsel James Schwartz participated in a PLI webcast called "Derivatives Regulation: Dodd-Frank Title VII vs. EMIR." This presentation explored the similarities and differences between the U.S. and European approaches to derivatives regulation.

MoFo sponsored the Private Placements Industry Forum 2014 from January 29-31, 2014. MoFo partner Brian Bates and MoFo of counsel Scott Ashton spoke on the panel "How Covenants Have Changed Over Time."

MoFo partner Anna Pinedo, senior of counsel Ken Kohler and of counsel James Schwartz participated in the IFLR webcast called "Dodd-Frank Implementation: What to Expect in 2014" on January 30, 2014. This webcast focused on the key rules expected to be finalized in 2014, including the LCR requirement, a long-term debt requirement; the Volcker Rule; and other significant Dodd-Frank milestones.

On February 3, 2014, MoFo partners Oliver Ireland, Dan Nathan and Anna Pinedo participated in a teleconference called "The Impact of the Volcker Rule on Proprietary Trading."

On February 5, 2014, MoFo senior of counsels Ken Kohler and Jerry Marlatt participated in a teleconference called "The Volcker Rule and Securitization."

Also on February 5, 2014, MoFo partners Marty Dunn and David Lynn participated in a West LegalEdcenter webcast called "JOBS Act Update: Regulation D and

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Rule 144A Offerings in 2014." This webcast explored the impacts of the SEC's rules to end the ban on general solicitation in certain private offerings that came into effect on September 23.

On February 6, 2014, MoFo partners Jay Baris and Henry Fields participated in a teleconference called "The Volcker Rule and Covered Funds."

On February 13, 2014, MoFo partners Barbara Mendelson and Henry Fields participated in a teleconference called "The Impact of the Volcker Rule on Foreign Banking Organizations."

MoFo partner Anna Pinedo and senior of counsels Ken Kohler and Jerry Marlatt participated in a West LegalEdcenter webcast called "The Volcker Rule: Impact of the Final Rule on Securitization Investors and Sponsors" on February 18, 2014. This webcast summarized certain impacts of the Final Rule on banking entities that engage in asset-securitization activities as investors, sponsors, or providers of credit or liquidity support.

Also on February 18, 2014, MoFo partner Lloyd Harmetz and senior of counsel Jerry Marlatt held an in-house seminar titled "How Foreign Banks Can Finance in the United States." This seminar discussed how to register in the United States, setting up a Rule 144A or bank note program for straight debt, and other topics pertaining to foreign banks looking to finance in the United States.

On February 20, 2014, MoFo sponsored a seminar in conjunction with the DC Bar titled "Implementing Regulation A+." MoFo partner Anna Pinedo gave a presentation discussing the SEC's proposed rules to implement the mandate of Title IV of the JOBS Act, and provided a perspective on the utility of Regulation A+ and on the Regulation A+ market.

MoFo partners Anna Pinedo and Jay Baris participated in a West LegalEdcenter webcast called "Social Media for Banks and Financial Services Institutions" on February 25, 2014. This webcast focused on the considerations for issuers, broker-dealers, registered investment advisers, and commodity pools in using social media, whether for corporate communications or in the context of securities offerings.

On February 26, 2014, MoFo partners Anna Pinedo and Jeremy Jennings-Mares spoke on a panel at the IFLR Bank Capital Seminar. This seminar explored the recent changes in bank capital rules.

MoFo partner Jeremy Jennings-Mares spoke on a panel titled "Important Regulatory Developments on the Horizon: Bail-In and the New Bank Resolution Regime" during IMN's 7th Annual Global Covered Bonds Conference on February 27-28, 2014. This conference covered the latest issues in the covered bonds market.

On February 28, 2014, MoFo partners Henry Fields, Oliver Ireland, and Dan Nathan and MoFo senior of counsel Ken Kohler participated in an IFLR webcast called "The Volcker Rule." This webcast summarized certain impacts of the final rule on banking institutions, including foreign banking organizations.

On March 6, 2014, MoFo partner Anna Pinedo and MoFo of counsel Nilene Evans held an in-house seminar called "FINRA Offerings & Research." This seminar provided a review of the FINRA rules applicable to public offerings, including FINRA's new review process.

Also on March 6, 2014, MoFo partner Anna Pinedo participated in an ALI CLE webcast called "Swaps Regulation under Dodd-Frank's Title VII: Recent Developments." This program explored the latest rule-making developments regarding international security-based and other swap transactions.

MoFo sponsored another *Structured Products* conference on March 10, 2014, in New York. MoFo partners Anna Pinedo and Remmelt Reigersman spoke at the conference on the panel titled "Legal Regulatory Compliance Tax Round-Up."

On March 11, 2014, MoFo partners Oliver Ireland and Henry Fields participated in a PLI webcast called "Federal Reserve's Prudential Regulations for US Banks." This webcast summarized the Federal Reserve Board's released final rules establishing enhanced prudential standards for bank holding companies and the extent to which certain of these requirements are likely to affect smaller banks.

On March 12, 2014, MoFo partner Henry Fields and MoFo senior of counsel Ken Kohler participated in a Western Independent Bankers' webcast called "The Volcker Rule – A Practical Discussion on the Final Rule Requirements." This webcast discussed the impacts of the final Volcker Rule on community banks.

On March 14, 2014, MoFo partners Barbara Mendelson and Henry Fields participated in a PLI webcast called "Federal Reserve's Enhanced Prudential Supervision for Foreign Banks." This webcast summarized the Federal Reserve Board's released final rules establishing enhanced prudential standard requirements for certain foreign banking organizations operating in the United States.

On March 18, 2014, MoFo partner Dan Nathan, senior of counsel Bob Fleishman and of counsel Julian

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Hammar held an in-house seminar titled "CFTC and FERC Enforcement and Compliance Update." This seminar discussed the new enforcement tools wielded by the CFTC and FERC.

On March 25, 2014, MoFo partners Henry Fields and Barbara Mendelson hosted a teleconference titled "Federal Reserve's Enhanced Prudential Supervision for Foreign Banks." This teleconference covered the Federal Reserve Board's final rules establishing enhanced prudential standard requirements for certain foreign banking organizations operating in the United States.

On March 25-26, 2014, MoFo partner Anna Pinedo chaired a PLI conference called "Private Placements and Other Financing Alternatives 2014." This was the first in-person PLI conference that discussed the proposed crowdfunding rules, the proposed Reg A+ rules, and the practical issues emerging in connection with Rule 506 offerings using general solicitation. MoFo partner Marty Dunn also participated in the conference and spoke on the panels titled "Overview of 4(a)(2) and Regulation D" and "Staying Private, Private Secondary Markets, Using the Internet."

On March 27, 2014, MoFo partners Anna Pinedo, Oliver Ireland, James Tanenbaum, and Remmelt Reigersman and of counsel James Schwartz hosted a variety of sessions during a financial institutions seminar in Charlotte, NC. The topics included Dodd-Frank regulatory reform, bank balance sheets and financing financial institutions, Volcker Rule and derivatives update, tax developments affecting financial products, and mortgage-related developments.

The materials from all of these sessions are available upon request by emailing Alexa Powers at alexapowers@mofo.com, or by visiting our website at www.mofo.com.

Awards

At the 2014 mtn-i Americas Awards, several of the deals that we worked on over the past year were honored with awards of their own. These include a $235 million offering by Bank of America Corporation of leveraged index return notes, linked to the Dow Jones Industrial Average, as well as a $128 million offering by the Bank of Nova Scotia of structured notes linked to the Raymond James Analyst Current Favorites Total Return Index.

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1 All section references are to the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury regulations promulgated thereunder.

2 For a discussion of the proposed regulations under Section 871(m), see our client alert available at http://www.mofo.com/files/Uploads/Images/131212-IRS-Regulations.pdf.

3 Please see our client alert regarding FATCA registration, available at http://www.mofo.com/files/Uploads/Images/130821-FATCA-Registration-Begins.pdf.

4 http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx.

5 Office of Chief Counsel Internal Revenue Service Memorandum 20141001F (Jan. 29, 2014).

6 See, e.g., PLR 201337007 (Sept. 28, 2012) (IRS ruled that taxpayer could spin-off its real estate assets tax-free into a REIT).

About Morrison & Foerster

We are Morrison & Foerster — a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer*'s A-List for 10 consecutive years. *Chambers Global* named MoFo its 2013 USA Law 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.

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Because of the generality of this newsletter, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.