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EDITOR'S NOTE

We held up Tax Talk this quarter in order to bring you the latest on the Trump administration's tax reform plans. Unfortunately, the one-page plan and transcript of the press conference released on April 26 discussed below, represent a step backward for the Trump administration's thinking on tax reform. Our article points out that it is missing even the level of detail in the President's campaign plan. According to the administration, May will be a month of listening to various constituencies about tax reform. However, it appears to us that, given the magnitude of the issues May may not be enough time to fully consider and develop a plan. While tax technicians such as yours truly are waiting for legislative language and explanations of various provisions, it is unclear at what point we will see those released. In fact, if the American Health Care Act of 2017 is any guide, it won't be until shortly before it is ready to be voted on in the House. . .

In the meantime there is no shortage of discussion about various provisions thought to be in the tax reform plan. For example, in Q1 there have been a number of serious panel discussions about the destination-based cash flow tax (see article below). There is no consensus but instead what has developed is a schism between U.S. importers (who would be hurt by the tax) and U.S. exporters (who would benefit from the tax). These positions are reflected in dueling letters to Congress from groups called Americans for Affordable Products and the American Made Coalition. Unfortunately, this doesn't bode well for a consensus on this important part of the House's original plan.

Apart from tax reform, this version of Tax Talk covers the changes made to the final section 871(m) regulations in January, IRS plans to attack basket option strategies, and Greenlight Capital's proposal that General Motors Company adopt a dual class share structure.

MORRISON FOERSTER

TRUMP ADMINISTRATION RELEASES ONE-PAGE TAX PLAN

On April 26, 2017, amidst much anticipation, the Trump administration released its tax plan, entitled "2017 Tax Reform for Economic Growth and American Jobs" (the "Plan").[1] The Plan was presented at a press conference by Secretary of the Treasury Steven Mnuchin and Director of the National Economic Council Gary Cohn.[2] Touted on its face as the biggest individual and business tax cut in American history, the plan only consists of a single page containing just twelve substantive bullets, though Mnuchin stated that the Plan is intended only to outline the core principles of the Trump administration's tax reform agenda. The Plan offers less detail than plans issued by President Trump during his campaign,[3] and it is unclear whether the public should look to his campaign materials to fill in the gaps.

The Plan first states its four goals: (1) grow the economy and create millions of jobs; (2) simplify the tax code; (3) provide tax relief to American families, especially middle-income families; and (4) lower the business tax rate "from one of the highest in the world to one of the lowest."

Individual Reform

Like President Trump's campaign materials, the Plan would provide tax relief to American families by (1) reducing the seven individual income tax brackets to three tax brackets of 10 percent, 25 percent, and 35 percent (up from 33 percent in the campaign plan); (2) doubling the standard deduction; and (3) providing tax relief to families with child and dependent care expenses.

The Plan would simplify the Internal Revenue Code by (1) eliminating targeted tax breaks that mainly benefit the wealthiest taxpayers; (2) protecting the home ownership and charitable gift tax deductions; (3) repealing the alternative minimum tax; and (4) repealing the estate tax. While the home ownership and charitable gift tax deductions will be preserved, Mnuchin confirmed at the press conference that the Plan envisions eliminating all itemized deductions on the personal side, which would include eliminating the itemized deduction for state and local taxes.

1 A copy of the Plan is available online, at http://www.journalofaccountancy.com/content/dam/jofa/news/2017-tax-reform-for-economic-growth.jpg.

2 A transcript of the press conference is available online, at https://www.whitehouse.gov/the-press-office/2017/04/26/briefing-secretary-treasury-steven-mnuchin-and-director-national.

3 For more detail information about tax plans released by President Trump during his campaign, see Vol. 9, Issue 4 of our quarterly publication, Tax Talk, available at https://media2.mofo.com/documents/170210-tax-talk.pdf.

Finally, the Plan would repeal the 3.8 percent tax imposed on net investment income. The repeal of this tax was also featured in the recent Republican health care proposal, which failed to get sufficient Republican support in the House.

Business Reform

The Plan proposes four prongs to reform the federal taxation of businesses in the U.S. First, the Plan would reduce the business tax rate to 15 percent. During the press conference, Mnuchin confirmed that this business rate is going to be available for small- and medium-sized businesses, as well as corporations. What is unclear, however, is how this rate will apply to entities treated as partnerships for U.S. federal income tax purposes. Instituting such a tax for non-corporate businesses raises various challenges, the obvious one being how to prevent conversion of salary income to business income. The potential exists for high-earning individuals to recast themselves as LLCs, sole proprietorships or pass-throughs to take advantage of this rate.[4] Another uncertainty for taxation of domestic business activities is whether President Trump still intends to pursue elements of a domestic cash-flow tax (i.e., immediate deduction for certain domestic investments), a concept included in both his campaign materials and the House tax reform plan. Also absent from the Plan is the limitation on interest deductions that corresponds with immediate expensing of investment in a cash-flow tax system; President Trump's campaign materials proposed to limit deductions for corporate interest expense for certain businesses, and the House plan proposed to only allow deductions for net interest expenses on debt against interest income. As with the campaign plan, there is no detail on how financial instruments or financial institutions would fit into the revised corporate tax system.

Second, the Plan would change the U.S. system of international taxation from the current "worldwide" taxation system, which generally taxes all income of U.S. businesses regardless of the country from which the income is earned, to a "territorial tax system," which would generally mean that companies will only pay U.S. federal income tax on income earned or sourced in the U.S. Interestingly, the Plan does not include the concept of a border-adjusted cash-flow tax, which was a key point of international tax reform (in addition to raising significant revenue) for House Republicans in their tax reform blueprint.

Third, as President Trump stated in his campaign materials, the Plan would include a one-time repatriation

4 *See* David Kocieniewski, Trump's Tax Plan Could Turn 'Everyone and Their Dog' Into an LLC, Bloomberg (April 28, 2017), available at https://www.bloomberg.com/politics/articles/2017-04-28/trump-plan-seen-turning-everyone-and-their-dog-into-an-llc.

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tax on the "trillions of dollars [of U.S. companies] held overseas." The Plan is silent as to what the rate of such a repatriation tax might be and, during the press conference, Mnuchin would only say that the repatriation tax will be at "a very competitive rate." Finally, the Plan would eliminate tax breaks for special interests, although the details of this statement are undefined. To the extent President Trump's campaign materials should be used to fill in the blanks in the Plan, the elimination of tax breaks for special interests might include "eliminat[ing] most corporate tax expenditures except for the Research and Development tax credit," although even in President Trump's campaign materials, no more detail than that was given about such eliminations.[5]

Process

In terms of process, the Plan states that the Trump administration will hold listening sessions with stakeholders throughout the month of May, and will continue to work with the House and Senate to develop the details of the Plan. Accordingly, during the Q&A portion of the press conference, Cohn and Mnuchin deferred to further discussion with the House and Senate multiple times, even for key points such as the rate of a one-time repatriation tax and the income brackets for individual tax rates.

Looking Ahead

Mnuchin told reporters at the press conference that the Plan is just meant to introduce the "core principles" of the Trump administration's tax reform agenda, and that the administration will release more details as they are agreed upon by Congress and the president. Further, Mnuchin said that the Trump administration is "determined to move this as fast as we can and get this done this year." However, for the moment, the Plan raises more questions than it provides technical answers.

Tax Talk will continue to provide updates on additional details and developments.

SECTION 871(M) REGULATIONS: CHANGES MADE BY JANUARY GUIDANCE

Section 871(m) is the Code[6] provision that treats "dividend equivalents" paid under certain contracts as dividends from sources within the Unites States and therefore subject to U.S. withholding tax if paid to a non-U.S. person. In September 2015, the IRS issued final regulations (the "2015 Final Regulations").[7] In December 2016, the IRS released Notice 2016-76, which announced that the IRS intended to issue additional final regulations.[8] On January 19, 2017, the IRS released new final regulations, temporary regulations (together, the "Final Regulations") and proposed regulations covering section 871(m) of the Code and related withholding rules. Despite some initial uncertainty,[9] taxpayers are now treating the Final Regulations as effective. The final and temporary regulations provide technical corrections to the 2015 Final Regulations but otherwise generally adopt the 2015 Final Regulations. A discussion of the highlights of the Final Regulations follows, along with a few observations.

The Final Regulations make changes to several highly technical parts of the dividend equivalent rules. As such, while it provides some background, this article also assumes some understanding of existing regulations and guidance, described in prior MoFo publications.[10]

Technical Corrections to 2015 Final Regulations

- **Definition of Broker.** The 2015 Final Regulations defined a broker as a broker within the meaning of section 6045(c). Comments to the 2015 Final Regulations explained that many regulated investment companies would fit that definition, because it includes any person who regularly acts as a middleman with respect to property, and many regulated investment companies redeem their own shares. The IRS agreed, and the Final Regulations now include an exception for such redemptions.
- **Definition of Dividend Equivalent.** The 2015 Final Regulations provided that a taxpayer can reduce a dividend equivalent by any amount treated in accordance with sections 305(b) and (c) with respect to the underlying security reference by a section 871(m) transaction. Comments suggested that the regulations should clarify how that rule applies to a section 871(m) transaction that has the section 305(c) paying security as its underlier. The

5 President Trump's tax reform page on his campaign website that contained this quote is no longer available. For a summary, see https://taxfoundation.org/details-donald-trump-tax-reform-plan-september-2016.

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

7 For a more detailed discussion of the Final Regulations, see our Client Alert, available at https://media2.mofo.com/documents/150921dividendequivalent.pdf.

8 For a more detailed discussion of Notice 2016-76, see our Client Alert, available at https://media2.mofo.com/documents/161206-irs-guidance-871m.pdf.

9 The Final Regulations were released on January 19, 2017, and published in the Federal Register on January 24, 2017. However, on January 20, 2017, President Trump's Chief of Staff, Reince Priebus, sent a memorandum to all heads of executive departments and agencies instructing, among other things, that all regulations released but not yet published must be immediately withdrawn for review and approval. The IRS, on the other hand, announced on January 24, 2017 that the new section 871(m) regulations were "approved by the Office of Management and Budget," and had "an effective date of January 19, 2017."

10 In addition to the publications referenced above, on December 30, 2016, the IRS issued Rev. Proc. 2017-15 (the "Final QI Agreement"), which contains the final qualified intermediary agreement that includes rules for qualified derivatives dealers. For a more detail discussion of the Final QI Agreement, see Vol. 9 Issue 4 of Tax Talk, available at https://media2.mofo.com/documents/170210-tax-talk.pdf.

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Final Regulations amend the definition of dividend to explicitly state that the definition applies without regard to whether there is an actual distribution of cash or property. Further, the Final Regulations state that only a long party treated as receiving a section 305(c) dividend is entitled to reduce its dividend equivalent amount, and that a section 305(c) dividend gives rise to a dividend equivalent.

- **Time for Determining Delta and the Initial Hedge.**
  - Simple contracts. Comments suggested that the delta for a simple contract should be determined on the earlier of the trade date or the date on which the parties agree to the material terms or final pricing for the contract. However, comments also suggested that the trade date be used if the pricing date of the contract is more than 14 days before the issue date, because too long a period between the two might create the opportunity for abuse. The Final Regulations provide that the delta of a simple contract is determined on the earlier of pricing date and the issue date, unless the issue date is more than 14 calendar days after the pricing date. A similar rule applies to complex contracts.
  - Listed options. Comments to the 2015 Final Regulations stated that using the delta from the day prior to issuance for a listed option would substantially reduce the burden on taxpayers and ease taxpayers' administrative compliance burden. The IRS amended the 2015 Final Regulations to generally adopt the day prior concept, subject to a refined definition of "regulated exchange."
  - Using third-party data. Comments noted that third-party data may be available for potential section 871(m) transactions, and asked the IRS to specifically permit withholding agents to rely on such data. The preamble to the Final Regulations states that although the final regulations are not amended, the Treasury Department and the IRS note that nothing prohibits taxpayers from obtaining such third-party data, and while taxpayers and withholding agents can use such data, they are not entitled to rely on the accuracy of that information.
  - Determining delta using an exchange-traded hedge. For simple contracts referencing 10 or more securities, the 2015 Final Regulations allowed the short party to determine delta by reference to a hedge, provided the short party uses an exchange-traded security that references substantially all the underlying securities needed to hedge the potential section 871(m) contract. Comments requested that, if a short party could fully hedge itself with an exchange-traded security, but did not actually enter into such a hedge, the short party should still be able to use that delta calculation to determine delta. The Final Regulations allow the delta of simple contracts referencing 10 or more securities to be calculated by determining the ratio of the change in the fair market value of the simple contract to a small change in the fair market value of an exchange-traded security if such exchange-traded security would fully hedge the potential section 871(m) contract.

2017 Final Regulations

- **Substantial Equivalence Test.** The 2015 Regulations requested comments regarding the mechanics of the substantial equivalence test, but comments did not generally recommend material changes to the test. Therefore, the Final Regulations adopt the substantial equivalence test as proposed with minor changes. Comments to the 2015 Final Regulations suggested guidance on whether the simple contract benchmark used in the test was "closely comparable" to a complex contract, and also asked that the regulations specifically allow for a hypothetical simple contract to be used. The Final Regulations provide that the simple contract benchmark may be an actual or hypothetical contract that, at the time the substantial equivalence test is applied to the complex contract, has a delta of 0.8, references the applicable underlying security (or securities) of the complex contract, and has terms that are consistent with all material terms in such complex contract. Further, the simple contract benchmark is now required by the rules to consistently apply reasonable inputs, including a reasonable time period for the benchmark contract. Comments were also concerned that the test might be unduly burdensome, and requested the regulations be altered to allow for taxpayers to use an alternative test as long as such alternative test resulted in the same amount of withholding tax. The Final Regulations do not include this approach.

- **Amount and Timing of a Taxpayer's Liability.**

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- Timing for liability. Under the 2015 Final Regulations, the dividend equivalent amount was determined on the earlier of the record date or the day before the ex-dividend date with respect to the U.S.-source dividend. Thus, in many cases, the amount of a dividend equivalent would be determined before a withholding agent was required to withhold any tax. Comments were concerned that the long party to a section 871(m) transaction could have a tax liability before a payment was made. The Final Regulations provide that the long party is generally liable for tax on a dividend equivalent in the year the dividend equivalent payment is subject to withholding, or in the case of a QDD, when payment of the applicable dividend on the underlying security is subject to withholding.

- Amount of tax not subject to change. The Final Regulations also clarify that the amount of a dividend equivalent subject to tax will not change because the tax is withheld at a later date. Thus, changes in facts (for example, the tax rate or whether the recipient is a qualified resident of another country that has an income tax treaty with the U.S.) between the time the amount of a dividend equivalent is determined and the time that withholding occurs, do not affect tax liability. For example, if in the year of determination a long party qualifies for withholding tax benefits under a treaty, and in the year of withholding the long party does not, the dividend equivalent would qualify for treaty benefits.

- Only liable while the section 871(m) contract is held. The Final Regulations expressly provide that the long party to the section 871(m) contract is only liable for tax on dividend equivalents that arise while the long party is a party to the transaction. For example, if non-U.S. long party A enters into a section 871(m) transaction on an underlying stock that pays quarterly dividends, and sells the transaction to non-U.S. long party B after four dividends were paid, A will be subject to tax on those four dividends, and B will be subject to the section 871(m) withholding tax for future payments while B holds the instrument.

- **Changes to Qualified Index Rules.** The 2015 Final Regulations provided for a safe harbor for derivatives based on an index in which U.S. stock components comprise, in the aggregate, 10 percent or less of the weighting of all the index's components. Comments regarding this safe harbor stated that taxpayers might use a customized index to make tax-advantaged investments in specific U.S. stock. The Final Regulations clarify that in order to meet the 10 percent or less safe harbor, an index must be widely traded and must not be formed with a principal purpose of tax avoidance. In addition, comments sought clarification on when a newly created index would be tested under the rules, since the 2015 Final Regulations only stated that this test would be done on the first of the calendar year. The Final Regulations now provide that in an index's first year of existence, the qualified index tests will occur on the first business day the index is listed, and the dividend yield calculation will be determined by using the dividend yield that the index would have had in the immediately preceding year if it had the same components throughout that year that it has on its creation date.

- **Combined Transactions.** The Final Regulations generally adopt the simplified standard announced in Notice 2016-76, which was only for transactions entered into in 2017. Specifically, a withholding agent will only be required to combine transactions entered into in 2017 for purposes of determining whether such contracts are subject to section 871(m) withholding if such contracts are over-the-counter transactions that are priced, marketed, or sold in connection with each other. Comments suggested this simplified standard be the permanent standard, but the Final Regulations do not adopt that approach. Comments also suggested clarifications to the combined transaction rules to resolve ambiguities. Rather than address these in the Final Regulations, the preamble to the regulations states that the IRS may publish subsequent guidance on combined transactions, but until such further guidance is issued, taxpayers may adopt any reasonable methodology to combine transactions within the general framework of the final regulations.

- **Party Responsible for Determining Delta and Other Information.** Under the 2015 Final Regulations, the party responsible for determining whether a transaction was a section 871(m) transaction and determining and reporting other information (the "Responsible Party"), would generally be either the short party or a broker-dealer that was a party to such transaction. In response to comments, the Final Regulations amend the rules for deciding which party should be the Responsible Party in the following five circumstances.

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(1) For structured notes (included contingent payment debt instruments), warrants, convertible stocks, and convertible debt instruments, the issuer of a potential section 871(m) transaction is the Responsible Party.

(2) If both the short party and an agent or intermediary of the short party are a broker or dealer, the short party is the Responsible Party. The preamble to the Final Regulations states that the short party can contract with a third party to make the determinations on its behalf, but the short party remains responsible for the accuracy of the third party's calculations.

(3) If the short party is not a broker or dealer and more than one of the agents or intermediaries of the short party are a broker or dealer, the broker or dealer closest to the short party in the chain will be the Responsible Party.

(4) Similarly, if the short party and its agents or intermediaries are not brokers or dealers, and more than one agent or intermediary action on behalf of the long party is a broker or dealer, the broker or dealer closest to the long party in the chain will be the Responsible Party.

(5) Finally, for potential section 871(m) transactions that are traded on an exchange and cleared by a clearing organization, when more than one broker or dealer acts as an intermediary between the short party and foreign investor, the broker or dealer that has an ongoing customer relationship with the foreign investor is the Responsible Party.

- **QDD Rules.**
  - Income tax treaties. The Final QI Agreement and the Final Regulations provide that a QDD must treat any dividend equivalent as a dividend from sources within the U.S. for purposes of withholding, and a QDD is only entitled to withhold at a reduced rate based on a beneficial owner's claim that it is entitled to a reduced rate of withholding for portfolio dividends under the dividends article of an income tax treaty.
  - Eligible entities. Only an "eligible entity" can elect QDD status. The Final QI Agreement expanded the definition of "eligible entity" to include (a) a bank holding company that is subject to regulatory supervision as a bank holding company by the governmental authority in the jurisdiction in which the company is organized or operates, and (b) an entity wholly owned (directly or indirectly) by a bank holding company subject to regulatory supervision as a bank holding company by a governmental authority in the jurisdiction in which the bank holding company is organized or operates. Further, the Final QI Agreement clarified that the eligible entity test is applied at the home office or branch level, and that each home office or branch is a separate QDD. Comments requested that the definition of "eligible entity" be expanded to specifically include controlled foreign corporations ("CFCs"). The preamble to the Final Regulations states that the Final Regulations did not make this expansion because CFCs can already qualify as a QDD as long as they are also a qualified intermediary.
  - Withholding on dividends paid to a QDD. Under the Final QI Agreement and the Final Regulations, dividends paid to a QDD on physical shares will remain subject to withholding under section 881 of the Code. However, dividends on physical shares and deemed dividends received by a QDD in its QDD capacity will not generally be subject to withholding until 2018. The IRS will consider comments recommending approaches for alleviating any overwithholding. In addition, the Final Regulations provide that all payments (other than dividend equivalent payments) made to a QDD with respect to underlying securities will be subject to withholding and reporting if those payments would be subject to reporting and withholding when received by a foreign person.
  - Time of withholding. The Final QI Agreement and the Final Regulations provide that a QDD must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend on an underlying security.
  - Qualified Securities Lenders and Credit Forward. Comment requested that taxpayers be able to continue to apply the Qualified Securities Lender regime (the "QSL regime") in place before the 2015 Final Regulations were issued. The preamble to the Final Regulations states that while the IRS understands the QSL regime was more convenient for taxpayers, it created administrative problems for the IRS.

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Therefore, the Final Regulations do not allow taxpayers to continue to use the QSL regime, which will be obsolete as of January 1, 2018.

- **Withholding on Dividend Equivalents.**
  - Transactions transferred to a different account. The 2015 Final Regulations provide that withholding occurs upon a "payment" under a section 871(m) contract, but the regulations did not treat the transfer of a section 871(m) transaction to one broker or custodian account or to another broker or custodian as a "payment." Comments pointed out that such transfers are common. The Final Regulations now provide that a transfer of a section 871(m) contract from one broker or custodian to an account not maintained by the withholding agent will constitute a payment, thus allowing brokers to do their required withholding upon such transfers.
  - Option to withhold on dividend payment date. The 2015 Final Regulations required withholding to occur on the later of when the amount of a dividend equivalent is determined and when the date of a payment under a section 871(m) contract occurs. Some comments requested that withholding agents be allowed to withhold on the dividend payment date. The Final Regulations allow withholding agents to elect to withhold on either the "later of" rule or the dividend payment date, as long as the withholding agent applies the election consistently to all section 871(m) transactions of the same type. As discussed above, a QDD must withhold on the dividend payment date.
- **Applicability Date.**
  - Applicability of section 871(m) regulations. Announcements made in Notice 2016-76 on delayed effective dates are confirmed in the Final Regulations. Notice 2016-76 provided simplified rules for combined transactions, and announced that calendar years 2017 and 2018 would be phase-in years for withholding under the section 871(m) regulations; in administering the rules with respect to delta-one transactions in 2017 and non-delta-one transactions in 2018, the IRS will take into account the extent to which a taxpayer or withholding agent made a good faith effort to comply with the regulations.
  - QDD withholding. Notice 2016-76 surprisingly changed the mechanics of QDD section 871(m) withholding. The Final QI Agreement and the Final Regulations provide that a QDD will not be subject to withholding on actual or deemed dividends in 2017. Further, 2017 will be a phase-in year for QDDs, and the Final QI Agreement and the Final Regulations do not impose tax on a QDD's section 871(m) amount until January 1, 2018.

IRS ATTACKING BASKET OPTION STRATEGIES

Basket contracts are generally derivative instruments linked to a basket of reference assets that, among other things, allow the holder to vary the basket over the instrument's life. According to the IRS, these types of contracts have the potential for tax avoidance because taxpayers account for gain or loss on the contract once the contract terminates instead of when changes to the underlying assets are made. The IRS has had basket transactions on its radar since 2015, when the IRS first issued notices classifying basket option contracts as "listed transactions" and basket contracts as "transactions of interest."[11] On February 6, 2017, the IRS issued audit guidelines for auditing basket transactions,[12] in tandem with an earlier announcement of a compliance campaign focusing on such transactions. Now, with the addition of new audit guidelines, the IRS seems to be intensifying its scrutiny of basket transactions, and taxpayers who have engaged in these transactions would be prudent to prepare for some kind of audit.

NYSB LETTER ON FOREIGN PASSTHRU PAYMENTS

On January 19, 2017, the New York State Bar Association ("NYSBA") released a letter to the IRS regarding guidance on withholding on foreign-source payments under the Foreign Account Tax Compliance Act ("FATCA"). FATCA generally imposes a 30 percent withholding tax on U.S.-source passive income if paid to a foreign financial institution ("FFI") that is non-compliant with FATCA's requirements. One requirement for compliance under the FATCA statute is that an FFI must withhold on certain non-U.S. source income ("Foreign Passthru Payments") to recalcitrant account holders (i.e., those that refuse to

11 In October 2015, the IRS issued Notice 2015-73 and Notice 2015-74, which revoked Notice 2015-47 and Notice 2015-48, respectively, and replaced them with new guidance on basket transactions. For a more detailed discussion of Notice 2015-73 and Notice 2015-74, see Vol. 8 Issue 3 of Tax Talk, available at http://www.mofo.com/~/media/Files/Newsletter/2015/11/151103TaxTalk.pdf.
12 The IRS audit instructions are available at https://www.irs.gov/pub/int_practice_units/fin_t_73_05_08_01.pdf.

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provide IRS forms to the IRS) and non-compliant FFIs. The IRS has yet to provide a definition on the scope of Foreign Passthru Payments, although it proposed a definition in 2011 that was subsequently abandoned.[13] The main purpose of the Foreign Passthru Payment withholding requirement was to prevent FFIs from establishing compliant FFIs that served as "blockers" to receive U.S. source payments, and then having the blocker FFIs make non-withholdable payments to non-compliant FFIs.

Through regulations and other guidance, the IRS has delayed the effective date of the Foreign Passthru Payment withholding requirement, which is currently scheduled to take effect January 1, 2019. NYSBA's letter recommends that the IRS maintain the current status quo by continuing to delay the implementation of the Foreign Passthru Payment withholding requirement. The letter notes that the IRS has been successful in entering into intergovernmental agreements ("IGAs") with foreign jurisdictions, which typically require financial institutions in that jurisdiction to report U.S. account holders to their local tax authority. In return, each FFI in the IGA jurisdiction is treated as a FATCA-compliant FFI. According to the letter, the ubiquity of IGAs has effectively turned all FFIs into compliant FFIs, eliminating the concern that compliant FFIs would be used as blockers for non-compliant FFIs. Furthermore, the IRS has less burdensome alternatives available to combat potential abuses, including amending regulations to require compliant FFIs to report payments to non-compliant FFIs.

TWO-MONTH EXTENTION OF DEADLINE FOR RENEWING Q1 AGREEMENTS

On March 31, 2017, the IRS extended the deadline by two months for submitting an application to be a qualified intermediary ("QI")/foreign withholding partnership ("WP")/foreign withholding trust (including renewals to be a qualified derivatives dealer ("QDD")) from March 31, 2017 to May 31, 2017.14 All such applications received by May 31, 2017 will be granted an Effective Date of January 1, 2017. For new withholding foreign partnerships, new withholding foreign trusts, and new QIs that are not applying for QDD status, the March 31, 2017 deadline remains.

IMPACT OF T+2 CHANGE ON EXISTING TAX RULINGS

On March 22, 2017, the SEC adopted an amendment to the Settlement Cycle Rule under the Securities Exchange Act of 1934, which shortens the standard settlement cycle for most broker-dealer transactions from three business days after the trade date ("T+3") to two business days after the trade date ("T+2") beginning September 5, 2017.[15] Some older IRS Revenue Rulings and Private Letter rulings consider the difference between the trade date and the settlement date for making determinations such as when gain or loss is recognized on a short sale and the holding period of stock traded on an established securities market.[16] Perhaps it is time for clarification on those rulings that they now apply to the T+2 settlement cycle. However, given the general freeze on IRS guidance,[17] that may be too much to expect.

GREENLIGHT CAPITAL PROPOSES NOVEL DUAL CLASS STRUCTURE FOR GM

Dual class share structures have been around for a long time but Tax Talk was interested to see that Greenlight Capital ("Greenlight") is now incorporating a novel dual class structure into the activist investor's playbook. In late March, Greenlight proposed that General Motors Company ("GM") adopt a dual class structure by distributing a new class of common stock to its existing common stockholders on a one-for-one basis.[18] After the distribution, GM would have two classes of common stock:

- The new class of common stock ("Dividend Shares") would entitle the holder to GM's existing $1.52 per share dividend. It would have 1/10 of a vote per share.

- The existing class of stock ("Capital Appreciation Shares") would entitle the holder to dividends in excess of dividends on the Dividend Shares. Future share repurchases would be only of Capital Appreciation Shares.

According to Greenlight, despite strong operating performance, GM's stock price has languished for the last seven years. The purpose of the dual class structure is to create a class (the Dividend Shares) that appeals to yield-oriented investors and a class (the Capital Appreciation Shares) that appeals to value-oriented investors.

13 In Notice 2011-34, the IRS proposed characterizing a payment made by an FFI as a Foreign Passthru Payment to the extent of the payor's percentage of U.S. assets held.
14 For prior coverage please see MoFo Tax Talk available at https://media2.mofo.com/documents/170210-tax-talk.pdf.

15 For a more detailed discussion of the T+2 change, see our recent issue of Structured Thoughts, available at https://media2.mofo.com/documents/170404-structured-thoughts.pdf.
16 See, e.g., Rev. Rul. 2002-44, 2002-28 I.R.B. 84 (2002), Rev. Rul. 93-84, 1993-2 C.B. 225 (1993), and Rev. Rul. 66-97, 1966-1 C.B. 190 (1996).
17 On January 20, 2017, President Trump's Chief of Staff, Reince Priebus, sent a memorandum to all heads of executive departments and agencies instructing, a general regulatory freeze pending review, available at https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies.
18 A description of the plan is available at https://www.sec.gov/Archives/edgar/data/1079114/000090266417001796/p17-0921dfan14a.htm.

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Greenlight estimates that the package of one Dividend Share and one Capital Appreciation Share would be valued at between $43-$59, while one share of GM's common stock currently trades around $35.

From a federal income tax standpoint, distribution of the second class of common stock to existing common stockholders should be tax-free under IRC §305(a), which generally provides that gross income does not include the amount of any distribution of a corporation's stock with respect to its outstanding stock. A shareholder would allocate its basis in the existing common to the Dividend Shares and Capital Appreciation Shares according to their relative fair market values at the time of distribution and the holding period would tack. After the distribution the tax treatment of both classes would be like any other common stock.

Readers will recall that GM has been a test bed for multiple class structures before. In 1993 GM issued Class E shares when it acquired Electronic Data Systems (Ross Perot's company). Series E stock was followed by Series H stock tied to the acquisition of Hughes Aircraft Co. The IRS originally issued a favorable private letter ruling on the stock but today the issue is on the no rule list.[19] Going back even farther, Joseph Debe's Americus Shareholder Services had an idea to split existing shares of common stock into "prime" and "score" components using a trust structure. Primes represented a fixed dividend and the liquidation rights of the stock while Scores represented dividends above the fixed dividend and appreciation above the current stock price. Debe received a private ruling from the IRS which was later revoked when the "Sears regulations" were issued. Debe's transaction was ultimately grandfathered and Americus created 20 or so trusts before his death in 2001.

GM's initial reaction to the Greenlight proposal was lukewarm, to say the least.

On April 12, 2017, Greenlight filed a proxy statement with the SEC proposing three alternative directors for GM's board who would vote to adopt the Greenlight structure. According to its proxy filed on April 13, 2017 GM's current board opposes the Greenlight proposal and the alternative slate of directors.

IRS NOT PLANNING TO ALERT TAXPAYERS OF REVOKED REIT ELECTIONS (BASED ON STATEMENT FROM IRS OFFICIAL)

Andrea Hoffenson, branch 2 chief, IRS Office of Associate Chief Counsel (Financial Institutions and Products) announced on March 22, 2017 that the IRS will not notify taxpayers with real estate investment trust private letter rulings relating to the definition of "real property" whether their private letter ruling is revoked for being inconsistent with the final regulations clarifying the definition of "real property." The preamble to the Final Regulations provides that private letter rulings inconsistent with the final regulations are revoked prospectively.[20] The IRS considers the preamble to the final regulations to constitute ample notice to such affected taxpayers.

WHAT IS A DESTINATION-BASED CASH-FLOW TAX?

In its most recent (and only) blueprint for tax reform, the House Republicans proposed a tax plan that would implement a "destination -based cash-flow tax."[21] What would that involve, and how does it compare to our current system? Below, Tax Talk breaks this proposal down to its two elements: (1) the cash-flow tax, and (2) the destination-based tax with a border adjustment.

Cash-Flow Tax

A cash-flow tax is generally a tax levied on cash entering a business less the cash leaving a business. Under the current U.S. federal income tax system, taxation is based generally on income less deductions specifically outlined by the Code. Practically, a cash-flow tax would be similar to our current system in that it would be administered by levying a tax liability on each business on an annual basis. The key difference is that under the current Code, deductions are only permitted for specified investments and assets, while a cash-flow tax would allow a deduction for any investment, irrespective of the type of good or service purchased.

For example, suppose that in year one, a lightbulb producer has receipts of $100 million, pays its employees $30 million, and invests $50 million in new factory equipment. Under current law, the Company could generally fully deduct the $30 million in salaries, but would have to amortize the $50 million investment in equipment over a period of years. Under a cash-flow tax, the business could reduce its taxable income by both the

19 See Rev. Proc. 2017-3, 2017-1 I.R.B. 130 (2017).

20 For prior coverage please see MoFo Client Alert available at https://media2.mofo.com/documents/160914-real-property-reit-rules.pdf.
21 For more discussion of other elements of the House plan, see Vol. 9 Issue 4 of Tax Talk, available at https://media2.mofo.com/documents/170210-tax-talk.pdf.

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$30 million in salaries and the full $50 million paid for the factory equipment in year one.

Border Adjusted Destination-Based Tax

In international taxation, a country generally has two options when setting a tax base, either an origin-based tax or a destination-based tax. Currently, the U.S. tax system includes an origin-based tax, which means that a U.S. corporate tax is levied on goods produced in the United States, regardless of where they are consumed.
A destination-based tax taxes goods based on where they are consumed, regardless of where they are produced. The House tax proposal also features a "border adjustment" provision which would eliminate the ability for companies to deduct the cost of imports, while at the same time eliminating the tax on income attributable to exports. The proponents of the House plan have asserted that the switch would help stimulate growth in the economy, increase the competitiveness of U.S. companies, and simplify the business tax system.

For example, suppose that a U.S. exporter purchases goods from a U.S. manufacturer for $100 million and sells them to foreign consumers for $110 million. Under the current regime, the exporter will generally be able to expense the costs associated with obtaining its goods, and upon sale to foreign customers, the exporter will be taxed on its profits. Assuming a corporate tax rate of 35%, the U.S. exporter would owe $3.5 million of U.S. tax. The tax consequences to an importer would mirror those of an exporter. Namely, if an importer purchased goods from a foreign seller for $100 million and then sold those goods to U.S. consumers for $110 million, the importer would be entitled to deduct the $100 million cost to acquire its goods and pay $3.5 million in tax on its $10 million profit.

However, under the House plan, only exporters would receive a deduction for the costs of production for their goods, and exporters would no longer pay tax on their foreign profits. So in the example above, the exporter would be able to offset any U.S. taxable income with the $100 million that it spent to obtain its goods; furthermore, the exporter would receive its $10 million profit from foreign sales free of U.S. tax. Whereas the foreign seller would be required to pay an import tax, the importer would not receive any deduction for the costs of its imports, and the importer would be subject to tax on its $10 million in profit when it sells to U.S. consumers.

UPDATE ON TRUMP ADMINISTRATION AND REGULATIONS

Three recent items indicate the Trump Administration's current plans for tax regulations: (a) the IRS announced that it will delay certain regulatory projects that could be impacted by tax reform; (b) President Trump signed an executive order to review all tax regulations issued in 2016; and (c) a Treasury official stated the Treasury is considering exempting tax regulations from President Trump's executive order requiring two regulations be deleted for every new regulation added. Tax Talk provides updates on each.

<u>IRS Delays Projects Potentially Impacted by Tax Reform</u>

The IRS Priority Guidance Plan outlines which regulatory projects the IRS intends to focus on in the coming year and includes several financial products items, including regulations on how to determine whether a Section 1001 event has occurred for a non-debt instrument, how to account for contingent payments on notional principal contracts ("NPCs"), and regulations on mark-to-market accounting under Section 475. However, according to an IRS official speaking at a Practising Law Institute seminar, the IRS is shifting resources away from certain projects on the Priority Guidance Plan that may become irrelevant if Congress passes legislation that would require mark-to-market treatment for holders of most derivative financial instruments.[22] According to Associate Chief Counsel Helen Hubbard, the IRS is "triaging" and spending time on "projects that are most likely to remain relevant if there is a much broader mark-to-market regime enacted by Congress." As a result, regulations under Section 1001 for non-debt instruments and contingent NPC regulations are being put on hold. Section 475 regulations, on the other hand, are relevant regardless of whether new legislation is passed; however, since the last proposed regulations were issued in 1999, any new regulations would be re-proposed. Other projects, such as regulations on when a debt obligation is treated as in "registered form" for tax purposes, would also not be affected by mark-to-market legislation and so remain a high priority.

<u>Trump Administration to Review All Tax Regulations Issued in 2017</u>

On April 21, 2017, President Trump signed an executive order entitled "Identifying and Reducing Tax Regulatory Burdens," which directs the Secretary of the Treasury to review all significant tax regulations issued by the Department of the Treasury on or after January 1, 2016. It will be interesting to see what impact this has on complex regulatory projects issued by the Obama Administration in its final months, such as the once-controversial section 385 regulations or the section 871(m) regulations discussed above.

22 Emily L. Foster, "Derivatives Tax Reform Would Change IRS Guidance Plan," 2017 TNT 11-2 January 18, 2017.

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Tax Regulations Under 2-for-1 Executive Order

On January 30, 2017, President Trump issued an executive order which directed agencies (such as the IRS) to repeal two existing regulations for every new regulation promulgated.[23] Practitioners have urged the IRS to reconsider this order with respect to tax regulations, on the grounds that tax regulations are special because deregulatory actions would place additional interpretive burden on taxpayers which would increase taxpayer risk of taking uncertain positions.[24] At an event hosted by the District of Columbia Bar Taxation Section, Thomas West (acting Treasury Assistant Secretary for Tax Policy) stated that the Treasury has "a lot of sentiment" for tax regulations being different, in part because both the Treasury Office of Tax Policy and the IRS Office of Chief Counsel work together in drafting tax regulations.[25]

MOFO IN THE NEWS; AWARDS – Q1 2017

Morrison & Foerster was named Global Law Firm of the Year by *GlobalCapital* magazine for its 2016 Global Derivatives Awards. Morrison & Foerster is currently nominated for Americas Law Firm of the Year – Overall; US Law Firm of the Year –Transactions and US Law Firm of the Year – Regulatory for *GlobalCapital*'s 2017 Americas Derivatives Awards. We were named Americas Law Firm of the Year in 2016 and 2015 by *GlobalCapital* for its Americas Derivatives Awards. We were named Americas Law Firm of the Year for the seventh time in eleven years by *Structured Products Magazine*. Morrison & Foerster was also named the 2016 Equity Derivatives Law Firm of the Year at the *EQDerivatives* Global Equity & Volatility Derivatives Awards.

- On March 28, 2017, Senior Of Counsel Hillel Cohn was joined by Francois Cooke (ACA Compliance Group) in hosting a teleconference entitled "Current Practices and Issues for Foreign Broker-Dealers Under Rule 15a-6 in 2017." Topics included: Summary of Rule 15a-6 requirements; risks and responsibilities of acting as a chaperoning broker; practical issues in intermediating Rule 144A and other transactions; benefits of an intermediary agreement; and dealing with retail customers under Rule 15a-6.
- On March 16, 2017, Partner Jeremy Jennings-Mares and Partner Oliver Ireland were joined by Doncho Donchev (Crédit Agricole Corporate and Investment Bank) in hosting an IFLR webinar entitled "TLAC Implementation in the U.S. and the EU" to discuss the details of the final TLAC rules and proposals and their effect on both future capital raisings by banks and existing stocks of bank debt. Topics included: MREL subordination requirements and the effect of jurisdictional differences; key cross-Atlantic differences in TLAC; eligibility of different products, including structured notes; recent TLAC/MREL issuances; and the resolution process for GSIBs.
- On March 9, 2017, Partner Jay Baris was joined by Andrew J. "Buddy" Donohue (Former Chief of Staff, Director of Enforcement, and Director of Investment Management, SEC), Roberta Karmel (Centennial Professor of Law, Brooklyn Law School, former SEC Commissioner), Robert Khuzami (Kirkland & Ellis LLP, former Director of Enforcement, SEC) and Troy Paredes (Paredes Strategies LLC, former SEC Commissioner) in hosting an ALI-CLE webinar on proposed SEC legislation entitled "SEC in 2017 – What's Next? SEC Veterans Weigh In." Topics included: Rules that were proposed but not adopted by the SEC as part of the Dodd-Frank Act rule-making mandate; what to expect as far as corporate governance and executive compensation requirements; final rules adopted pursuant to the Dodd-Frank Act mandate relating to extractive minerals and specialized disclosures; future of the Disclosure Effectiveness initiative; likely status of the rules proposed by the SEC and not yet adopted; proposed changes affecting investment companies and their likely status; and anticipated enforcement areas of focus.
- On March 8, 2017, Morrison & Foerster hosted its 7th Annual Financial Services, Regulatory and Compliance Conference at the Ritz Carlton Charlotte in Charlotte, NC. The morning sessions focused on consumer financial services and privacy and cybersecurity developments. The afternoon sessions focused on wholesale, capital markets and tax developments. Partner Oliver Ireland and Partner Obrea Poindexter hosted the first panel entitled "The Consumer Financial Protection Bureau: A Review of the Bureau's Regulatory and Enforcement Activities during 2016; Proposed Rules; Challenges to the Bureau's Authority; Likely Reforms." Partner Obrea Poindexter and Of Counsel Sean Ruff led the second panel entitled "Payment Systems Developments and Fintech Payments." Partner Oliver Ireland, Partner Obrea Poindexter and Of Counsel Sean Ruff hosted the third panel entitled "Developments Affecting Marketplace Lenders." Partner Nathan Taylor hosted the fourth panel entitled "Cybersecurity and Data Protection Developments. " Partner Oliver Ireland, Obrea Poindexter, Partner Nathan Taylor and Of Counsel Sean Ruff hosted the fifth panel entitled "What's Ahead?" Partner Thomas Humphreys and Partner Remmelt Reigersman hosted the sixth panel entitled "Tax Developments Affecting Financial Institutions and Financial Products." Partner Oliver Ireland and Partner Anna Pinedo hosted the seventh and eighth panels entitled "Basel Implementation, the Fed's Final Long-Term Debt, TLAC and Clean Holding Company Rule and Funding

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23 Reducing Regulation and Controlling Regulatory Costs, Executive Order (January 30, 2017).
24 Tax Counsel Group Seeks Clarification of 2-for-1 Executive Order, 2017 TNT 58-16 (March 23, 2017).
25 Nathan J. Richman, Treasury-IRS Cooperation Sets Tax Regs Apart for 2-1for-1 Order, 2017 TNT 76-4 (April 21, 2017).

Activities" and "Regulatory Burden Relief: What to Expect." Senior Of Counsel Hillel Cohn hosted the ninth panel entitled "The Department of Labor's Fiduciary Duty Rule." Of Counsel James Schwartz hosted the tenth panel entitled "Derivatives Related Updates." Partner James Tanenbaum, Partner Oliver Ireland and Senior Of Counsel hosted the final panel entitled "A Culture of Compliance, Risk Management and Corporate Governance at Financial Institutions."

- On March 2, 2017, Partner Peter Green and Partner Oliver Ireland hosted a Western Independent Bankers webinar entitled "Unraveling Regulatory Reform Implications" to discuss some of the ongoing issues most relevant to banks and other financial institutions in the US. Topics included: Basel III capital and liquidity requirements; too big to fail GSIB requirements and the resolution process; systemically important banks (≥ $50 B) and heightened supervisory requirements; the Consumer Financial Protection Bureau; and, the effect of Brexit on global financial regulation.
- On February 23, 2017, Partner Oliver Ireland hosted a telephone briefing entitled "Financing Fintech: Reviewing Comments on the OCC Special Purpose National Bank Charter Proposal." Mr. Ireland discussed the comments on the OCC White Paper entitled "Exploring Special Purpose National Bank Charters for Fintech Companies" and the issues raised by the commenters who included members of Congress, community groups, state bank regulators and trade associations and Fintech companies.
- On February 22, 2017, Partner Peter Green, Partner Jeremy Jennings-Mares and Of Counsel Julian Hammar were joined by Ali Hosseini (J.P. Morgan) in hosting an IFLR webinar entitled "Confusion or Clarity? Cross-Border Regulation of Derivatives" to provide an update on cross-border derivative issues including a focus on recent developments in the US and the EU. Topics included: An update on the rollout of the margining rules relating to uncleared derivatives in both the US and the EU; ongoing implementation of clearing requirements for OTC derivatives; What is the current position in relation to exchange trading of derivatives – in particular, what effect will MiFID II have in the EU?; Where are we on substituted compliance/equivalence as between the US and the EU?; and, Will Brexit and/or the new Trump administration have any effect on the international framework for derivative regulation?
- On February 16, 2017, Of Counsel Bradley Berman was joined by Jack McSpadden, Jr. (Citigroup Global Markets Inc.) in hosting a teleconference entitled "Section 3(a)(2) Bank Note Programs" regarding Section 3(a)(2) of the Securities Act, which provides an exemption from registration for securities issued by banks. The program covered the requirements of the exemption, offering structures for non-U.S. banks, requirements for banks and branches regulated by the Office of the Comptroller of the Currency, offering documentation and process tips for launching a bank note program. Topics included: What is a "Bank"?; non-U.S. Banks; the OCC Securities Offering Regulations; Rule 144A Offering Alternative for non-U.S. banks; FINRA Matters; offering documentation; launching a Bank Note Program; and, liabilities.
- On February 9, 2017, Partner Lloyd Harmetz and Partner Anna Pinedo hosted the second of two teleconferences entitled "Securities Developments Medley – Session Two" to recap the late 2016 SEC Staff issued guidance principally in the form of C&DIs on various topics. Topics included: C&DIs on Rule 144A, FPIs, and Regulation S; guidance on Exxon Capital exchange offer representations; guidance on shortened tenders; and recent Trust Indenture Act related court cases.
- On February 8, 2017, Partner Ze'-ev Eiger and Partner Anna Pinedo hosted the first of two teleconferences entitled "Securities Developments Medley – Session One" to recap the late 2016 SEC Staff issued guidance principally in the form of C&DIs on various topics. Topics included: Regulation A: what do we know about how the exemption is working?; Regulation Crowdfunding; C&DIs on Regulation Crowdfunding; FINRA crowdfunding enforcement matter; Rule 147/Rule 504; Integration C&DI; C&DIs on Rule 701; and Guidance on Rule 144.
- On February 7, 2017, Partner Anna Pinedo spoke on a panel entitled "Capital Raising Opportunities and Challenges in 2017: Being Public without Going Public" on Day 1 of the 35th Annual Federal Securities Institute in Miami, Florida.
- On January 31-February 2, 2017, Partner Brian Bates and Partner Scott Ashton participated in the Private Placements Industry Forum in Boca Raton, Florida. The Forum covered the most pressing issues in the industry including: global deal generation, how rating agencies are affecting deal prices and yields, and provided an in depth look at the latest changes in deal documents.
- On January 30-31, 2017, Partner Peter Green and Partner Jeremy Jennings-Mares hosted a session entitled "Preparing for Margin Requirements on Day 1 of the Europe EQD 2017conference in Barcelona, Spain. The intensive two-day event targeted European and global themes across areas including dividends, dispersion, repo and market structure on Day 1 (Cross-Asset Volatility Trading), and constructing VRP, overcoming crowding, arbitrage & fat tails on Day 2 (Alternative Risk Premia).
- On January 24, 2017, Partner Lloyd Harmetz, Partner Thomas Humphreys and Senior Of Counsel Hillel Cohn hosted a timely presentation entitled "9th Annual SPA and MoFo Structured Products Legal, Regulatory & Compliance Update 2017" on what to expect in the new year and from the new administration. Amy Sochard (Senior Director, FINRA) provided an update on the FINRA Advertising landscape. Senior Of Counsel Hillel Cohn presented on the Department of Labor's Fiduciary Rule. This presentation covered recent FAQs, proposed

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legislation and the future of the Rule. Partner Thomas Humphreys presented on tax code reform. Partner Lloyd Harmetz presented on the 2017 FINRA and OCIE priorities.

- On January 12, 2017, Of Counsel James Schwartz and Of Counsel Julian Hammar hosted a teleconference to discuss the latest developments regarding the treatment by U.S. regulators of cross-border swap and security-based swap transactions. Topics included: The overall state of play with respect to the treatment of cross-border transactions and the prospects (and need) for further substituted compliance determinations; The CFTC's proposal regarding the cross-border application of registration thresholds and external business conduct standards; The CFTC's and prudential regulators' treatment of margin in the cross-border context, including in the context of the EU margin rules; The SEC's rules relating to cross-border matters; and The Fed's and other banking regulators' proposed rules regarding the application of special resolution regimes.
- On January 11, 2017, Partner Peter Green and Partner Jeremy Jennings-Mares hosted a PLI webinar to explain the impact on UK-based banks following the UK's vote to leave the EU. Topics included: What is meant by the "single market" for financial services and the "EU passport"?; "Hard Brexit" vs. "Soft Brexit" -- What do these terms mean in the context of banking and financial services? To what extent are UK based banks likely to be able to maintain access to EU markets following Brexit in each scenario?; When will banks need to make firm decisions about possible relocation of activities to other EU jurisdictions?; What will be the impact of recent proposed changes to CRD4/CRR and the BRRD to non-EU banks carrying out activities in the EU?; and In its G20 memo, the Japanese government asked for certainty and transparency in the Brexit negotiations. What are the chances?

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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 13 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.