

# U B S

TAILOR-MADE

SINCE 1995, Morrison & Foerster lawyers and UBS have worked together to address multiple financing opportunities that arise as market conditions evolve. Morrison & Foerster worked with UBS to create a new financial derivative, which became known as a forward recapitalization transaction, in response to many issuers' needs for immediate capital. The forward recap accomplished precisely what issuers needed with significant accounting and tax benefits. It immediately became popular with clients, such as real estate investment trusts, which had immediate cash needs and optimism that the value of their equity securities would increase.

This forward recapitalization consisted of the private sale to UBS of an issuer's securities at a purchase price based upon the closing price of the issuer's securities. The stock purchase agreement required the issuer to file, and use its best efforts to cause to be declared effective, a registration statement covering the resale by UBS of the shares and any additional shares that might be issued to a UBS affiliate through the settlement provisions of a forward purchase agreement. The forward purchase agreement provided for the forward purchase by the issuer from UBS of a number of shares equal to an initial share amount at a fixed price plus a forward accretion reflecting an imputed LIBOR-based return minus an adjustment reflecting distributions, if any, on the shares. The forward purchase agreement allowed for stock settlement if the issuer had an effective resale registration statement.

The structure of forward recaps has been modified as a result of discussions with the SEC concerning its views on this product and similar equity derivative structures. Today, Morrison & Foerster continues to work with UBS on new equity derivatives products, individually tailoring each to address changing market conditions and the specific needs of various UBS clients.