

## Reminder Regarding Upcoming FATCA Deadline and Implications for Trading Agreements

The effective date under the Foreign Account Tax Compliance Act (“FATCA”) for withholding agents to begin withholding on certain U.S. source payments made to foreign financial institutions (“FFIs”) and non-financial foreign entities (“NFFEs”) is July 1, 2014 (absent further extension). Generally, FATCA imposes a 30% withholding tax on certain U.S. source payments made to FFIs and NFFEs unless the recipients of such payments qualify for an exemption from FATCA or comply with certain information, diligence, reporting and/or withholding requirements that are mandated by FATCA. Under many forms of trading agreement, including ISDA Master Agreements, if FATCA withholding occurs on a payment, the payor is required to gross up the recipient for such withholding. Because the recipient (and not the payor) is the party that has the ability to prevent FATCA withholding taxes by complying with FATCA rules, parties should consider amending any affected trading agreements in advance of the July 1 deadline to ensure that the recipient (payee) bears any burden of FATCA withholding taxes. Such amendments can be made by both parties to an agreement becoming adhering parties to the ISDA 2012 FATCA Protocol or by a fund entering bilateral amendments with its trading counterparties.

For more information regarding FATCA, please contact the Ropes & Gray attorney who usually advises you.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing or recommending to another party any tax-related matters addressed herein.