

## ATTORNEYS IN THIS PRACTICE

Yvonne Chan  
John A. Clark  
Brian S. Fraser  
Jennifer K. Grady  
Igal Katz  
Jon Kibbe  
Richard J. Lee  
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Julia Lu  
Michael D. Mann  
Andrew M. Martin  
Edward Swainston  
Diane L. Vanderson  
Janine Ivanova Wicklund  
Carl Winkworth

## RELATED PRACTICES

Corporate and Business Transactions  
Distressed Debt and Claims Trading  
Investment Management  
Lending Transactions  
Mergers and Acquisitions  
Private Equity  
Restructuring and Bankruptcy  
Securities Transactions  
Tax

## Derivatives

RK&O assists its clients in navigating and transacting business in the rapidly evolving derivatives market, with its many innovative products and structures and developing rules and regulations. Our extensive experience in the underlying debt and equity markets and our representation of industry groups, leading investment banks and hedge funds provide the foundation for our derivatives practice. We currently represent industry groups in connection with structuring and implementing new derivative products; dealers and market makers in developing trading strategies that require a comprehensive understanding of debt and equity instruments; and hedge funds in connection with establishing master derivative trading relationships with dealers and prime brokers. We regularly provide training seminars to our clients about emerging products and frequently advise on the anticipated effects of corporate events and other issues with market-wide impact.

We represent cross-border, industry-wide working groups in developing and drafting the standardized documentation currently governing all standard U.S. loan credit default swap transactions and European loan credit default swap transactions. Because of RK&O's long experience in the underlying leveraged loan market, we have been instrumental in helping these groups establish standards for public and private information flow, frame issues concerning application of securities laws in the loan market, and institute market-driven modifications to existing loan settlement regimes. Following the successful launch of these products, we were retained by both the International Swaps and Derivatives Association, Inc. (ISDA) and the Loan Syndications and Trading Association, Inc. (LSTA) in connection with related projects, including the ISDA loan credit default swap index product and the LSTA's efforts to address structural and settlement issues which arise in connection with total return swaps on bank loans.

Our clients frequently combine cash market strategies and derivative hedging strategies, and often creatively link hedges across asset classes and markets. Our knowledge of the underlying asset classes and the markets in which they trade allows us to help our clients analyze risk and execute these strategies. While credit markets, trading instruments and asset classes are rapidly converging, the need to understand credit structures and credit risk remains critical. We therefore work closely with our clients to analyze the structure of underlying credit instruments, isolate and understand the risk being traded, and eliminate unintended incidental risks not part of the derivative transaction. In addition, based on our expertise in both the underlying asset class and the derivative product, we help clients design and execute derivative hedges for single secured loans and portfolios of secured and unsecured loans utilizing total return swaps, loan credit default swaps and traditional credit default swaps. In connection with a credit default swap, we help clients identify appropriate structures for the derivative transaction and understand the underlying credit issues and potential corporate events that may affect the derivative transaction once it becomes outstanding. To do this, we work extensively with our bankruptcy practice group and our litigators to evaluate the effect of extrinsic changes on corporate structures or corporate creditworthiness. In this way, we are able to provide the most strategically

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## DERIVATIVES (Cont.)

nanced advice to our derivative clients as they forecast possible outcomes of complex restructuring, default or merger scenarios.

In non-U.S. financial markets, investors often employ a variety of financial instruments to gain access to, enhance leveragability of, or obtain favorable tax treatment compared to, the underlying equity securities, debt securities or loans. We help our clients achieve these goals by designing and evaluating credit and equity-linked note transactions targeting credit risks or equity securities of Asian issuers. We also advise our clients in the negotiations of equity swap master confirmations and other equity derivatives transactions. Our expertise in U.S. securities laws and understanding of the regulatory and tax issues of our hedge fund clients, combined with our ability to identify local law issues and manage local counsel, helps us service our clients' needs for derivatives advice in international markets.

Our hedge fund clients rely on us to negotiate comprehensive master agreements with trading counterparties and to keep them aware of developments in the derivatives market. We provide experienced support and guidance in negotiating ISDA master agreements, collateral support documentation and customized prime brokerage arrangements. We know the current market for negotiating changes to form documents, and we are focused on the underlying jurisdictional, tax, regulatory, compliance and bankruptcy issues that are important to our clients and that inform any negotiation of a long-term, comprehensive master agreement governing a trading relationship. Since derivative products continue to evolve, and because similar products may be traded differently in different markets, we believe that a strong and continuing dialogue with our clients about the current state of the derivatives markets is an essential part of our representation.

## PUBLICATIONS

"Derivatives risk remains poorly understood" by Craig Newman and David Daniels published in *Financial Times*

"Still in Flux: Legal and Regulatory Developments Affecting the Analysis of Information Flow in the U.S. Secondary Loan Market" by Julia Lu and Jennifer Grady published in the *LSTA 2012 Loan Market Chronicle*

"Why Your Investment Management Company May Soon Be a CFTC-Regulated Entity" by Julia Lu, John Clark, Eva Marie Carney and Kimberly Versace

"The imperfect hedge: bail-in risk and CDS contracts" by Julia Lu and John Clark published in *Butterworths Journal of International Banking and Financial Law*

"A New Model for Treating Cleared Swaps Collateral" by Julia Lu and John A. Clark published by *Law360*

"CFTC Adopts 'Legal Segregation with Operational Commingling' Model for Treatment of Cleared Swaps Collateral" by Julia Lu and John A. Clark

"*MSHDA v. Lehman*: Trying to Keep the Safe Harbor Safe for Swap Counterparties" by Neil Binder

"Lehman Update: Derivatives Creditors File a Competing Plan" by Joon Hong

"Material Non-Public Information in the Secondary Loan Market after Dodd-Frank" by Jon Kibbe and Michael Mann published in the *LSTA 2011 Loan Market Chronicle*

## DERIVATIVES (Cont.)

"Now You Have a Security, Now You Don't - Antifraud and Anti-Manipulation Regimes for Loan Derivatives Products Under Dodd-Frank" by Julia Lu and Eva Marie Carney published in the *Futures & Derivatives Law Report*

"Passive Investors Only -- Strategic Investors Need Not Apply: Dish Network Corp. v. DBSD N. AM., Inc." by Michael Friedman and Keith Sambur

"A Claims Market Emerges in Iceland" by Jon Kibbe, Louisa Watt, Jennifer Grady and Kenneth Werner

"Dodd-Frank Crosses the Pond: Unintended Consequences for LMA-Style Loan Participations?" by Jon Kibbe, Julia Lu and Carl Winkworth

"Life After Dodd-Frank - Part II" by Julia Lu published in *Derivatives Week*

"Life After Dodd-Frank: Loan CDS, TRS - Part I" by Julia Lu published in *Derivatives Week*

"Loan CDS and TRS: Life After Dodd-Frank?" by Julia Lu, Jennifer Grady and Eva Marie Carney

"Bullet LCDS: A New Direction for the U.S. Loan Credit Default Swap Product" by Julia Lu and Jennifer Grady

"ISDA's Evolving Auction Methodology Cash Settlement of Loan Credit Default Swaps" by Jon Kibbe, Julia Lu and Jennifer Grady

"LSTA Distressed Participation Agreement" by Paul B. Haskel and James Ohlig

## PRESENTATIONS

James Walker presents "LinkedIn, Facebook and Twitter, Oh My! Ethics & Privacy in Social Media" hosted by the LSTA

Jon Kibbe and Jennifer Grady present "Material Non-Public Information Best Practices" at LSTA 16th Annual Conference

RK&O partners participate in the panel discussion "Receiving Information, Managing Risk, and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Financial Services General Counsel Luncheon in San Francisco

RK&O partners present "Receiving Information, Managing Risk and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Alternative Asset Management General Counsel Luncheon in New York City

Brian Fraser participates as a Panelist in a Compliance Roundtable hosted by the LSTA

Jon Kibbe and Jennifer Grady speak at LSTA's "LCDS and TRS" conference

Jon Kibbe acts as a Panelist at the ISDA Symposium

Jennifer Grady presents "Overview of New Products: Loan Only CDS" at the ISDA seminar

## NEWS &amp; ANNOUNCEMENTS

Julia Lu quoted in *Bloomberg* article "CFTC-SEC at Odds on Commodity Pool Operators"

Louisa Watt quoted in the *International Financing Review* article "Europe edges towards claims market"



DERIVATIVES (Cont.)

Michael Friedman quoted in the *Bloomberg* article "Bankruptcy Turnarounds Menaced by Investor Valuation Fights, Lifland Says"

Jon Kibbe quoted in *The New York Times* article "Pension Fraud in New Jersey Puts Focus on Illinois"