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## SEC Filing Illustrates Recent REIT Trend: Holding and Financing Renewable Energy Assets

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Sponsors and investors have been paying much attention to the potential use of real estate investment trust (REIT) structures to hold and finance renewable energy assets in a tax-efficient way. A recent SEC filing by Hannon Armstrong Sustainable Infrastructure Capital, Inc. (Hannon Armstrong) illustrates such a structure. In its S-11 registration statement filed on February 15, 2013, Hannon Armstrong announced its intent to become a publicly traded mortgage REIT that specializes in financing sustainable energy-related projects, including renewable energy (*e.g.*, solar or wind) projects and projects that enhance the efficiency of users of energy.

In order to qualify for the special tax treatment afforded to REITs under the tax code, an entity must, among other things, invest primarily in qualifying “real estate assets” (including mortgages on real property) that generate qualifying real estate-related income (including interest on mortgages on real property). In recent years, the IRS has confirmed its position that certain types of immovable assets — for example, billboards, gas pipelines, storage and terminalling facilities, electricity interconnection assets, offshore oil rigs and cell towers — are qualifying assets for purposes of the REIT requirements.

The filing by Hannon Armstrong indicates that the IRS has continued this trend by ruling on the treatment, for REIT purposes, of certain immovable renewable energy and energy enhancement assets. In particular, Hannon Armstrong announced that it has received a private letter ruling treating loans secured by energy enhancement and renewable energy assets as qualifying real property mortgages that generate qualifying mortgage interest for purposes of the REIT requirements.

Although a private letter ruling is binding on the IRS only with respect to the taxpayer that received the ruling, the ruling disclosed in the Hannon Armstrong S-11 is an encouraging sign for REITs that are interested in investing in the renewable energy sector, as the announcement of the private letter ruling confirms the tax law viability of the energy REIT vehicle.

Skadden has extensive experience with REITs, including with the use of REITs to invest in renewable energy. Our REIT group is available to answer any questions you may have regarding the use of REITs for renewable energy investments.

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