November 14, 2016

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Dear Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (SIFMA)[1] has become aware that the United Kingdom, Germany, Spain, France, and Italy (hereinafter the G5 countries) have written a letter to the US Treasury that states their position that dividend equivalent payments, as defined by Code Section 871(m)[2] and the underlying regulations, do not qualify as dividends under the applicable United States tax treaty when paid by non-US entities. We understand their view to be that such payments fall under the "Other Income" article of the relevant treaty and,

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] References to sections are to the sections of the Internal Revenue Code of 1986, as amended.

accordingly, the United States has no taxing rights where the beneficial owner is a qualified treaty resident of one of the G5 countries (subject to any other treaty requirements such as limitation of benefits provisions being met). We are concerned, therefore, that beneficial owners of dividend equivalent payments in these countries, hearing of their government's position, will argue that they should not be subject to United States withholding under the "Dividend" article of the applicable tax treaty and will not consent to any such taxation by non-US payors. Because non-US entities paying dividend equivalent amounts are withholding agents under Chapters 3 and 4 of the Code, if this issue is not resolved, then non-US entities would not be able to comply with United States tax rules with respect to such treaty residents. Moreover, if such non-US entities are "qualified derivative dealers" (QDDs), there is a significant concern that in the absence of United States withholding to G5 residents, such QDDs themselves would be liable for such withholding as a result of the obligation to pay the QDD's "section 871(m) amount" under Notice 2016-42.[3]

We are writing therefore to request that the effective date of the section 871(m) regulations be delayed until the United States has resolved this point with the G5, either by the United States and G5 members agreeing which treaty provision applies or the United States changing the regulations and Notice 2016-42 to account for the G5 views. In the latter case, it is imperative that the industry have time to renegotiate documentation and rebuild withholding tax systems to take into account any such new rules. For example, if the United States decides to apply only a single layer of withholding tax on payments made from the United States, US withholding agents would need time to rebuild systems to effect withholding and reporting on non-US dealers, including affiliates. In conjunction with the rebuilding, foreign dealers will need time to renegotiate their documentation to make clear they will not withhold on clients but will pass on only the net amount of dividends they receive directly or indirectly on hedging transactions to their clients. Such actions could not be completed by January 1, 2017.

[3] I.R.S. Notice 2016-42, 2016-29 I.R.B. 67.

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As it is now mid-November and updated guidance has not yet been published, our members are very concerned about the ability to comply with the regulations by January 1, 2017. We would welcome the opportunity to speak with you about our concerns. Please feel free to contact Payson Peabody at 202-962-7300.

Respectfully,

Payson R Peabody

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