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Re: Single stock equity swaps on publicly traded equities of U.S. corporations

Dear Sir/Madam:

The Securities Industry and Financial Markets Association ("SIFMA")¹ appreciates the openness of IRS and Treasury to discussing various technical issues with us earlier this year relating to single stock equity swaps on publicly traded equities of United States companies. The members of SIFMA remain committed to assisting in any way that you may find helpful and appropriate as you work to provide guidance in this area.

SIFMA wishes to stress that swaps have become common and customary transactions, which are an important method for investment professionals to obtain economic exposure to securities. Counterparties enter into equity swaps for the same reason they transact in physical shares – to obtain economic exposure to an underlying security. Because swaps and physical transactions are entered into for the same fundamental economic reason, the economic characteristics of swaps are inherently very similar to the economic characteristics of physical ownership. Nevertheless, there can be regulatory, economic, administrative and/or business advantages to a swap transaction as compared to physical ownership of stock.

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

The tax law is clear that payments under notional principal contracts are not subject to withholding tax. SIFMA recognizes that there are complex characterization issues that arise when trying to determine whether a transaction documented as a swap should be recharacterized, and that there may be equity swap transactions that warrant recharacterization and the imposition of U.S. withholding tax on payments to non-U.S. counterparties. There is no public guidance, however, for taxpayers to follow to ensure that their equity swap transactions are subject to the default sourcing rule and not subject to recharacterization. Due to the current state of uncertainty in this area of law, the members of SIFMA strongly support the Treasury and IRS issuing guidance as soon as possible that is as specific as possible.

Please do not hesitate to contact me (at 202-962-7326 or pmcclanahan@sifma.org) if we can assist in any way as you consider guidance to eliminate uncertainty and reduce the burdens and inefficiencies for both the IRS and taxpayers associated with current law. We hope that this topic will be viewed as a high priority.

Sincerely,

Signature Removed for
Electronic Posting

Patti McClanahan
Managing Director, SIFMA

Cc: Michael Novey
David Shapiro