



January 16, 2025

CC:PA:01:PR (REG-112129-23)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Proposed Regulations Regarding the Corporate Alternative Minimum Tax

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to Treasury and the IRS in response to the recently proposed tax regulations that implement the corporate alternative minimum tax (“CAMT”) rules that were enacted as part of the Inflation Reduction Act (the “Proposed Regulations”). SIFMA shares the goals of Treasury and the IRS to implement the CAMT in a manner that is both administrable and aligned with Congress’s intent when it enacted the CAMT statute. SIFMA would be happy to discuss its recommendations with Treasury and the IRS or provide further information if doing so would be helpful in developing further CAMT guidance.

I. Executive Summary

In general, the Proposed Regulations should be modified to provide that the “adjusted financial income” (“AFSI”) of a taxpayer is equal to the “financial statement income” (“FSI”) of the taxpayer, subject only to the adjustments that are specifically required under the Code and other limited adjustments described below. In addition, SIFMA makes the following specific recommendations:

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

- The Proposed Regulations, when finalized (the “Final Regulations”), should generally allow a corporate partner in a non-consolidated partnership to elect out of the “bottom up” approach in the Proposed Regulations, and to instead compute its distributive share of AFSI from a partnership based on a “top-down” method. If made, this election should apply to all such partnership interests that are held by a corporate partner, and the decision to make (or not make) such an election should be irrevocable without the consent of the IRS.
 - The need for such an election is particularly evident when considering the distortive results that would arise if the “bottom-up” approach outlined in the Proposed Regulations applies to investments accounted under the Proportional Amortization Method (“PAM”) or Hypothetical Liquidation at Book Value Method (“HLBV”).
 - The government should issue interim guidance that would permit the use of the “top down” election prior to the issuance of Final Regulations.
- The Final Regulations should generally allow a corporate partner in a non-consolidated partnership to elect out of the Section 721 and Section 731 “deferred sale” provisions that are set forth in the Proposed Regulations, in which case it would immediately recognize book gain or loss for CAMT purposes in respect of partnership contributions and distributions. If made, this election should apply to all such partnership interests that are held by a corporate partner, and the decision to make (or not make) such an election should be irrevocable without the consent of the IRS.
- SIFMA endorses the recommendations in the letter that was submitted, or will be submitted, by the Institute of International Bankers (“IIB”) with respect to the Proposed Regulations.
- The Final Regulations should provide that a non-corporate investment fund that is not engaged in a trade or business is not treated as a “deemed corporation” that is a common parent of a “foreign-parented multinational group” (“FPMG”).
- The Final Regulations should also make certain changes to the hedging rules:
 - First, the Final Regulations should modify the special hedging rule in the Proposed Regulations so that taxpayers would exclude fair value measurement adjustments from AFSI if (i) either the hedged item or the hedge itself (but not both) is subject to a fair value measurement adjustment and (ii) both of such positions are, or are not, subject to the mark-to-market method of accounting for tax purposes (as opposed to the Proposed Regulations, which would only apply the special hedging rule if both of such positions are not subject to the mark-to-market method of accounting for tax purposes).
 - In addition, the Final Regulations should clarify that a position that is marked to value under the “lower of cost or market” accounting method

should be treated as subject to a fair value measurement adjustment for purposes of the special hedging rule in the Proposed Regulations.

- Finally, the Final Regulations should allow taxpayers to elect out of the special hedging rules, and instead follow the FSI reporting of hedges and hedged items for CAMT purposes.
- The Final Regulations should clarify that the special rule applicable to mortgage servicing contracts also extends to hedges of such contracts. This clarification would ensure that income from the hedge, like income from the mortgage servicing contract itself, is not included in income for CAMT purposes before the date it is recognized for regular income tax purposes.

II. Background

The CAMT imposes a minimum tax on an “applicable corporation” that is generally equal to 15% of that corporation’s AFSI.² A corporation’s AFSI is the net income or loss of the taxpayer set forth on the taxpayer’s “applicable financial statement” (“AFS”) for such taxable year (that being, its FSI), subject to certain adjustments.³ The IRS and Treasury have substantial authority to modify how AFSI is computed, “as the Secretary determines necessary to carry out the purposes of this section.”⁴

On September 12, 2024, the IRS and Treasury issued the Proposed Regulations. SIFMA appreciates the considerable thought and effort that went into crafting the Proposed Regulations and prior Notices, and recognizes that implementing a minimum tax that starts with FSI, subject to certain adjustments, is undoubtedly complex. As discussed further below, however, SIFMA believes that certain elements of the Proposed Regulations introduce undue complexity and compliance burdens that could hinder their intended purpose.

When CAMT was enacted, it was expected that CAMT would apply to a small number of the largest corporations, and Treasury has recently confirmed that this expectation has not changed.⁵ Under the Proposed Regulations, however, we expect that many thousands of corporations and partnerships, including relatively small partnerships, would incur substantial compliance costs, even though we expect that the vast majority of such taxpayers would not be subject to any tax under the CAMT regime. Moreover, the government would also then incur

² See Section 55(b)(2).

³ See Section 56A.

⁴ See Section 56A(c)(15).

⁵ The CAMT lacks a formal legislative history. However, reports prepared by the Congressional Research Service estimated that the CAMT was expected to apply to between 150 and 250 corporations. See Congressional Research Service, “The 15% Corporate Alternative Minimum Tax” (January 19, 2023), at 6. More recently, Treasury has stated that it expects that approximately 100 corporations will pay the CAMT. See Press Release, “U.S. Department of the Treasury Releases Proposed Rules for Corporate Alternative Minimum Tax to Address Significant Corporate Tax Avoidance By Companies with \$1 Billion Or More In Annual Profit” (September 12, 2024).

substantial costs in enforcing CAMT as it would need to potentially audit many thousands of taxpayers for CAMT compliance, notwithstanding the fact that relatively few taxpayers will be subject to any CAMT liability.

The complexity of the Proposed Regulations imposes significant compliance burdens that will impact many taxpayers, including small and mid-size taxpayers and partnerships. This is particularly the case for financial institutions, as they generally hold interests in numerous partnerships. As described below, we believe that the objectives of the CAMT would be better realized with an elective simplified approach in the case of partnerships that would reduce these compliance burdens and associated costs, while maintaining sound tax administration and allowing the government to collect the intended revenues under the CAMT.

III. Recommendations

A. General Simplification

We recommend that the Proposed Regulations be modified to provide that the AFSI of a taxpayer is generally equal to the FSI of the taxpayer, subject only to the adjustments that are specifically required under the Code, adjustments that are necessary to prevent abuse, and the adjustments described below with respect to hedging transactions. We acknowledge that many of the adjustments to FSI in the Proposed Regulations would reduce a taxpayer's CAMT liability (to the extent the taxpayer is otherwise subject to tax under CAMT), but we nevertheless advocate that such adjustments be limited in order to reduce the costs of implementing the CAMT regime and to ensure that the CAMT is based on book income in the manner that was intended by Congress.⁶ We note in this regard that the Proposed Regulations provide for many adjustments to FSI that are not explicitly required by the statute and will require affected taxpayers to separately report amounts from raw accounting ledger data (rather than using data from existing financial statement reporting processes). The implementation of these adjustments will be extremely complex and costly for both SIFMA members and other taxpayers.

The Proposed Regulations also often import concepts from the corporate income tax in a manner that increases complexity, including when not required by the Code or necessary to prevent abuse. The CAMT is fundamentally a minimum tax on FSI, and the application of such rules to the CAMT both adds complexity and dilutes its effectiveness as a tax on FSI.

Furthermore, we believe it is important for the government to consider that publicly traded corporations are generally required to report income tax accruals to their shareholders on their quarterly financial statements (*e.g.* as ASC 740 provisions under U.S. GAAP). Many of the adjustments mandated by the Proposed Regulations will necessitate the maintenance of CAMT-specific records that serve no other purpose, and will also require taxpayers to seek information from third parties. We expect that obtaining needed CAMT-specific data on a quarterly basis will

⁶ Despite the CAMT's lack of formal legislative history, the history of various predecessors to the CAMT is clear in this respect. For instance, the General Explanation of the Administration's FY 2022 Revenue Proposals stated that the CAMT was intended to "reduce the significant disparity between the income reported by large corporations on their federal income tax returns and the profits reported to shareholders in financial statements by requiring them to pay a minimum amount of tax based on their reported financial income."

be extremely challenging, and in some cases may not be feasible. While the use of estimated tax accruals is permitted under U.S. GAAP, estimates are inherently imprecise, and the complexity of the CAMT regulations will make the process of determining a corporation's CAMT accruals more challenging.

We acknowledge that there may be circumstances in which Treasury and the IRS find it necessary, due to countervailing policy considerations, to implement additional adjustments to AFSI, even if those adjustments are not explicitly required by the statute. Nevertheless, we would urge Treasury and the IRS to be judicious about such variations, and make such adjustments—particularly if such adjustments are mandatory—only in situations where they are necessary to prevent avoidance of the CAMT or to address significant policy concerns. Minimizing such adjustments (and instead basing the CAMT on FSI where possible) will simplify the inherently challenging tax of complying with the CAMT.

While we have outlined a general approach for revising the Proposed Regulations, this letter focuses on a select set of issues that are most critical to SIFMA members and hold particular significance for the financial services industry. Consequently, this letter is not intended to provide an exhaustive discussion of all the changes our members believe should be made to the Proposed Regulations.

B. Application of CAMT to Partnerships

As discussed above, financial institutions generally hold interests in numerous partnerships, and many hold thousands of direct or indirect partnership interests. These investments serve important functions, including facilitating joint ventures, structuring client investments, meeting Community Reinvestment Act obligations, and allowing for investments that yield tax benefits (such as the Low-Income Housing Tax Credit, the New Markets Tax Credit and various renewables credits) that Congress enacted to promote investment in certain industries, technologies and communities. Nevertheless, the size of any one partnership investment is typically not material to an institution's balance sheet or P&L.⁷ Accordingly, the complexity of the CAMT rules applicable to partnerships is a significant concern for SIFMA members.

The Proposed Regulations require the use of a “bottom up” method to compute partnership inclusions for CAMT purposes, in which AFSI is first computed at the partnership level and a corporate partner must then determine its share of such AFSI.⁸ This procedure is extraordinarily complex, and would impose substantial compliance burdens on both corporations that are subject to CAMT and the partnerships in which they invest (directly or indirectly).

SIFMA appreciates that the IRS and Treasury selected a “bottom up” approach because they viewed it as consistent with the statute and perhaps considered it the most economically

⁷ Financial institutions generally hold minority interests in such partnerships. However, with respect to certain credit investments in partnerships, financial institutions sometimes hold a majority interest in such investments (for example, in clean energy investments or low income housing projects).

⁸ See generally Prop. Treas. Reg. § 1.56A-5.

accurate approach. SIFMA also appreciates that the “bottom up” method will in most cases (*e.g.*, in the case of partnership interests accounted for at fair value) reduce a CAMT entity’s AFSI relative to a “top-down” approach.

Nevertheless, the “bottom up” approach is especially complex because it requires taxpayers to disregard partnership items on its AFS and include its distributive share of partnership AFSI. Determining a partner’s distributive share of partnership AFSI is a very complex four-step process that requires (i) the CAMT entity to determine its distributive share percentage, (ii) the partnership to determine its modified FSI, (iii) the CAMT entity to multiply its distributive share percentage by the partnership’s modified FSI, and (iv) the CAMT entity to adjust this amount by certain separately stated AFSI amounts. A corporate partner will generally not have this information and will have to obtain this information from a partnership that otherwise would not prepare this information for any other purpose.

In the case of a tiered partnership, this process would be repeated (potentially numerous times due to the multiple tiers in many investment structures) to determine the distributive share amounts of each CAMT entity partner in the tiered partnership chain. Many of these computations will need to be done on an item-by-item basis, and doing so for potentially thousands of partnership investments (a level that is not uncommon among SIFMA members) will be extraordinarily challenging and burdensome for corporate taxpayers and for the government to examine and administer.

In fact, the preamble to the Proposed Regulations acknowledges that approximately 25,000 small partnerships would be impacted by the CAMT partnership reporting rules in the Proposed Regulations.⁹ We believe that the actual number of partnerships that will be impacted far exceeds that figure.

Each year, millions of partnerships file tax returns. Under the approach outlined in the Proposed Regulations, any partnership with a direct or indirect corporate partner that is an “applicable corporation” or that needs to substantiate that it is not an “applicable corporation” may face significant costs to comply with the CAMT reporting requirements. As previously noted, Congress intended for the CAMT to apply only to a small subset of corporate taxpayers, and it is hard to imagine that Congress also intended to impose substantial costs and burdens on many thousands of partnerships in order to achieve that goal. Furthermore, if the Proposed Regulations are finalized as written, partnerships may be reluctant to accept investment from any direct or indirect corporate partners that would trigger CAMT reporting obligations.¹⁰ This could have a negative economic impact, discouraging investment that would otherwise be made, which runs counter to sound tax policy and the broader objectives of the CAMT regime.

⁹ Preamble to the Proposed Regulations at 89 FR 75128 (Sept. 13, 2024).

¹⁰ Even if partnerships decide to accept CAMT entities as investors, difficult commercial questions would also arise regarding whether it is appropriate for the cost of compliance with the CAMT reporting rules to be allocated solely to a partnership’s CAMT investors, or whether such expenses should instead be shared among all partners.

1. Top-Down Election

In light of the issues described above associated with a “bottom up” approach, SIFMA recommends that the Proposed Regulations be modified to allow a corporate partner in a non-consolidated partnership to elect out of the “bottom up” approach in the Proposed Regulations, and to instead compute its distributive share of AFSI from a partnership based on a “top-down” method (a “Top-Down Election”). Under this approach, a corporate partner's AFSI inclusion with respect to a partnership investment would, if a Top-Down Election is made, equal the FSI that it includes on its own audited financial statements with respect to such investment.

SIFMA recommends that a Top-Down Election, if made, should apply to all partnership interests that are held by a corporate partner unless the partnership is consolidated with the corporate partner for AFS purposes. SIFMA further recommends that a Top-Down Election (or failure to make a Top-Down Election) be irrevocable without the consent of the IRS. This should mitigate any concerns that the election will be made (or not made) in an inconsistent manner based on what is best for a taxpayer in a particular year, or based on what is best for a taxpayer with respect to each individual partnership.

We believe that a Top-Down Election is permitted under the CAMT statute. We first note that Section 56A(e) provides a broad grant of regulatory authority to issue guidance regarding the definition of AFSI. Moreover, Section 56A(c)(2)(D)(i), which is the general statutory rule for including income of partnerships for CAMT purposes, begins with “except as provided by the secretary”, which is broader than the corresponding provision in Section 56A(c)(2)(C) with respect to interests in a corporation. This indicates that Congress deliberately granted broader regulatory discretion in applying CAMT to partnerships, likely acknowledging that the unique substantive and compliance challenges posed by partnerships require such flexibility to create a functional and effective CAMT framework.

In addition, we believe that a Top-Down Election is also consistent with Congressional intent. As previously noted, information provided to Congress expressed an expectation that the CAMT would be limited to a small number of very large taxpayers, and such an election would further the intent that the CAMT impact a limited number of taxpayers. Furthermore, a Top-Down Election would be more directly based on FSI, which is the foundation upon which Congress intended to impose a minimum level of taxation when it enacted the CAMT.

Given the above, we believe there is sufficient authority for the Treasury and the IRS to permit a Top-Down Election under which taxpayers use the FSI reported in respect of a partnership investment for CAMT purposes. However, if the government is concerned that including unrealized gains and losses in FSI under this method might conflict with the statutory “distributive share” provision—given that a partnership’s FSI typically excludes unrealized gains and losses—the government could consider requiring taxpayers making such an election to adjust its FSI for a partnership interest by disregarding any portion of FSI attributable to changes in the market value of that partnership interest.

Furthermore, we believe that the government would not be adversely impacted by the Top-Down Election, because this election would require the electing taxpayer to forgo many of the typically taxpayer-favorable adjustments made to financial statement income under the CAMT regime, in exchange for a simplified methodology. Additionally, the government should not be concerned about the possibility of a taxpayer challenging the validity of such an election, as a taxpayer would presumably have no standing to challenge an elective regime.

Finally, given the critical importance of this issue to taxpayers, particularly financial institutions, and its application to current tax returns and reporting, we recommend that the government provide interim guidance allowing taxpayers to make a Top-Down Election before the issuance of the Final Regulations.

The following two subsections address the application of the Top-Down Election when income from a partnership is accounted for under the PAM or HLBV methods. As discussed below, the PAM and HLBV methods were developed primarily for “tax equity” investments in partnerships that own assets qualifying for tax credits (e.g., low-income affordable housing or renewable energy). “Tax equity” partners generally expect to realize less cash at the end of a project’s term than they initially invested, but are compensated for such losses by being allocated a disproportionate share of the project’s tax credits, depreciation, and other tax benefits. These accounting methods address the shortcomings of the traditional equity method, which often fails to reflect the economics of investments in partnerships with complex capital structures.

As discussed below, the “bottom-up” approach poses specific challenges for investments accounted for under the HLBV or PAM methods for book purposes, because the FSI of a partner (which is calculated under the HLBV or PAM methods) will generally bear no relationship to the FSI of the partnership (which is not calculated using the HLBV or PAM methods). As a result, and as illustrated by the examples below, the application of the “bottom-up” approach in such a case will yield distortive results. This issue is particularly significant for SIFMA members because, as discussed above, financial institutions frequently invest in hundreds or thousands of such partnerships.

a. HLBV Method

The HLBV method is a balance sheet-oriented approach to the equity method of accounting¹¹ that provides a framework for allocating GAAP income or losses to investors. Under this method, one first determines the amount each partner would receive if the partnership were hypothetically liquidated at book value at the end of each measurement period. The change in this allocated amount during the period—adjusted for distributions and contributions—determines the book income or expense allocated to each partner.

Because income or losses are allocated based on the hypothetical liquidation value of the partnership, investors using the HLBV accounting method typically report income or expense

¹¹ Proposed §§1.56A-1(b)(15) explicitly provides that HLBV is an “equity method” for purposes of the distributive share computation.

amounts that differ significantly from their share of the partnership's FSI. Consequently, as discussed further below, applying the "bottom-up" approach for CAMT purposes will likely result in substantial distortions from book income for taxpayers accounting for partnership interests under the HLBV method.

The Preamble to the Proposed Regulations acknowledges this issue, stating: "The Treasury Department and the IRS appreciate that the calculation methodology provided in proposed §1.56A-5(e)(2) may produce imprecise results under certain circumstances, particularly for a CAMT entity using the hypothetical liquidation at book value method under the equity method to account for its partnership investment for AFS purposes. ... The Treasury Department and the IRS request comments on more precise methods that could be used to calculate a CAMT entity's distributive share percentage, including in the circumstances described above."¹²

The following example illustrates the distortion described above.

Facts: PRS1 is a partnership owned by X, a corporation and tax-equity investor, and A, an individual developer. For 2024:

- X has FSI of \$500 million, consisting of \$515 million from its direct operations and a \$15 million loss from its investment in PRS1, which it accounts for using the HLBV accounting method.
- PRS1 reports FSI of -\$0.1 million, which includes \$20 million of income from regular operations and \$20.1 million of covered book depreciation expense.
- For regular tax purposes, the \$20 million of income is included in gross income, and X has no deductible tax depreciation because the relevant asset previously benefited from bonus depreciation.

Analysis: The calculation of X's distributive share from PRS1 for 2024 under the Proposed Regulations involves the following steps:

1. Step 1: Calculate the distributive share percentage

- X computes a fraction, where the numerator is -\$15 million (the FSI reported on its AFS from PRS1) and the denominator is -\$0.1 million (100% of PRS1's FSI).
- The resulting distributive share percentage is 15,000% ($-\$15 \text{ million} \div -\0.1 million).

2. Step 2: Compute the modified FSI of the partnership

- PRS1's FSI of -\$0.1 million is adjusted to disregard covered book depreciation

¹² Preamble to the Proposed Regulations at 89 FR 75077 (Sept. 13, 2024).

expense (\$20.1 million) and reduced by deductible tax depreciation (\$0).

- PRS1's modified FSI is therefore \$20 million (-\$0.1 million + \$20.1 million - \$0).

3. Step 3: Multiply the distributive share percentage by the modified FSI of the partnership

- X multiplies its distributive share percentage (15,000%) by PRS1's modified FSI (\$20 million), resulting in **\$3,000 million** of modified FSI.

As a result, X's FSI excludes the \$15 million loss from its PRS1 investment under the HLBV method. Instead, X must include \$3,000 million as its distributive share amount from PRS1. Consequently, X's total AFSI for 2024 increases from \$500 million to \$3,515 million (\$500 million + \$3,000 million + \$15 million).

This example highlights the distortion that arises under the Proposed Regulations in the case of a partner that accounts for a partnership interest under the HLBV method. Specifically, in the example above, X's AFSI is artificially inflated from \$500 million to \$3,515 million without any corresponding economic profit or tax policy rationale, and this distortion is not reversed until the partnership interest is sold or the partnership is liquidated. Additionally, this example illustrates the sensitivity of the distributive share calculation to small changes in the partnership's FSI. For instance, if PRS1's FSI were \$0 instead of -\$0.1 million, X's distributive share percentage would presumably be zero, leading to vastly different results.¹³

As a result, it is essential that the Final Regulations at a minimum allow a corporate partner in a partnership using the HLBV method to elect a top-down approach to compute its FSI related to the partnership interest.

b. PAM Method

The PAM accounting method is primarily used for investments in partnerships that own assets qualifying for tax credits, such as low-income housing tax credit partnerships.¹⁴ Under

¹³ In enacting CAMT, Congress intended to allow taxpayers to reduce their CAMT liability through credits generated by investments in low-income housing and green energy—investments typically made through partnerships accounted for under HLBV or PAM. Therefore, it would be inconsistent with Congressional intent if CAMT effectively prevented the utilization of these credits, and potentially caused even greater harm by significantly overstating taxpayers' AFSI. As demonstrated by the examples in the text, this is exactly the outcome that can occur with the bottom-up approach.

¹⁴ The Proposed Regulations do not address whether PAM is an equity method of accounting for purposes of the fraction in the distributive share computation. However, even if PAM is not treated as an equity method of accounting for this purpose, the distortions described below would also arise, because the denominator of the distributive share fraction described below would still be an amount that is “reflective of the proportionate amount of partnership's FSI the CAMT entity is reporting for AFS purposes”. See Preamble to the Proposed Regulations at 89 FR 75128 (Sept. 13, 2024). For purposes of simplicity, the remainder of this discussion assumes that PAM is treated as an equity method subject to the methodology described above, with the partnership's FSI used as the denominator of the applicable fraction.

PAM, the investor amortizes the cost of the investment in proportion to the tax credits and other tax benefits received over the life of the investment. This method aligns the recognition of the investment's cost with the receipt of tax benefits, such as tax credits and tax deductions. The amortization expense is recognized in the tax line of the income statement. This approach is generally used for investors seeking to match the timing of tax benefits with the financial reporting of the investment's cost, thereby providing a clearer picture of the investment's impact on the investor's financial position.¹⁵ The following example illustrates the application of PAM.

Facts: X, a tax-equity investor, invests \$90 million in a partnership named PRS and accounts for the investment using PAM. X is subject to a 20% tax rate. The investment is expected to yield \$98 million in total tax benefits over a five-year period, comprised of (i) \$80 million in tax credits and (ii) \$18 million in tax depreciation benefits (from bonus depreciation). No cash distributions are made during the investment period. The expected tax benefits align with the actual tax benefits realized.

Analysis: The table below summarizes the annual results of the investment for book purposes. Under PAM, the tax benefits and the proportional amortization of the investment are netted, resulting in the investment's effect being reflected solely on the “tax line” of the investor’s income statement.¹⁶

	Formula	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Tax Credit	$a = \$80\text{mm}/5$	\$ 16.00	\$ 16.00	\$ 16.00	\$ 16.00	\$ 16.00	\$ 80.00
Tax Effects of Depreciation (bonus depreciation)	$b = (\$90\text{mm} * 20\%) / 2$	\$ 9.00	\$ 9.00	\$ -	\$ -	\$ -	\$ 18.00
Expected Tax Benefit	$c = a + b$	\$ (25.00)	\$ (25.00)	\$ (16.00)	\$ (16.00)	\$ (16.00)	\$ (98.00)
Expected Tax Benefit Ratio	$d = c / \text{sum of all years}$	25.51%	25.51%	16.33%	16.33%	16.33%	100%
Proportional Amortization of the Investment	$e = d * \$90\text{mm}$	\$ 22.96	\$ 22.96	\$ 14.69	\$ 14.69	\$ 14.69	\$ 90.00
FSI	N/A	0	0	0	0	0	0
Tax Line - Current Tax Expense (Benefit)	$c + e$	\$ (2.04)	\$ (2.04)	\$ (1.31)	\$ (1.31)	\$ (1.31)	\$ (8.00)

As illustrated in the example above, a partner accounting for an interest in a partnership under PAM generally includes minimal or no FSI with respect to its investment and amortizes its investment cost as a reduction to the tax benefit amount used to calculate the tax expense on its financial statements. Consequently, the “bottom-up” distributive share methodology outlined in the Proposed Regulations will generally lead to distortions, as the numerator (the partner’s FSI with respect to the partnership) bears little or no correlation to the partnership FSI included in the denominator. As a result of this misalignment, a partner accounting for a partnership interest under

¹⁵ See FASB accounting Standard Update: “Investments—Equity Method and Joint Ventures (Topic 323)” expanding the use of the PAM method.

¹⁶ This example is modeled on the OECD report regarding “Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two), July 2023” (page 38). See: <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf>. Notably, the OECD’s Pillar II guidance acknowledged that investments accounted under PAM require special considerations and that the tax treatment of such investments should generally follow the book treatment.

PAM would typically recognize minimal, if any, income in AFSI throughout the investment's duration, followed by a disproportionate loss for CAMT purposes upon the investment's termination. This outcome not only deviates significantly from financial statement income but also imposes an unnecessary burden on taxpayers. To address these issues, it is critical that such partners be permitted to elect to determine their CAMT income related to the partnership based on their FSI for the partnership, subject to the adjustment described in the following paragraph.

If the Final Regulations allow partners to make a Top-Down Election, they must clarify how FSI is calculated in the case of a partnership interest that is subject to the PAM accounting method. More specifically, as noted above, under the PAM, a partner amortizes the initial cost of an investment (less any expected residual value) over the anticipated term of the investment, proportionally based on the expected timing of the applicable tax benefits. The partner then accounts for the tax benefits and amortization as an adjustment to its net income tax expense. Accordingly, if a partner bases its AFSI attributable to a partnership interest that is accounted for under the PAM solely on its FSI with respect to the partnership interest, it would arguably have no AFSI income or loss because Section 56A(c)(5) excludes income tax items from AFSI. However, such a taxpayer has effectively incurred an expected pre-tax economic loss that would be typically reflected in FSI if the partnership interest were not accounted for under PAM. To address this issue, we recommend that taxpayers that make a Top-Down Election treat the amortization of an investment under PAM as a non-tax item, even though U.S. GAAP treats it as a tax item. Under this approach, a partner's FSI for CAMT purposes with respect to the partnership interest in the example above would be the negative amount listed each year in the line "Proportional Amortization of the Investment".

2. Election Out of the "Deferred Sale" Rules

The Proposed Regulations provide that a partner that contributes property to a partnership in a tax-free contribution under Section 721 will exclude the book gain from its AFSI. Instead, the contribution is treated as a deferred sale for CAMT purposes, with the gain included in AFSI over a specified period depending on the type of asset contributed to the partnership. A similar approach is adopted for tax-free distributions of property under Section 731(c), where the partner defers the gain recognized for book purposes over a period based on the nature of the distributed asset.¹⁷

We assume that the government included this adjustment to FSI to align the CAMT regime more closely with the tax non-recognition provisions typically applied to contributions to, and distributions from, a partnership. While we acknowledge that this approach may generally benefit taxpayers by deferring the recognition of gain for CAMT purposes, it will also introduce considerable complexity and cost. Partners and partnerships will need to establish a CAMT-specific accounting system to track these contributions and distributions, which would not otherwise be required for any other purpose. Moreover, these adjustments are not mandated by the Code and further diverge from the book income base upon which the CAMT is intended to be levied.

We therefore recommend that the Proposed Regulations be revised to allow a corporate

¹⁷ See Prop. Treas. Reg. § 1.56A-20(c)(2) (contributions); Prop. Treas. Reg. § 1.56A-20(d)(1) (distributions).

partner in a non-consolidated partnership to elect out of the deferred sale provisions in the Proposed Regulations, in which case it would immediately recognize book gain or loss for CAMT purposes in respect of partnership contributions and distributions. If made, this election should apply to all such partnership interests that are held by a corporate partner, and the decision to make (or not make) such an election should be irrevocable without the consent of the IRS. While such an election would generally be expected to increase a CAMT entity's AFSI by accelerating gain recognition for CAMT purposes, we believe that many partnerships and corporate partners would prefer such an election, because it would eliminate the need to track, compute and report the deferred CAMT gain or loss over an extended period of time.

C. "Inbound" Investments

SIFMA's membership includes non-U.S. financial institutions that operate in the United States through branches or subsidiaries. We understand that the IIB has submitted, or will submit, a comment letter with respect to the application of the Proposed Regulations to a branch or subsidiary that is included in an FPMG. We have reviewed the IIB letter and endorse the recommendations therein. Accordingly, we will not separately address those issues in this letter.

D. Foreign-Parented Multinational Groups

Under the Code, if a corporation is a member of a "foreign-parented multinational group for any taxable year," then, solely for purposes of determining whether such corporation meets the \$1 billion AFSI test for becoming subject to the CAMT, the AFSI of all members of the "foreign-parented multinational group" can be taken into account.¹⁸ In general, the Code defines a "foreign-parented multinational group" to mean a group of two or more entities if: (i) at least one entity is a domestic corporation and another entity is a foreign corporation, (ii) such entities are included in the same applicable financial statement with respect to such year, and (iii) either—(x) the common parent of such entities is a foreign corporation, or (y) if there is no common parent, the entities are treated as having a common parent which is a foreign corporation under regulations.¹⁹ Accordingly, in the absence of regulations to the contrary, a group will not be treated as a "foreign-parented multinational group" if its common parent is classified as a partnership, whether domestic or foreign, for tax purposes.

The Proposed Regulations, however, significantly expand this rule by deeming any "ultimate parent" entity that is not a corporation for tax purposes to be a foreign corporation for purposes of the FPMG rules if it directly or indirectly owns a foreign trade or business or a controlling interest in a foreign corporation (in each case, generally excluding ownership through a domestic corporation).²⁰ Accordingly, the Proposed Regulations would seemingly treat a partnership investment fund that is not engaged in a trade or business as a common parent of an FPMG, so long as it owns *any* foreign corporation or business *regardless of the size of that*

¹⁸ See Section 59(k)(2)(A).

¹⁹ See Section 59(k)(2)(B).

²⁰ See Prop. Treas. Reg. § 1.59-3(e).

corporation or business. In such a case, the fund would be aggregated with its portfolio investments for purposes of determining whether it is an “applicable corporation” subject to CAMT.

We strongly urge the government to reconsider this position, as we believe Congress did not intend this outcome. Moreover, this approach creates logical inconsistencies and undermines the policy objectives of the CAMT.

First, while the CAMT does not have any committee reports, the Senate rejected amendments to the bill prior to passage that would have explicitly subjected investment funds to the CAMT provisions under the aggregation rules that apply to domestic groups. Specifically, the CAMT aggregation rules for a domestic group follow the aggregation principles under Section 52 (a) and (b) of the Code. Under these rules, a partnership that is the parent of a controlled group is aggregated with its portfolio companies only if the partnership itself is engaged in a trade or business.²¹ Consequently, both the CAMT statute and the Proposed Regulations would not aggregate an investment partnership that is not engaged in a trade or business with its portfolio investments, provided the partnership does not hold any foreign subsidiaries or businesses and is therefore subject to the domestic group rules rather than the FPMG rules.

However, an earlier version of the statute, which was placed on the Senate calendar, would have modified the application of the Section 52 aggregation rules under the CAMT statute, treating an investment partnership as engaged in a trade or business based on its investment activities. This version was intended to aggregate investment funds that are not otherwise engaged in a trade or business for purposes of the domestic group aggregation rule. Senator Thune, however, introduced an amendment (“Thune Amendment”) to eliminate this modification, and his amendment was ultimately adopted in the final CAMT legislation.²²

This clearly reflects Congress’s intent that investment partnerships should not be aggregated with their portfolio investments under the CAMT rules. While the Thune Amendment applies only to domestic controlled groups and does not explicitly address the FPMG rules, there

²¹ See Treas. Reg. § 1.52-1(c), which requires each entity in a “parent-subsidiary group under common control” to be engaged in a trade or business.

²² See Amendment No. 5472 to Amendment No. 5194 to H.R. 5376 (2022). See also Remarks of Senator John Thune, Congressional Record (August 6, 2002), at S4199-S4200 (“Democrats say that the book minimum tax will apply only to very large corporations with a 3-year average financial statement income in excess of \$1 billion, but as their bill is currently proposed—and this change occurred basically in the last 24 hours—the bill would now require unrelated companies of any size held by funds or partnerships to combine their otherwise unrelated income to determine if they meet an aggregate \$1 billion income threshold, subjecting each respective company to the book minimum tax even if its own income is far too low. This significant expansion of the tax has the potential to subject thousands of American businesses to the book minimum tax’s administrative and financial burdens. The nonpartisan Joint Committee on Taxation said this change would raise \$35 billion in taxes on potentially thousands of small- and medium-size businesses, not merely a hundred or so large companies as our Democratic friends would have you believe. . . . I encourage my colleagues to support this amendment and help ensure our Nation’s small- and medium-size businesses aren’t hit with a misguided and entirely inappropriate \$35 billion tax hike.”). The pertinent amendments can be viewed online here: <https://www.congress.gov/bill/117th-congress/house-bill/5376/amendments>.

is no apparent policy justification for aggregating an investment fund with its portfolio companies simply because it holds a single foreign corporation (making it subject to the FPMG rules), while excluding it from aggregation if it holds no foreign corporations (and is therefore subject to the Section 52 aggregation rules for domestic groups). Congress likely deemed it unnecessary to address this point in the context of the FPMG rules because the FPMG statute applies, by its terms, only when the common parent is a corporation. Thus, there was presumably no need to clarify that an investment partnership should not be aggregated with its portfolio companies under the FPMG rules.

While Congress did grant Treasury and the IRS authority under Code Section 59(k)(2)(D)(i) to expand the application of the FPMG rules, it is highly unlikely that this authority was intended to be used in a manner that would significantly broaden the tax base. The statute's use of the phrase "(if any)" in reference to "the entities (if any) which are to be treated under [section 59(k)(2)(B)(iii)(II)] as having a common parent which is a foreign corporation" indicates that Congress intended this regulatory authority to be applied narrowly, if at all. The expansion of this authority to treat investment funds that are not engaged in a trade or business as a "deemed corporation" for FPMG purposes would likely conflict with recent Supreme Court precedent.²³

Second, as previously noted, if an investment partnership is treated as a deemed corporation and the common parent for FPMG purposes (as suggested by the Proposed Regulations), this would lead to an inconsistent and illogical outcome. Specifically, an investment partnership that owns only domestic corporations would not be aggregated with its portfolio companies for CAMT purposes. However, the same partnership would be aggregated with its portfolio companies for CAMT purposes if it acquires a single foreign corporation, simply because it would then fall under the FPMG rules. We are unaware of any policy rationale to justify such a result, and it is highly unlikely that Congress intended for the CAMT to operate in this manner. Certainly, principles of statutory interpretation strongly disfavor such a reading.²⁴

Finally, there are also strong policy reasons to exclude private equity funds and similar investment vehicles from CAMT, except in cases where a portfolio company independently meets the \$1 billion threshold. Private equity funds are typically limited-life investment entities that hold diversified portfolios of businesses, each with independent management, and aim to generate returns by improving and eventually selling those businesses. This model contrasts sharply with operating corporations, which generally make long-term investments, manage more integrated operations, and focus on generating operating profits. Because operating corporations tend to be

²³ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2249 ("[W]hen the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. "); *see also*, *Prescott v. Northlake Christian School, et. al.*, 2004 WI 2434497, *4 ("The phrase 'if any' is simply shorthand for 'if there are any' and implies the possibility of 'none'").

²⁴ *Oshkosh Truck Corp v. United States*, 123 F. 3d 1477, 1481 (Fed. Cir. 1997) ("[U]nless there is a rational reason for different treatment, similarly-situated taxpayers should be treated similarly") (citations omitted); *see also*, *United States v. Kaiser*, 363 U.S. 299, 308 (1960) (Frankfurter, J., concurring) ("The Commissioner cannot tax one and not tax another without some rational basis for the difference.")

more unified, they are generally better equipped to handle the complexities of CAMT. By contrast, subjecting investment partnerships that are not engaged in a trade or business to the CAMT rules would introduce significant complexity. Such treatment could lead to unintended consequences, such as incentivizing fund managers to raise smaller funds that are unlikely to reach the \$1 billion threshold or to sell businesses earlier than planned to avoid triggering CAMT applicability. These outcomes would undermine investment strategies and run counter to sound tax policy.

Based on the discussion above, SIFMA recommends that the Proposed Regulations be modified so that a partnership that is an investment fund and that is not engaged in a trade or business will not be treated as a “deemed corporation” under the FPMG rules. The definition of “investment fund” for this purpose should be broad enough to encompass typical private equity funds, and the definition of “trade or business” should exclude investment activities, consistent with the approach outlined in the Thune Amendment. The government may also wish to consider adopting the Pillar 2 definition of an “investment fund” for this purpose.²⁵

E. Hedging Transactions

1. Taxpayers Subject to Mark-to-Market for Tax Purposes

The Proposed Regulations include a special rule for hedging transactions that is intended to eliminate mismatches that could arise if a hedge and the hedged item are treated differently for financial accounting purposes. More specifically, the Proposed Regulations generally disregard fair value measurement adjustments for AFSI purposes if (i) the hedged item or the hedge itself is subject to a fair value measurement adjustment but the other item is not and (ii) the hedged item and the hedge are not marked to market for regular tax purposes (the “Special Hedging Rule”).²⁶ This is intended to prevent a corporation from recognizing AFSI for CAMT purposes even though it does not recognize any income as an economic matter or for income tax purposes.

Although SIFMA appreciates that Treasury and the IRS considered the unique issues raised by hedging transactions, a mismatch of the type described above can still arise if either the hedged position or the hedge itself (but not both) is subject to a fair value measurement adjustment and both items are marked to market for regular tax purposes. The preamble to the Proposed Regulations suggests that Treasury and the IRS expected that such a scenario did not require a

²⁵ The relevant definition in the Pillar 2 model rules is as follows: “Investment Fund” means an Entity that meets all of the criteria set out in paragraphs (a) to (g) below: (a) it is designed to pool assets (which may be financial and non-financial) from a number of investors (some of which are not connected); (b) it invests in accordance with a defined investment policy; (c) it allows investors to reduce transaction, research, and analytical costs, or to spread risk collectively; (d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome; (e) investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors; (f) the Entity or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation); and (g) it is managed by investment fund management professionals on behalf of the investors.

²⁶ See Prop. Treas. Reg. § 1.56A–24(c)(2).

special rule because it states the following:

“Under proposed §1.56A-24(c)(2), a fair value measurement adjustment for an AFSI hedge or a hedged item for a taxable year would be disregarded by a CAMT entity for purposes of determining the CAMT entity’s AFSI if the CAMT entity (i) has a fair value measurement adjustment with respect to an AFSI hedge but not the hedged item or (ii) has a fair value measurement adjustment with respect to a hedged item but not the AFSI hedge. However, in either situation, the fair value measurement adjustment would not be disregarded if either the AFSI hedge or hedged item is marked to market for regular tax purposes. In these cases, the book and regular tax treatment of the AFSI hedge or hedged item are likely to correspond (for example, the hedged item may be marked-to-market for both book and regular tax purposes), so that no adjustment to AFSI is needed.”²⁷

However, notwithstanding the language above, we think that a similar mismatch could arise even if the hedge and the hedged item are subject to the mark-to-market method of accounting for tax purposes. This could be illustrated by the following example.

Facts: A corporation holds a commodity delivery contract and a hedge of the contract. The contract is not subject to fair value accounting and thus does not generate FSI until realized, whereas the hedge is subject to fair value accounting. The contract and the hedge are both marked to market for income tax purposes. At the end of year 1, the contract has decreased by \$20, and the hedge has appreciated by \$20.

Analysis: The Special Hedging Rule would not apply because the hedge and the hedged item are subject to the mark-to-market method of accounting for tax purposes. Although the CAMT and regular tax treatment of the hedge in this example do correspond (both are marked to market), the CAMT and regular tax treatment of the contract are not aligned, because the contract would be marked to market for tax purposes and not for book purposes. As a result, the CAMT entity would realize AFSI of \$20 for CAMT purposes, but would recognize no net income for tax purposes or as an economic matter. This is the same mismatch that would arise (in the absence of the special hedging rule in the Proposed Regulations) if the corporation did not mark-to-market both positions for tax purposes.

Accordingly, in light of the issue that is illustrated by the example above, we recommend that the Special Hedging Rule be revised so that fair value measurement adjustments shall be excluded from AFSI if (i) either the hedged item or the hedge itself (but not both) is subject to a fair value measurement adjustment and (ii) both of such positions are, or are not, subject to the mark-to-market method of accounting for tax purposes (as opposed to the Proposed Regulations, which would only apply the special hedging rule if both of such positions are not subject to the

²⁷ See Preamble to the Proposed Regulations, 89 Fed. Reg. 75062, 75109.

mark-to-market method of accounting for tax purposes).

2. “Lower of Cost-or-Market” Method of Accounting

In addition, some commodities are accounted for under a “lower of cost-or-market” (“LCM”) basis, while hedges of such items are subject to fair value accounting. Under the LCM method of accounting, an asset is valued at the lesser of its original cost or the “market” price, which is determined by reference to its replacement cost, its net realizable value, or its net realizable value minus a normal profit margin. It is not entirely clear whether a downward adjustment in the value of an asset under the LCM method to reflect a decrease in the value of the asset is treated as a fair market value adjustment under the Special Hedging Rule. If it is not so treated, there could be a mismatch of the type that the Special Hedging Rule is intended to address. This could be illustrated by the following example.

Facts: A corporation holds a commodity delivery contract and a hedge of the contract. The contract is subject to the LCM method of accounting, whereas the hedge is subject to fair value accounting. At the end of year 1, the contract has decreased by \$20, and the hedge has appreciated by \$20, so that both positions are marked to market for financial accounting purposes.

Analysis: If the LCM mark of the contract is not treated as a fair market value adjustment under the Proposed Regulations, then the fair market value adjustment of the hedge would be disregarded for CAMT purposes, whereas the \$20 loss on the contract would be taken into account for AFSI purposes. This would result in an inappropriate mismatch since the corporation did not recognize any income for FSI purposes or as an economic matter, and would likewise not recognize any income for tax purposes as long as both positions are, or are not, subject to the mark-to-market method of accounting for tax purposes.

Accordingly, in light of the issue that is illustrated by the example above, we recommend that the Special Hedging Rule be revised to clarify that a position that is marked to value under the “lower of cost or market” accounting method should be treated as subject to a fair value measurement adjustment for purposes of the special hedging rule in the Proposed Regulations.

3. Option to Elect Out of the Hedging Rules and Follow FSI

While, as noted above, we generally believe that the CAMT regime should not deviate from FSI book income, we think that the Special Hedging Rule (as modified by our comments above) is an appropriate exception in light of the unique mismatches that hedging transactions can produce.

Nevertheless, the Special Hedging Rule introduces additional complexity and compliance requirements, and cause AFSI to vary from book income. As a result, some SIFMA members believe that this complexity is unwarranted, and would prefer for the treatment of hedges for CAMT purposes to fully align with the treatment of hedges for FSI purposes, notwithstanding that such alignment may require taxpayers to include non-economic income within AFSI.

In view of these considerations, SIFMA recommends that the Final Regulations allow

taxpayers to elect out of the Special Hedging Rule and instead report income from hedging transactions and hedged items in accordance with the manner in which they are treated for FSI purposes.²⁸ Because the Special Hedging Rule is not required by the CAMT statute, Treasury and the IRS should have the authority to permit such an election. Moreover, while we understand that the government may be concerned about taxpayers selectively making or forgoing this election to minimize CAMT liability, this risk can be mitigated by requiring that the election apply to all of a taxpayer's hedging transactions and be irrevocable without IRS consent. These limitations, combined with the fact that mismatches between FSI and the income reportable under the Special Hedging Rule would generally reverse over time, should provide the government with comfort that allowing such an election will not lead to inappropriate tax planning or other abuses.

F. Mortgage Servicing Contracts

As discussed in the previous section, the timing of income inclusions from hedges and the related hedged items should be consistent for CAMT purposes. Specifically, income from both hedged items and their corresponding hedges should either be calculated in accordance with financial statement principles or regular income tax principles.²⁹ There should not be a situation in which income from the hedged item is computed using book income principles while the income from the hedge is calculated using regular income tax principles (or vice versa). Such an approach would create an unnecessary mismatch for CAMT purposes, where no such mismatch exists for book or regular income tax purposes.

We are concerned that the application of CAMT to mortgage servicing contracts (commonly referred to as “MSRs”) and associated hedges could introduce such a mismatch. Specifically, taxpayers frequently enter into hedges of MSRs to mitigate risks associated with the contracts, such as interest rate risks, foreign currency risks, basis risks, and prepayment risks. Taxpayers generally account for MSRs consistently under both tax and book purposes, ensuring alignment between the income from the MSR and the associated hedge. Accordingly, there would be no mismatch for CAMT purposes as long as the income from both the MSR and the hedge are accounted for under the same framework, either the book rules or the tax rules.

Section 56A(c)(10), however, provides for an adjustment to AFSI in the case of income from a mortgage servicing contract. The Proposed Regulations implement this rule by providing that “AFSI is adjusted so as not to include any item of income in connection with a mortgage servicing contract any earlier than the date such an income is included in gross income under chapter 1.”³⁰ There is no explicit corresponding rule for hedges of such contracts, which may lead to an

²⁸ For purposes of clarity, this election would only apply to the special hedging rule under Prop. Treas. Reg. § 1.56A–24(c) and not to the remainder of Treas. Reg. § 1.56A–24.

²⁹ As discussed earlier in this letter, we generally recommend that CAMT be computed in accordance with book income.

³⁰ See Prop. Treas. Reg. § 1.56A–25.

interpretation of the Proposed Regulations suggesting that income from the MSR is included based on taxable income for CAMT purposes, while income from the hedge is included based on book income for CAMT purposes.³¹ This could result in a distortion of income for CAMT purposes, where a taxpayer with little or no net income from an MSR and its hedge for tax and book purposes might report income in one year and a corresponding loss in another year for CAMT purposes.

To address this issue, we recommend that the Final Regulations clarify that if the special rule in Section 56A(c)(10) applies to an MSR, any hedge of the MSR should also be subject to the same rule. This would ensure that income from the hedge, like income from the MSR itself, is recognized for CAMT purposes when it is recognized for regular tax purposes, thereby avoiding the potential mismatch described above.

IV. Conclusion

SIFMA appreciates Treasury and the IRS's consideration of the comments and proposals in this letter. Please contact PJ Austin (pjaustin@sifma.org) if you have any questions regarding this submission.

Respectfully Submitted,



P.J. Austin

Vice President, Tax

³¹ It is possible that the reference to “income in connection with a mortgage servicing contract” could be interpreted to include a hedge of an MSR, but it is unclear whether that is a correct interpretation of the Proposed Regulations.