sifma
Invested in America

May 21, 2025

U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, D.C. 20220

Re: Proposed Changes to Existing Regulations

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (SIFMA)[1] submits these comments in response to Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative," (the "Executive Order") and the related "Presidential Memorandum Directing the Repeal of Unlawful Regulations." (the "Presidential Memorandum").

SIFMA believes that the regulations discussed below impose significant costs upon private parties that are not outweighed by public benefits and, in certain instances, rely on legal and regulatory precedents which the Executive Order and the Presidential Memorandum expressly challenge. The following addresses final regulations as well as proposed regulations that SIFMA believes should be amended, withdrawn, or repealed based on the principles set out in the Executive Order and Presidential Memorandum and provides cites to submissions that SIFMA has previously made on these topics.

I. Executive Summary

SIFMA proposes that Treasury and the IRS repeal or amend the following regulations:

- Section 987 regulations. The 2023 Proposed Regulations and 2024 Finalized and Proposed Regulations continue to present significant ambiguities and compliance burdens for the financial services industry, which is uniquely impacted by these regulations due to the nature of our business operations. Until these issues are resolved, SIFMA would propose to bring back the former rules which allowed financial services entities to adopt any reasonable method of

[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).

calculating their section 987 gain or loss. SIFMA also proposes retaining the Hedging Transaction Election.

- Portions of the section 871(m) regulations. While finalized in 2017, implementation of some portions of the regulations has been delayed until 2027, and SIFMA continues to have concerns about the compliance burden of delayed portions of the regulations relative to the benefits of the regulations. We believe the best approach is to maintain the rules as provided for by Notice 2024-44 and its predecessors[2] and reexamine the section 871(m) regulations in light of the concerns that prompted the continued delay of the implementation date.
- Disregarded Payment Loss ("DPL") regulations. SIFMA believes Treasury and the IRS lacked the requisite authority to enact these regulations. In addition, the complexity and administrative burden of complying with the DPL regulations outweighs their public benefit. SIFMA believes these regulations should be repealed.
- Foreign Tax Credit ("FTC") Final regulations. The 2022 FTC regulations impose significant administrative and compliance burdens on taxpayers, which outweigh any benefit to the public. In addition, these regulations have already been suspended by Notice.

SIFMA believes Treasury and the IRS should rescind, amend, or otherwise modify the following proposed regulations:

- Corporate Alternative Minimum Tax ("CAMT") regulations. The Treasury and IRS should issue a notice as soon as possible withdrawing and expressing the intention to repropose Prop. Treas. Reg. §1.56A-5, which provides adjustments to partners' distributive share of partnership AFSI.
- Proposed regulations concerning the identification of basket contracts as listed transactions. We recommend the Treasury and IRS issue a notice as soon as possible withdrawing these proposed regulations.
- Stock Buyback Funding Rule. The Treasury and IRS relied on its authority under section 4501(d) in proposing this rule in a manner that is inconsistent with *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The Rule also deviates from the plain meaning of the statute and would be overly broad in its application. SIFMA believes this proposed regulation should be withdrawn.
- Proposed regulations concerning taxes on taxable distributions from donor advised funds under section 4966. We recommend the Treasury and IRS issue a notice as soon as possible withdrawing these proposed regulations.
- Reconsider Withholding and Information Reporting Regulations. SIFMA and its members have identified several regulations relating to withholding and information reporting that should be reexamined in light of the significant compliance and system costs they impose relative to the regulations' public benefit. These include: Treas. Reg. § 1.1471-5(e)(4)(i)(B); the sourcing of payments to non-U.S. vendors under Treas. Reg. § 1.1441-3(d); redemption exchanges treated as dividend distributions under sections 1441, 6045, and 302; additional relief in the digital asset regulations under section 6045; issue guidance confirming Forms W-9 can be electronically signed in the same manner as Forms W-8; provide for the indefinite validity of Forms W-8; and

[2] *See* Notice 2016-76, Notice 2017-42, Notice 2018-72, Notice 2020-2, Notice 2022-37.

re-examine Treas. Reg. § 1.6049-5. SIFMA would welcome the opportunity to enter into a full dialogue with the Treasury and IRS regarding these regulations.

II. Final Regulations: Discussion and Recommended Changes

A. *Final Section 987 Regulations: [3] Restore Exception for Financial Services*

Recommendation

The section 987 regulations present significant ambiguities and compliance burdens for banks, broker dealers, and many insurance companies. Until these issues are resolved, SIFMA proposes that Treasury and the IRS bring back the exception for financial services taxpayers, which would allow them to continue to use any reasonable method of calculating their section 987 gain or loss, rather than requiring them to use the FEEP method. SIFMA also proposes that the regulations retain the Hedging Transaction Election, but with the clarifications requested in our section 987 comment letter and discussed briefly below.

Discussion

The section 987 regulations impose heavy compliance costs on SIFMA members[4], given their common use of foreign branches in the ordinary course of their business for non-tax reasons, and the volume of intra branch activity in the ordinary course of business. One of the main challenges lies in the requirement to maintain detailed books and records that separately track each foreign branch's functional currency balance sheet, income, and expenses. Financial services companies typically engage in high volumes of intra-branch transactions involving transfers of capital, funding arrangements, or internal hedging activities which must be monitored and translated in accordance with the section 987 regulations. These rules also require a sophisticated tracking of historic exchange rates, movements of property and liabilities, and branch remittances, which can be especially burdensome given the frequency and size of internal cash flows in global financial institutions.

This compliance burden is magnified by the operational reality that many of these transactions are not meaningfully separable from broader business operations. They may occur automatically or as part of integrated treasury management systems, making it difficult to isolate and track foreign exchange effects for tax purposes without building bespoke systems or performing manual adjustments.

Moreover, the potential for the types of loss planning with respect to historic assets that motivated significant portions of these complex regulations is non-existent for financial services entities given that the vast bulk of their branch assets are securities and other financial assets. Indeed, the prior 2016 proposed 987 regulations excluded financial institutions from their scope, recognizing these points. We appreciate the changes made between the 2023 Proposed Regulations and the Finalized and Proposed 2024 regulations, particularly on the recognition of the importance of a hedging rule. At the same time,

[3] The United States Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") published proposed regulations under Section 987 ("2023 Proposed Regulations") on November 14, 2023. On December 11, 2024, Treasury and the IRS published the 2024 Final Regulations and the 2024 Proposed Regulations, respectively, and the "Section 987 regulations" collectively.

[4] SIFMA submitted comments to Treasury and the IRS suggesting numerous modifications to the 2023 proposed regulations. SIFMA submitted additional comments to Treasury and the IRS in response, suggesting additional modifications concerning the 2024 Final Regulations and the 2024 Proposed Regulations.

significant ambiguities and problems still remain with regard to the application of the 2024 Final Regulations to financial services entities. Specifically:

- The scope of the foreign currency exposures covered under the Hedging Transactions Election remains too narrow, leading to potential, and random, distortions on the amount of income in different foreign tax credit baskets.
- Taxpayers cannot take hedging activities conducted during pretransition periods into account when computing pretransition section 987 gain or loss.
- It remains unclear whether intercompany transactions can qualify as section 987 hedging transactions.
- As of now, there is no transition relief for hedging transactions that straddle the effective date of the section 987 Hedging Transaction Election rules.
- The scope of the Frequently Recurring Transfer Election does not include intercompany lending transactions by banks and other financial entities, which are vital to their operations.

Despite these ambiguities, SIFMA believes the Hedging Transaction Election is fundamentally sound and, if these points cannot be clarified, would propose that it be retained in its current form. However, transitioning to the FEEP method still presents significant challenges for financial services taxpayers in contrast to the prior regulations which allowed such taxpayers to use any reasonable method of calculating their section 987 gain or loss.

B. ***Modify 2017 Section 871(m) Regulations***

Recommendation

Final regulations issued in 2017[5] should be modified prior to January 1, 2027, to make the transitional rules provided for by Notice 2024-44 and its predecessors permanent.

Discussion

While finalized in 2017, implementation of certain portions of the regulations has been delayed until 2027[6] in recognition of the complexities involved in implementing these regulations in their current form. As noted in our previous submissions,[7] SIFMA continues to have concerns about the compliance burden relative to the benefits of the full proposed regulations. We believe the best approach is to modify the 2017 regulations permanently preserving the status quo as provided for by Notice 2024-44, including the current delta one standard, the current combination rules, the current qualified derivatives dealer rules and the current qualified index rules.

[5] TD 9815, 82 FR 8144.
[6] *See* Notice 2024-44; *See also* Notice 2016-76, Notice 2017-42, Notice 2018-72, Notice 2020-2, Notice 2022-37.
[7] SIFMA, "Section 871(m) Transition Rules," Nov. 21, 2023.

C. ***Rescind the Disregarded Payment Loss (DPL) Regulations***[8]

Recommendation

In line with the Executive Order and Presidential Memorandum, SIFMA believes Treasury and the IRS lacked the proper authority to promulgate these regulations, and they should therefore be rescinded. The regulations as written are ambiguous and would give rise to significant additional compliance costs for taxpayers. SIFMA believes the most practicable approach would be to rescind the DPL rules.

Discussion

The new DPL rules, as stated by the Treasury and IRS, are intended to prevent certain deduction/non-inclusion ("D/NI") outcomes arising from disregarded payments. Generally, a D/NI outcome can arise when a payment results in a deduction for the payor for tax purposes, but the recipient does not include a corresponding amount as taxable income in its tax jurisdiction. D/NI outcomes can arise when a payor is an entity whose separate existence from its United States owner is disregarded (a "disregarded entity" or "DRE) for United States federal tax purposes.

As a threshold matter, SIFMA does not believe that Treasury and the IRS had the proper authority to enact these regulations. Treasury lacked statutory authority to issue the DPL regulations because they represent a significant expansion of the dual consolidated loss (DCL) rules beyond what Congress intended under section 1503(d). The DCL regime was enacted to prevent the use of a single economic loss to offset both U.S. and foreign taxable income. However, the DPL rules target so-called "deduction/no inclusion" (D/NI) outcomes based on policy concerns rooted in the OECD's BEPS initiative rather than the statutory framework established by Congress.

The DPL regulations create affirmative gross income inclusion requirements for payments received by domestic corporations or their disregarded entities, a mandate not authorized by the existing statute. The DPL regulations impose substantive new tax obligations that are not grounded in section 1503(d), and as such, should be enacted only through legislation rather than through administrative rulemaking.

SIFMA submitted comments on the DPL Rules on October 4, 2024, raising concerns that included, but were not limited to, amending certain definitions to exclude payments that are not likely to create D/NI outcomes; replace the anti-avoidance rule with a rule based on "a principal purpose" or "the principal purpose"; modify the definition of a Disregarded Payment Entity; modify the DPL cumulative register calculation; and amend the DPL rules to provide for a SRLY limitation in relation to "recaptured" DPLs. Left unaddressed, these issues create significant complexity, ambiguity, and additional compliance costs for SIFMA members.

D. ***Repeal Final Foreign Tax Credit Regulations***

Recommendation

SIFMA believes the Notice suspending the 2022 FTC regulations should remain permanent, and the regulations repealed.

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[8] On August 7, 2024, Treasury and the IRS proposed Section 1.1503(d) regulations addressing changes to the dual consolidated loss ("DCL") regulations and the treatment of certain disregarded payments (the "Proposed Regulations"), as modified by a series of corrections to the Proposed Regulations, published on September 3, 2024.

Discussion

The 2022 FTC regulations impose significant administrative and compliance burdens on SIFMA members, which outweigh any benefit to the public. The 2022 FTC Regulations are also widely seen as overly broad and difficult to apply, which led to their suspension by notice.

III. Proposed Regulations: Discussion and Recommended Changes

A. *Repropose Corporate Alternative Minimum Tax Regulations Relating to Partner's Distributive Share of AFSI*

Recommendation

SIFMA recommends the Treasury and IRS issue a notice rescinding Prop. Treas. Reg. § 1.56A-5, which provides adjustments to partner's distributive share of partnership AFSI.[9]

Discussion

The proposed Corporate Alternative Minimum Tax ("CAMT") regulations present a number of complexities that make compliance difficult and burdensome for SIFMA members.

Perhaps most significantly, Prop. Treas. Reg. § 1.56A-5 provides adjustments to partner's distributive share of partnership AFSI. As noted in our CAMT comment letter, it is common for financial institutions to hold hundreds or thousands of direct or indirect investments in tax equity investments that are partnerships for U.S. tax purposes. The proposed regulations would require financial institutions to maintain a highly complex system to identify and track these adjustments, which would result in a significant increase in the compliance burden on both the partnership and the partner, and create distortive results that are inconsistent with the statute.

In considering rewriting this section of the proposed regulations, SIFMA, as noted in our comment letter, recommends that corporate partners in a non-consolidated partnership be allowed 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, the 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 regulations should also allow a corporate partner in a non-consolidated partnership to elect out of the section 721 and section 732 "deferred sale" provisions, and instead immediately recognize book gain or loss for CAMT purposes in respect of partnership contributions and distributions. This election should also apply to all such

[9] In addition, SIFMA respectfully acknowledges that the proposed CAMT rulemaking on the AFSI book income starting point is not yet complete, and this is an especially complicated matter for foreign parented companies with U.S. branch operations. The proposed rulemaking appears to require that foreign parented taxpayers "de-construct" global, consolidated financial statements for CAMT purposes when other, now-existing financial statements reporting on US operations are readily available and are routinely prepared in the ordinary course of business (to support important non-tax business and regulatory needs). In fact, the industry has been using data sourced from these US financial statements for US regular tax purposes for many years. After considering the complexity and administrative burdens here, SIFMA believes that CAMT rulemaking should permit an approach for the AFSI starting point that implements CAMT consistently with its purpose while minimizing compliance and examination burdens on both taxpayers and the IRS, as explained in numerous industry comment letters. *See* Institute of International Bankers, "Comments on REG-112129-23," Jan. 15, 2025; *See also* SIFMA, "Proposed Regulations Regarding the Corporate Alternative Minimum Tax," Jan. 16, 2025.

partnership interests that are held by corporate partners, and the election should be irrevocable without the consent of the IRS.

B. ***Rescind Proposed Regulations Concerning the Identification of Basket Contracts as Listed Transactions***[10]

Recommendation

SIFMA recommends rescinding the proposed regulations. Given that there is uncertainty as to whether and when the proposed rules will take effect, and the substantial administrative burden on taxpayers attempting to align their internal practices and systems with these proposed regulations, SIFMA urges Treasury and the IRS, if they choose to re-propose similar regulations, to make any such regulations (i) require reporting only with respect to transactions entered into, on, or after the date that the final (or re-proposed) regulations are published in the Federal Register and (ii) incorporate the recommendations that SIFMA made in its recent comment letter.

Discussion

SIFMA has serious concerns about the breadth of the proposed regulations and the redesignation of certain basket transactions from transactions of interest to listed transactions. SIFMA submitted comments when this regulation was proposed, which included numerous recommendations for modifications to these regulations.[11] These issues have not yet been addressed, and the application of the proposed rules remain complex and burdensome for SIFMA members. Even though the rules are only in proposed form, they are proposed to be retroactive, and therefore SIFMA members need to decide now whether to decline certain client transactions they have no reason to believe are abusive, and/or comply with significant administrative burdens, or risk that such transactions could retroactively become listed transactions in the future. Accordingly, the Treasury and IRS should withdraw the proposed regulations. If Treasury and the IRS do not withdraw the proposed regulations, Treasury and the IRS should issue a notice providing that any final (or re-proposed) regulations will require reporting only with respect to transactions entered into on or after the date that the final (or re-proposed) regulations are published in the Federal Register and issue new proposed regulations that address SIFMA's concerns, as expressed in the recent comment letter. As an alternative to new proposed reportable transaction regulations, Treasury and the IRS could issue substantive guidance, for example, under section 1001, addressing the issues presented by the specific abusive transactions that prompted Notices 2015-73 and 2015-74.

C. ***Rescind the Stock Buyback Funding Rule***[12]

Recommendation

SIFMA believes the Stock Buyback Funding Rule should be rescinded because it is based on an incorrect articulation of the Treasury's authority under section 4501(d), deviates from the plain meaning

[10] REG-102161-23, 82 FR 49508..

[11] SIFMA, "2024 Proposed Regulations for the Identification of Basket Contract Transactions as Listed Transactions," Sept. 10, 2024.

[12] On April 12, 2024, Prop. Treas. Reg. § 58.4501-7(e)(1) (the "Stock Buyback Funding Rule"), which would impose an excise tax on repurchases of corporate stock by certain covered corporations.

of the statute, and is significantly overbroad in the types of transactions and operations that it would capture.

Discussion

As noted in our most recent comment letter,[13] the Stock Buyback Funding Rule deviates from the plain reading of the statute and captures non-U.S. taxpayers in situations not outlined in the statute. Treasury has also relied on its authority under section 4501(d) to enact the Stock Buyback Funding Rule, but as explained in our comment letter, the authority Treasury articulates in the proposed regulation is not consistent with *Loper Bright*. Finally, the Stock Buyback Funding Rule would capture normal business activities (such as subsidiaries providing capital to their parent as part of the ordinary course of business) that are unrelated to attempting to avoid the rule.

D. *Rescind Proposed Regulations Concerning Taxes on Taxable Distributions from Donor Advised Funds Under Section 4966*[14]

Recommendation

SIFMA recommends the Treasury and IRS issue a notice rescinding proposed regulations concerning taxes on taxable distributions from donor advised funds under section 4966.

Discussion

As noted in our most recent comment letter,[15] the proposed donor advised fund regulations exceed the IRS's statutory authority because they seek to more broadly define the term "donor-advisor" which is already defined by statute quite narrowly. The proposed regulations also fail to provide underlying data or support and thus deprive the public of meaningful notice and opportunity to comment. In addition, the proposed regulations also represent a poor public policy choice given that the imposition of excise tax penalties would discourage the professional management of donor advised funds by investment advisers.

IV. Proposed Revisions to Withholding and Information Reporting Regulations

SIFMA and its members have also identified several regulations relating to withholding and information reporting that we believe should be reexamined when weighing the significant compliance and systems costs they impose on taxpayers relative to the regulations' public benefits. SIFMA would welcome the opportunity to enter into a full dialogue with IRS and Treasury in this regard. These include:

- Passive non-financial foreign entity (PNFFE) versus financial institution (FI) classification (Treas. Reg. § 1.1471-5(e)(4)(i)(B)). Under FATCA, these regulations place an undue due diligence burden on financial institutions that provide managed account services to non-U.S. private, closely held family investment companies.

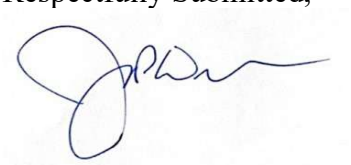
[13] SIFMA, "Excise Tax Final Procedural Regulations and Recent Supreme Court Case Law," Aug. 7, 2024.
[14] REG-142338-07, 88 FR 77922.
[15] SIFMA, "SIFMA Comment on Internal Revenue Service Proposed Rule re: Taxes on Taxable Distributions from Donor Advised Funds," Feb. 8, 2024.

- Sourcing of payments to non-U.S. vendors (Treas. Reg. § 1.1441-3(d)). Current regulations do not provide sufficient clarity on determining the source of services that could only be performed outside of the U.S. by non-U.S. vendors, creating unnecessarily burdensome processes to document sourcing.
- Redemption exchanges treated as dividend distributions (sections 1441, -6045, -302). Proposed regulations[16] require a burdensome process whereby brokers and non-U.S. customers must certify that redemption exchanges do not constitute withholdable dividends, even though in most, the distribution is not a dividend.[17]
- Additional relief in the digital asset regulations (section 6045). Brokers are required to report sales of tokenized securities on Form 1099-DA, even when reporting such transactions on Form 1099-B would be sufficient. Further refinement of the information reporting on sales of stablecoins required based on recent focus on stablecoin legislation by Congress.[18]
- Issue guidance confirming that W-9 Forms can be electronically signed like W-8 Forms.
- Declare indefinite validity of Forms W-8.[19] The form's conditions are unnecessarily burdensome and subject to interpretation, leading to limited use of the exceptions.
- Treas. Reg. § 1.6049-5, Reporting for CFCs. CFC reporting on Form 1099, pursuant to the regulaton is burdensome, may run afoul of privacy rules, and is both expensive and largely duplicative of FATCA reporting rules.

V. Conclusion

SIFMA appreciates the opportunity to provide comments to the IRS and Treasury on these regulations, and we look forward to working with the government to modify these regulations in a manner that reduces undue compliance burdens taking into account the business models, day-to-day operations and regulation of global banks, broker dealers, and asset managers. Please contact Josh Wilsusen (jwilsusen@sifma.org) or Jessica Barker (jbarker@sifma.org) if you have any questions regarding this submission.

Respectfully Submitted,



Josh Wilsusen
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[16] REG-140206-06, 72 FR 58781.
[17] SIFMA, "Proposed Regulations Concerning Withholding Procedures Under Section 1441 for Certain Distributions to Which Section 302 Applies," Jan. 16, 2008.
[18] SIFMA, "Form 1099-DA," Nov. 11, 2024.
[19] Treas. Reg § 1.1441-1(e)(4)(ii)(B) and Treas. Reg. § 1.1471-3(c)(6)(ii)(B)).