



February 10, 2014

**Via Electronic Delivery:**

The Honorable Mark Mazur  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**Re: Managed Funds Association Comments on Timing of 871(m) Proposed Rules**

Dear Assistant Secretary Mazur:

Managed Funds Association (“MFA”)<sup>1</sup> respectfully requests that the Department of the Treasury reconsider the timing of the applicability date of the Internal Revenue Service’s (the “IRS”) re-proposed rule under Section 871(m) -- Dividend Equivalents from Sources within the United States (REG-120282-10), particularly with respect to instruments which we and other market participants believe are likely to be covered by the 2013 re-proposed rule, but likely were not covered by the IRS’s original 2012 proposed rule. Concerns have been expressed by a number of market participants, including MFA members, that the re-proposed rule could begin adversely affecting important capital markets, such as the convertible securities market, as early as March 5 of this year, after which date covered instruments will be subject to the to-be-determined final rule. Such market disruption, if it were to occur, could have significant and adverse consequences for many U.S. companies that rely on the convertible securities market as an important source of capital. As such, we believe it is important for Treasury to re-consider the applicability date of the re-proposed rule, which is simultaneous with the closing of the public comment period on the rule proposal.

The re-proposed rule, which was published in the Federal Register on December 5, 2013, applies to payments on covered instruments made on or after January 1, 2016; including instruments acquired prior to that date. While we are concerned generally about the IRS’s proposed approach to changing the tax treatment of contracts entered into prior to the IRS issuing a final rule, we are particularly concerned about the IRS’s proposed March 5, 2014 application date for ELIs.

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<sup>1</sup> The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and all other regions where MFA members are market participants.

As many commentators have noted, the 2013 re-proposal significantly changed the approach to determine what types of notional principal contracts (“NPCs”) and equity-linked instruments (“ELIs”) would be subject to withholding taxes and expanded the scope of instruments likely to be covered under the rule. This includes a number of instruments that many market participants believe do not present the concerns for tax abuse that is the policy basis for Section 871(m) and, therefore, should be outside the scope of the IRS’s final rule. Those instruments include:

- Convertible bonds;
- Options, even if there is no dividend equivalent component in the instrument;
- Forwards, even if there is no dividend equivalent component in the instrument;
- Futures, even if there is no dividend equivalent component in the instrument; and
- Structured notes, even if there is no dividend equivalent component in the instrument.

Because the re-proposed rule was only recently released and is still in the public comment period, market participants are still working to determine the full scope of the proposed rule and the consequences, intended and unintended, that the proposed rule will have on these instruments, and on U.S. capital markets. MFA is still analyzing the re-proposed rule and the potential consequences for U.S. capital markets and will be submitting substantive comments and concerns on the re-proposed rule prior to the March 5 closing of the comment period.

We believe it would be potentially disruptive to important capital markets if market participants acquire instruments beginning March 5 without knowing the tax consequences that will result, given the uncertainty about what will be covered under the final rule. Accordingly, we believe it is important for Treasury to extend the application date of the rule, to a date closer to the effective date for withholding or, at a minimum, to the date of the final rule.

We would welcome the opportunity to discuss this with you, or the relevant Treasury and/or IRS official(s), at the earliest opportunity. In that regard, please do not hesitate to contact Stuart Kaswell, MFA General Counsel, Benjamin Allensworth, MFA’s Associate General Counsel, or me personally at (202) 730-2600. I look forward to working with you, and your office, on this important issue.

Thank you, in advance, for your consideration of this matter.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker  
President and CEO

Cc: Mary Miller, Acting Deputy Secretary and Under Secretary for Domestic Finance  
Danielle Rolfes, International Tax Counsel  
Karl Walli, Senior Counsel-Financial Products