MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

March 5, 2014

Via Electronic Filing:

Internal Revenue Service
CC:PA:LPD:PR (REG–120282–10),
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington D.C. 20044

Re: MFA Comments IRS REG–120282–10, Dividend Equivalents from Sources within the United States

Dear Ladies and Gentlemen:

Managed Funds Association ("MFA")[1] appreciates the opportunity to respond to re-proposed IRS Reg 120282-10, Dividend Equivalents from Sources within the United States (the "Proposed Regulation"), which provides guidance regarding tax withholding obligations in connection with certain financial products that provide for payments that are contingent upon, or determined by reference to, payments of dividends from sources within the United States. MFA and its members support the policy underlying the Proposed Regulation of preventing abusive practices designed to evade U.S. taxes. However, while we appreciate some of the changes made by the IRS and Treasury to the original 2012 proposal, we remain concerned that certain provisions in the Proposed Regulation go far beyond addressing the primary goal of the relevant provisions of the Hiring Incentives to Restore Employment Act (the "HIRE Act"); applying appropriate withholding taxes on certain equity-linked derivatives instruments that pose risks of inappropriate tax avoidance.

We also remain concerned that the Proposed Regulation will introduce uncertainty and risk for market participants, which may drive many investors out of affected markets. As a general matter, market participants need reasonable certainty when entering into

[1] 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 many other regions where MFA members are market participants.

transactions that they understand the non-market dynamics (*e.g.*, tax treatment) of the trade. To help provide market participants with this certainty and to better ensure consistency in application of the final rules, is also important that the final rules establish a framework that will permit investors to make reasonable contractual representations to withholding agents and permit withholding agents to rely on those representations. In order to accomplish these goals, in a manner consistent with achieving the underlying objectives of Section 871(m), we encourage the Internal Revenue Service (the "IRS") and the Treasury Department to amend the Proposed Regulation to address the issues discussed below.

Scope of Instruments Covered by Proposed Regulation

We are concerned that the scope of instruments covered by the Proposed Regulation is overly broad in light of the Congressional intent underlying the relevant provisions of the HIRE Act, which focused on addressing perceived abusive practices regarding dividend equivalent payments to non-U.S. persons. The Proposed Regulation even goes beyond the IRS and Treasury's stated goal in the proposing release, "the Treasury Department and the IRS favor a delta approach that objectively identifies transactions in which the long party is able to sufficiently approximate the economic returns associated with an underlying security."

Expanding the scope, as the Proposed Regulation would, to change the tax treatment of non-U.S. ownership of all U.S. referencing equity-linked derivative positions, including those that are used to hedge and manage risk, is a significant and unwarranted change that goes beyond what is necessary to prevent abusive transactions and likely will adversely affect U.S. capital markets. Applying the rule to other types of transactions (including transactions involving convertible securities, options and futures) is a change in tax policy beyond the policy decisions made by Congress in enacting Section 871(m) and would significantly impair the ability of market participants to enter into legitimate capital markets transactions. It also creates a lack of parity with U.S. investors, who do not disaggregate derivative positions to become taxable on grossed up implicit dividends. The compliance and operational costs necessary to monitor, as well as apply and track withholding, on every potential equity-linked trade with U.S. exposure will require a substantial amount of resources and cost to implement. A significant amount of time and resources also will be required to negotiate the allocation of risks and liabilities among counterparties. As a consequence, the overly broad scope may have adverse consequences for U.S. capital markets, to the extent it adversely impacts the willingness of investors to purchase instruments that U.S. companies rely on to help finance their businesses.

Accordingly, we encourage the IRS and Treasury to modify the Proposed Regulation to address these concerns in a more narrowly tailored manner to avoid the significant, adverse consequences on legitimate capital markets transactions that would result from the application of the Proposed Regulation. In particular, consistent with the stated goal above, we believe the four factor test in the current temporary 871(m) regulations, along with the application of a general anti-abuse rule, better targets abusive transactions intended to replicate direct ownership of U.S. securities, including dividends paid to direct holders of those securities. Market participants understand these rules and have already incorporated them into their systems. To the extent the final regulations adopt an approach other than

the current four factor test, those rules should be narrowly tailored to include only abusive transactions intended to replicate the return from directly holding U.S. securities, including dividends paid to direct holders of those securities, and generally should exclude other types of transactions (including, for example, transactions involving convertible securities, options and futures).

Delta Threshold

With regard to some equity linked instruments, delta calculations vary widely among market participants. This is particularly acute, for example, in the convertible bond market. Estimating delta depends on subjective estimates of multiple input variables for a convertible calculator and thus, in turn, is not a globally consistent metric or estimate. Its estimate varies among market participants and thereby creates a trading market. The determination of delta is an output driven by several variables and assumptions including: stock price dynamics, volatility, the issuer's cost of credit, the treasury or swap yield curve, expected dividend payments, conversion rights, and issuers redemption options. Despite these limitations; however, we agree with the IRS that a delta test provides greater certainty to market participants than the previously proposed seven factor test and that it provides a better means to identify those instruments that "sufficiently approximate the economic returns associated with an underlying security."

The legislative history of Section 871(m) makes it clear that Congress intended to prevent the avoidance of taxation on dividends with respect to those transactions with characteristics that indicate the derivative transaction was an economic substitute for what otherwise would have been physical ownership of the underlying security (and not the mere fact that a counterparty had a partial long exposure to the underlying security). The avoidance that Congress was concerned with can only take place when a non-U.S. person gains economic exposure that is comparable to owning the underlying equity, including any dividends paid. If the economic exposure is not sufficiently comparable to owning the underlying equity, including any dividends paid, then payments made on the financial instrument are based on economic exposure that cannot be fairly said to resemble a true dividend received due to physical ownership of the underlying security.

We believe that the proposed delta .70 thresholds in §1.871-15(d)(2) and (e) do not achieve the stated objective of the Proposed Regulation. Instead, they will impose withholding taxes on many instruments that do not closely resemble the economic exposure of owning the underlying security directly, including any dividends paid. As such, we believe a delta threshold of .70 is overly broad given the stated policy objectives underlying Section 871(m). We encourage the IRS and Treasury to amend the delta thresholds in §1.871-15(d) and (e) to .90 or higher, which we believe would better capture the scope of financial instruments that provide similar economic exposure as owning the underlying security. We believe that a delta threshold of .90 or higher will limit the unintended consequences of a overly broad application the rules, while continuing to accomplish the stated goal of subjecting non-U.S. persons to withholding taxes when they own instruments that are economically similar to underlying U.S. securities and pursuant to which they receive dividend equivalent payments. In light of the ambiguity that exists with respect to

calculating delta, we further encourage the IRS and Treasury to provide guidance that would help clarify how taxpayers should calculate delta.

Moreover, the Proposed Regulation should be amended to reduce the required withholding on equity linked instruments, regardless of their delta, to the extent the holder of the instrument does not receive a dividend payment, substitute dividend payment, or economic equivalent. The applicable withholding requirement applies to *dividend payments*, not *equity ownership*. For example, if an equity linked instrument has a delta of .90, but never entitles the holder to receive dividends, dividend substitutes, or other economic value in lieu of dividends, then the final rules should not require withholding of a dividend payment that the holder never receives.

Combining Multiple Transactions

§1.871-15(l) provides that multiple transactions will be treated as a single transaction for purposes of the rule when a person is the long party with respect to each transaction; the transactions reference the same underlying security; and the transactions are entered into in connection with each other. While the rule provides examples of transactions that would be combined for purposes of determining whether withholding is required, there is still significant uncertainty regarding what it means for transactions to be entered into in connection with each other.

It is unclear, for example, whether the test is a subjective one, based on the intent of the taxpayer entering into the transactions. Further, it is unclear what the standard is for two transactions to be "in connection with each other." Absent a clear standard, market participants may reach different interpretations, which could lead to withholding taxes being applied inconsistently by different market participants. Inconsistency in application and potential conflicts in interpretation will create significant uncertainty and add complexity to many capital markets transactions. Because the determination is ultimately in the hands of the withholding agent, investors will bear the economic cost of these uncertainties.

These issues are of significant concern to investment funds, which often make large volumes of trades and often have multiple people making investment decisions. A fund may enter into transactions over an extended period or may enter multiple transactions that reference the same underlying security simultaneously (or nearly simultaneously). The first example in the rule appears to suggest that simultaneous transactions would be combined simply because they were entered into at the same time, which we believe could be over-inclusive.

The other examples refer to simplistic transactions in which the second transaction is entered into only to adjust the economic position associated with the first transaction. In practice, funds managing portfolios with hundreds or thousands of positions enter into transactions for multiple reasons, which may relate, directly or indirectly, to one or more existing positions of the fund. As such, it could be difficult to determine whether distinct transactions should be viewed as being in connection with one or more other transactions.

This uncertainty also could lead to differing interpretations between taxpayers and withholding agents, creating market distortions or disruptions.

Accordingly, we encourage the IRS and Treasury to remove §1.871-15(l) in the final rules. We note that, even with the removal of this subsection, the IRS would retain its general anti-abuse authority under §1.871-15(n) to address circumstances when a taxpayer engages in abusive practices to inappropriately avoid paying withholding taxes on dividend equivalent payments.

To the extent the IRS decides to maintain the combination provisions in §1.871-15(l), we believe that 15(l)(1)(iii) should be expanded to allow taxpayers to combine all long and short transactions entered into in connection with each other, regardless of whether the combined transactions would increase or lower the delta. Moreover, we encourage the IRS and Treasury to modify §1.871-15(l)(3) to provide that, to the extent a combined transaction reduces the overall delta below whatever threshold is specified in the final rules, then neither the individual transaction nor the combined transaction would be deemed a Section 871(m) transaction. In order to provide greater clarity to market participants, we encourage the IRS and Treasury to provide guidance that the determination of whether transactions are in connection with each other should be made in a manner consistent with how the taxpayer tracks the profits and losses of the transactions in its records. This approach would provide certainty and consistency for taxpayers and provide records that the IRS could use in the context of an audit.

Convertible Securities

Convertible securities are an example of an instrument that is likely to be subject to withholding under the proposed delta .70 threshold. Convertible securities are "hybrid" securities that possess both fixed income and equity characteristics, and include corporate bonds, preferred stocks and other types of securities that are convertible into common stock or its equivalent value. Convertible securities give the holder the right (but not always the obligation) to exchange a bond or preferred share for a fixed number of ordinary shares. The inclusion of convertible securities would go well beyond the stated policy goals underlying Section 871(m) and could have significant, adverse consequences for U.S. companies. Convertible securities are an important source of capital for many U.S. companies. In particular, convertible securities are a type of hybrid instrument that corporations use as a financing option to help them grow their business and effectively manage their balance sheet. We believe that including convertible securities within the scope of the final rules would lead to a higher cost of capital for U.S. companies that use these instruments to finance their businesses.

Convertible securities typically are long-dated instruments often issued by companies that do not make dividend payments at issuance (though they may at later dates). Given the uncertainty as to whether the issuer may at some point pay dividends, we believe it would be difficult to use these instruments to avoid withholding taxes on dividend payments. To our knowledge, traditional convertible securities have not been used to avoid

or evade U.S. taxes and, because of the economics/pricing involved in these instruments, we believe that they do not pose a significant risk of tax abuse.

Convertible securities are not issued, held or traded in order to access dividends. For example, as a general matter, the delta (or exposure) of a convertible bond to dividend payments is generally negative or zero. In other words, convertible bond holders often lose money every time a dividend is paid. This is because convertible bond holders are not entitled to receive dividends, and the dividend payment to shareholders decreases both the creditworthiness of the issuer and the future equity value of the conversion right due to: a) the stock price drop following the ex-dividend date, and b) the resulting lower cash amount in the balance sheet. It would thus be counter-intuitive and contrary to Congressional intent to require withholding with respect to convertible securities when a dividend is paid and the holder receives no economic value as a result of the dividend payment.

It is our understanding that U.S. companies that issue convertible securities do not track the delta of those instruments or have systems that could track that information, particularly with respect to instruments trading on the secondary market. Because the secondary market for convertible securities is robust, it would be difficult and costly for issuers to develop adequate systems to track trading on those markets. Concerns about the ability to track this information and potential liability for U.S. companies if they do not or cannot track it for withholding purposes may make them less inclined to issue convertible securities, resulting in a higher cost of capital for those companies.

This concern is compounded by the potential for issuers to be subject to contingent liabilities to the extent that the IRS determines after the fact that an issuer did not correctly calculate whether an instrument was subject to withholding. We believe this type of contingent liability would be unique compared to other capital markets instruments issued by U.S. companies, which could further disincentivize such companies from issuing convertible securities, and instead use higher cost financing options.

Further, foreign investors will be less likely to invest in these instruments if they are subject to Section 871(m), reducing market liquidity for U.S. companies. Removing an important group of investors from this market is likely to increase the cost of capital for U.S. companies, which will have to pay higher costs in response to less liquidity. Because foreign investors will be less likely to invest in these instruments, the U.S. government is thus unlikely to generate tax revenue by including them within the scope of the rule. Indeed, the decline in value of these securities, which also are held by many U.S. taxable persons, may lead to a decrease in tax revenue going forward. Such diminution in value also would have significant adverse consequences for other types of U.S. persons who own convertible securities, including pension plans and endowments.

As discussed above, convertible securities are a financing tool for U.S. companies and have a low risk of tax abuse by purchasers of these instruments. For these reasons, we strongly encourage the IRS and Treasury to exempt these instruments from the scope of the final 871(m) rules. If, notwithstanding the concerns set out above, the IRS and Treasury do not exempt convertible securities from the final rules, we encourage them to amend the final

rules to provide that the delta would be measured only at the date of issuance for purposes of determining whether the instrument is subject to Section 871(m), along with guidance for market participants with respect to calculating delta. While this alternative would continue to inappropriately include convertible securities within the scope of the final rules, we believe it would help mitigate, though not eliminate, some of the adverse market consequences as compared to the Proposed Regulation.

Qualified Indices

Broad-based indices generally are meant to reflect a market sector or segment and the components of such indices are not within the control of the investor wishing to gain exposure to such sector or segment. As such, market participants typically enter into index swaps primarily for the economic exposure to the index, and also for credit, leverage and other significant non-tax reasons. We believe the proposed exception from the definition of "underlying security" for a "qualified index" generally recognizes that derivatives on these types of indices do not present significant tax abuse issues. We are concerned; however, that the proposed definition of "qualified index" is too narrow and likely will exclude many transactions that reference broad-based indices, which are entered into primarily for these legitimate and substantial non-tax reasons.

In particular, we are concerned that the proposed tests in §1.871-15(k)(2)(i), (iv), (v), and (vi) likely would exclude many broad-based indices, including indices the IRS and Treasury seemingly intended to be a qualified index. With respect to requirement (i), that the index reference 25 or more component underlying securities, we are concerned that this could exclude many sector-specific indices. With respect to requirement (iv), that the index be modified or rebalanced only according to predefined objective rules at set dates or intervals, we understand that many indices may provide some amount of flexibility or judgment on the part of the index sponsor, which could significantly limit the number of indices that would be a qualified index. With respect to requirement (v), that the dividend yield of the index not be greater than 1.5 times the current dividend yield of the S&P 500 index for the month immediately preceding the date the index was acquired by the non-U.S. person, we are concerned about the consequences of having an index be deemed a qualified index one month but not the next. Such shifts could cause significant burdens or disruptions to investment funds and other market participants that enter into many different transactions that reference an index over time. With respect to requirement (vi), that the index be referenced by futures or options traded on an exchange or board of trade, we encourage the IRS to expand this criteria also to include any index for which there are exchange traded notes, exchange traded funds, or other listed derivatives contracts that track the index.

In addition to the concerns discussed above, we believe the changes discussed below would still exclude from the definition of "qualified index" the type of narrow-based index that the IRS is concerned about, without unduly impairing many trading strategies and products that do not present risk of abuse. We believe an index published by a recognized independent index publisher should be considered a qualified index under the final regulations. A "recognized independent index publisher" means an organization that

publishes indices that are created, calculated and compiled by a group of employees that have no duties other than those related to the publication of the indices, offered for license to all third parties on similar terms, and actually licensed by multiple third party industry participants.

Short Sales on Qualified Index Components

§1.871-15(k)(6) of the Proposed Regulation provides that a qualified index will no longer be deemed a qualified index if, in connection with the transaction referencing the qualified index, the taxpayer enters into one or more transactions that reduce its exposure to any referenced component underlying the index, other than transactions that reduce exposure to the entire index. We believe this provision is overly broad and would unduly limit the ability of market participants to engage in hedging, arbitrage and other legitimate risk mitigation and investment techniques. For example, as written, it would appear that, if a taxpayer entered into a derivative transaction that referenced the S&P 500 index, but also entered into a short position on an individual component of the S&P 500 in connection with the long position on the index, then the S&P 500 index would no longer be a qualified index for purposes of the rule. Exactly when two transactions in a large dynamic portfolio will be deemed "in connection with" is unclear. In addition, having to track the components of a qualified index that becomes tainted will be complicated and burdensome. To the extent a taxpayer enters into a transaction that references a qualified index, the index should continue to be a qualified index unless the short position can fairly be viewed as an attempt by a taxpayer to establish a net long position in a narrow set of underlying components for the purpose of evading withholding taxes. In the example above, the net long exposure to the remaining components of the index would still be well within the type of long exposure that should be deemed a qualified index (though as a technical matter, exposure to 499 of the components may not meet all of the tests in §1.871-15(k)(2)). We believe, therefore, that there is relatively little risk that allowing taxpayers to establish short positions on individual components of a qualified index will lead to significant taxpayer abuse and, accordingly, we encourage the IRS and Treasury to delete the provisions in §1.871-15(6) and instead rely on the anti-abuse provisions in §1.871-15(n) for situations in which a combined position is abusive.

Look-Through for Non-C Corporations

§1.871-15(m)(1) provides that, with respect to a transaction that references an interest in an entity other than a C corporation, the transaction references the allocable portion of any underlying security or potential Section 871(m) transaction held by the reference entity (subject to certain exceptions). This section of the Proposed Regulation appears to be designed to address the potential for partnerships to function like a customized index by holding a small basket of U.S. securities. To the extent that the non-U.S. person does not control the partnership; however, it is often difficult for them (or other market participants) to obtain detailed underlying information from partnerships and other non-C corporate entities, which would make it difficult to determine the extent to which the reference entity holds relevant underlying securities. Accordingly, we encourage the IRS and Treasury to clarify that a taxpayer may rely on representations or other information provided

by a reference partnership (or other non-C corporate entity) to determine whether the taxpayer is subject to withholding taxes under the final rules. Further, we encourage the IRS and Treasury to clarify that, if a taxpayer does not receive information from the reference partnership that the taxpayer can use to determine potential withholding, then the taxpayer may treat its transaction as not being subject to withholding under the final rules (absent knowledge by the taxpayer that the underlying holdings of the reference partnership are underlying securities subject to the rule).

Estimated or Implicit Dividend Equivalent Payments

§1.871-(h)(2) provides that a dividend equivalent payment is deemed to be made to a holder of an equity linked instrument, when there is a dividend is paid on the referenced equity security, even if the transaction does not provide for any actual payment or receipt of anything of value by the holder of the equity linked instrument. We believe this provision goes far beyond the intended scope of Section 871(m) and would unfairly subject non-U.S. taxpayers to withholding taxes on the so- called "*phantom dividend*" even though they are not, in any real sense, receiving any payment or value as a result of the dividend that could be fairly characterized as a dividend equivalent. Section 871(m) is intended to require withholding on *payments* of dividends and dividend equivalents, not on ownership of equity linked instruments. If the return to the non-U.S. investor does not include a substitute for a dividend, tax avoidance on dividends is not taking place.

It is our understanding that the pricing models for equity derivatives typically use dividends as one of the inputs, thereby bringing virtually all derivatives on U.S. equities within the scope of the rule, which far exceeds the intended scope of Section 871(m). It is also our understanding that pricing models typically reflect the fact that the holder will not receive the benefit of any dividend. The Proposed Regulation does allow the parties to rebut the "actual dividend assumption" and presumably allows for a zero withholding rate if there is not expected to be any dividend. However, it is unclear whether this provision also applies to positions that implicitly reduce the price for estimated and actual dividends that the holder will not receive the benefit of. The requirement to document the expected dividend up front based on the determination of the short party also causes significant burdens and creates a withholding risk to the non-U.S. investor who never receives the benefit of a dividend.

In light of the concerns discussed above, we encourage the IRS and Treasury to delete these provisions, which would have the effect of imposing withholding taxes on phantom dividend equivalent payments. To the extent the IRS and Treasury do not delete these provisions, they should narrow the scope to cover only those transactions that specifically provide for an adjustment to the transaction based on the payment of dividends to holders of the underlying security.

Effective Date of Final Regulations

March 5 Applicability Date

We note and support the statement in Notice 2014-14 that the IRS and Treasury intend to amend the final rules to provide that only specified ELIs issued on or after 90 days after the date of the final rules will be subject to withholding under the final rules. We believe this is a significant improvement compared to the proposed March 5 applicability date in the Proposed Regulation, and we applaud the statement from the IRS and Treasury.

Grandfathering Existing Contracts

We believe that, to further avoid market disruption, the final regulations also should provide that payments made on contracts existing prior to the date of the final rules will not be subject to withholding under the rule. Instead, withholding should only be on future payments made on specified NPCs and specified ELIs entered into after the effective date of the rule. Practically, it will take some time for market participants to properly evaluate their outstanding positions once the final regulations are issued. More significantly, withholding on existing contracts could cause market disruption as market participants seek to terminate existing contracts that are or may be characterized as a specified NPC. Moreover, market participants may not be able to terminate certain existing contracts, or may face significant costs to do so. Because market participants have entered into contracts that would not have been subject to withholding absent the Proposed Regulation, the withholding liability and/or termination provisions may unfairly favor one party over another in light of the change in rules. Market participants need consistent treatment throughout the life of a contract and imposing withholding taxes on pre-existing contracts, especially those that would not have been subject to withholding under the temporary regulations, will significantly alter the risk-adjusted value associated with existing contracts. Finally, we encourage the IRS and Treasury to grandfather all dividend equivalent payments made with respect to dividends paid or declared prior to the effective date of the final regulations.

Determination of Section 871(m) Transactions

In practice, brokers will be required to determine whether a transaction is subject to withholding taxes under the final rules. The fact that it will be the broker making the decision regarding the status of investor transactions under Section 871(m) exposes investors to significant risk of over-withholding. For example, to the extent an investor has combined positions held at different counterparties have an aggregate delta less than the threshold that is included in the final rules, but have individual deltas higher than the threshold, there is a high risk for over-withholding. Brokers may start requesting extensive information about trading information with other counterparties, which is information that is typically confidential and could have adverse trading consequences to the investor. To avoid these unintended consequences, we encourage the IRS and Treasury to provide guidance establishing reasonable representations that investors can provide to withholding agents that the withholding agents can rely on to meet their obligations under the final rules.

Cascading Withholding Tax

The accompanying release to the Proposed Regulation notes that several commentators raised concerns with respect to cascading withholding taxes the 2012 proposed rule. The release notes that commentators suggested the IRS incorporate specified NPCs into the regime set out in IRS Notice 2010-46, which addresses similar issues in connection with securities lending or sale-repurchase transactions. We remain concerned that the Proposed Regulation still does not address concerns about cascading withholding taxes, particularly with respect to chains of transactions that involve parties that do not qualify for the exemption set out in§1.871-15(j)(1) for a qualified dealer acting in its capacity as a dealer. As such, we believe it is important to address the issue of cascading withholding taxes in these regulations to avoid taxpayers being subject to over-withholding pending the adoption of future regulations.

Conclusion

MFA appreciates the opportunity to provide comments on the Proposed Regulation. We support the goal of preventing abusive practices designed to inappropriately avoid U.S. taxes, which underlies both Section 871(m) and the Proposed Regulation. We are concerned, however, that the Proposed Regulation goes far beyond what is necessary to address these concerns and will have unintended and undesirable adverse consequences for the equity derivatives markets. We believe the suggestions discussed above will help the IRS implement Section 871(m) in a manner that achieves the Congressional purpose while mitigating the unintended consequences.

MFA and its members would welcome an opportunity to meet with the staff from the IRS to discuss these and any other issues in connection with implementation of the Proposed Regulation. If you have any questions regarding any of these comments, or if we can provide further information with respect to these or other issues, please do not hesitate to contact Benjamin Allensworth or me at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell

Executive Vice President &
Managing Director, General Counsel

Cc: The Honorable Mark Mazur, Assistant Secretary (Tax Policy) , Department of the Treasury
Karl Walli, Senior Counsel-Financial Products, Department of the Treasury