

February 20, 2014

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

*Delivered electronically via FederalRegister.gov*

**Re: REG-120282-10: “Dividend Equivalents from Sources within the United States” (the “Proposed Regulations”)**

The Investment Industry Association of Canada (IIAC)<sup>1</sup> welcomes the opportunity to provide further comment on the Proposed Regulations with respect to dividend payments contingent upon or determined by reference to U.S. source dividend payments under section 871(m) of the Internal Revenue Code, hereinafter referred to as “dividend equivalents”.

While the IIAC is planning on providing further comment on the Proposed Regulations before the close of the comment period (March 5), we believed it would be important to provide preliminary comments in advance of this deadline on the definition of specified equity-linked instruments (“specified ELIs”) contained in proposed section 1.871-15(e). This section states:

(e) Specified ELIs. With respect to payments made on or after January 1, 2016, a specified ELI is any ELI acquired by the long party on or after **[INSERT DATE THAT IS 90 DAYS AFTER PUBLICATION DATE OF THIS DOCUMENT]** that has a delta of 0.70 or greater with respect to an underlying security at the time that the long party acquires the ELI.

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<sup>1</sup> The Investment Industry Association of Canada (IIAC) is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 160 IIROC-regulated investment dealer Member firms in the Canadian securities industry. These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations. The IIAC provides leadership for the Canadian securities industry with a commitment to a vibrant, prosperous investment industry driven by strong and efficient capital markets.

Essentially, this provision would require the application of the proposed delta test to EIs acquired on or after March 5, 2014. In our experience, it is highly unusual for a proposed regulation to take effect before it is finalized, and in particular because of the complex nature of the Proposed Regulations, we believe it would be extremely unreasonable for dealers to be prepared to implement this test to identify Specified EIs before comments on the Proposed Regulations have closed and been considered by IRS and Treasury for possible amendments to the final regulations. At a minimum, we believe it would be more appropriate for section (e) to state that “a specified EI is any EI acquired by the long party on or after 90 days after publication of the final regulations”. We would greatly appreciate a clear communication from Treasury and the IRS as to whether this determination date will be changed in advance of the March 5, 2014 date if at all possible. We also reserve the right to make additional comments on other elements of the definition of Specified EI, such as the delta test, in a future written submission.

If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at [ataylor@iiac.ca](mailto:ataylor@iiac.ca) or 416-364-2754.

Yours sincerely,

*“Andrea Taylor”*

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Cc:

D. Peter Merkel, Internal Revenue Service  
Karl Walli, Department of the Treasury