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Delivered via Email and Post

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Re: Extension of Notice 2010-46 and the Qualified Securities Lender Regime

Dear Sirs and Mesdames:

The IIAC represents 130 IIROC-regulated investment dealer member firms in the Canadian securities industry¹. The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) have expressed their willingness to re-examine regulations to reduce the burden on taxpayers and market participants in the Department of the Treasury's 2017-2018 Priority Guidance Plan, released October 20,

¹ The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 130 IIROC-regulated investment dealer members in the Canadian securities industry. These dealer firms are the key intermediaries in the Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in the public and private markets for government and corporations. For more information visit, <http://www.iiac.ca>

2017 and Executive Order 13777 issued by President Trump. We strongly encourage Treasury and the IRS to consider preserving the Qualified Securities Lender (QSL) regime introduced in Notice 2010-46, or in the alternative extend the transition period to provide sufficient time to reconsider the applicability of the Qualified Derivative Dealer (QDD) regime to securities lending, as we believe unintended and inequitable consequences will result. The IIAC has previously raised concerns regarding the administrability of the QDD requirements for securities lending in our May 24, 2017 and September 22, 2017 submissions². The IIAC would also like to extend its support for comments made by the Securities Industry and Financial Markets Association in their June 28, 2017 and August 31, 2016 submissions³, as well as the Risk Management Association's (RMA) submissions dated November 16, 2017 and August 31, 2016.⁴

Preserve the Qualified Securities Lender Regime

We believe that the QSL regime should be maintained indefinitely for securities lending and sale-repurchase transactions. Notice 2017-42 did not extend the QSL regime, which is scheduled to lapse January 1, 2018 and therefore this recommendation is a high priority. We appreciate the motivation for wanting to unify all Section 871(m) activities under one regime from an IRS administrative perspective, however, securities lending is fundamentally different from the other Section 871(m) activities (i.e. swaps). The securities lending financial institutions would face a disproportionate compliance burden, additional transactions costs, as well as the potential disruption of business practices.

Treasury has publicly stated that they view Section 871(m) regulations as primarily anti-abuse rules; securities lending is not a high-risk activity for abuse as there are already requirements in effect to capture tax.⁵ Correspondingly, we believe the QDD regime should be required only for activities or transactions that do not have mechanisms in place to capture tax on dividend equivalents. QSLs are already required to assume responsibility for proper withholding and reporting of any substitute dividend payments. The QSL regime is tailored to address specific concerns in the securities lending industry and has been working effectively for many years to maintain accountability between securities lending participants and prevent cascading withholding.

The QDD regime was not designed for securities lending and many aspects of the QDD regime are not applicable to the securities lending business, for example the concept of delta, scope determinations, or substantial equivalence. QDD is administratively burdensome with requirements to self-assess tax and

² IIAC May 24, 2017 Submission is available at <http://iiac.ca/wp-content/uploads/IIAC-Letter-to-IRS-re-QI-QDD-Ch3-Regulations-May-24-2017.pdf> ; IIAC September 22, 2017 Submission is available at <http://iiac.ca/wp-content/uploads/IIAC-Letter-to-Treasury-and-IRS-re-Executive-Order-13777-Enforcing-the-Regulatory-Reform-Agenda-and-Section-871m.pdf>

³ SIFMA June 28, 2017 Submission is available at <https://www.sifma.org/wp-content/uploads/2017/08/SIFMA-Submits-Comments-to-the-Treasury-and-IRS-on-Revenue-Procedure-2017-15-Qualified-Intermediary-Agreement.pdf>; SIFMA August 31, 2016 Submission is available at http://www.stradley.com/~media/Files/Publications/2016/SIFMA_Submits_Comment_to_Multiple_Agencies_on_the_QI_Agreement.pdf

⁴ RMA November 16, 2017 Submission is available at <https://www.rmahq.org/securities-lending-regulatory-and-legal/>; RMA August 31, 2016 Submission is available at www.rmahq.org/WorkArea/DownloadAsset.aspx?id=19605

⁵ See Stephanie Cumings, Treasury Reconsidering Dividend Equivalent Rules, 2017 TNT 211-3 (November 2, 2017)

calculate net delta unnecessary because as the RMA also noted in their 2016 submission “in the event an entity has entered into a securities lending transaction for its own account the QSL regime ensures that the QSL is liable for and must remit the applicable tax”. Further, the QDD regime does not have a replacement for the credit forward system, a fundamental aspect of the QSL regime. Requiring QSLs to become QDDs for only securities lending transactions will unnecessarily expose those firms to additional risks and complexities.

Extend Transition Period

If Treasury and the IRS do not accept this recommendation to retain the QSL regime indefinitely, we request the QSL regime be extended until January 1, 2020. If the QSL regime is not extended, current QSLs will need additional time to apply to become QDDs and possibly Qualified Intermediaries (QIs) where they do not already have QI status. For those QSLs that already have QI status and have renewed their QI Agreements effective January 1, 2017, there is no mechanism to apply now for QDD status using the QI portal⁶. As we noted in our letter dated September 22nd, 2017, these QIs will no longer be able to rely on QSL status as of January 1, 2018 and yet there is no path towards obtaining QDD status.

Assuming that the issue of obtaining QDD status is remedied, and that such status may be obtained effective January 1, 2018, participants in securities lending transactions will need additional time in order to fully understand the status of their counterparties in securities lending transactions, and redocument all participants. As QSL sunsets, new documentation must be collected from counterparties prior to January 1, 2018. IRS documentation has become increasingly complex and many customers and counterparties struggle to understand how to complete and interpret Forms W-8.

In addition, we believe the transition period is necessary to provide time for the Treasury and IRS to work with industry to give careful consideration to the potential for cascading withholding as the QDD regime does not address this pressing issue, and securities lending participants will need to reconcile the impact of cascading withholding on securities lending.

The policy objectives of Section 871(m) can be achieved while preserving the QSL regime. We believe the differences between securities lending and the other Section 871(m) activities warrant differential treatment. We respectfully request that the QSL regime be preserved indefinitely, or at a minimum the transition period should be extended until January 1, 2020 to allow for orderly transition.

We appreciate the opportunity to provide you with these comments. If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at awalrath@iiac.ca or 416-687-5472. Thank you.

Yours sincerely,
“Adrian Walrath”
Assistant Director

⁶ The Qualified Intermediary, Withholding Foreign Partnership and Withholding Foreign Trust Application and Account Management System