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November 29, 2016

The Honorable Mark Mazur  
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The Honorable William J. Wilkins  
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1111 Constitution Avenue, NW  
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Re: *Report No. 1359 on Proposed Regulations under Section 851 of the Code*

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit the attached report of the Tax Section commenting on Proposed Regulation § 1.851-2 (the "Proposed Regulations"). These comments are submitted in response to a request by the Treasury Department and the Internal Revenue Service in the notice of proposed rulemaking issued on September 28, 2016 (the "Notice").

The Proposed Regulations would be issued under Section 851(b)(2) (the "Good Income Test"), which applies for purposes of determining the qualification status of a regulated investment company (a "RIC"). The Notice also requests comments on the withdrawal of Rev. Rul. 2006-1, Rev. Rul. 2006-31 and related guidance (the "Prior Guidance"), which address the treatment of income from certain commodity-

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linked instruments under Good Income Test and the asset diversification requirement contained in Section 851(b)(3).

The Proposed Regulations would adopt two new rules. The first would provide that, for purposes of the Good Income Test, income recognized under Section 951(a)(1)(A)(i) or 1293(a) (“Subpart F/QEF Imputations”) “are treated as dividends *only* to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of earnings and profits of the taxable year which are attributable to the amounts so included.” [emphasis added] (the “Dividend Proposal”). The second would provide that, for purposes of the Good Income Test, Subpart F/QEF Imputations and income recognized under sections 951(a)(1)(A)(ii), 951(a)(1)(A)(iii) or 951(a)(1)(B) (together with Subpart F/QEF Imputations, “CFC/PFIC Imputations”) “are not treated as other income derived with respect to a corporation’s business of investing in such stock, securities, or currencies.” (the “Main Proposal”).

Our Report does not comment on whether the Prior Guidance should be withdrawn. As to the Proposed Regulations, we recommend that:

1. Final regulations adopt the Dividend Proposal, but not the Main Proposal, and
2. In lieu of the Main Proposal, final regulations provide that CFC/PFIC Imputations derived with respect to a business of investing in stocks, securities or currencies be treated as qualifying under the Good Income Test regardless of whether the imputed income is distributed.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this report, please feel free to contact us and we will be glad to discuss or assist in any way.

Respectfully submitted,



Stephen B. Land  
Chair

cc: Emily S. McMahon  
Deputy Assistant Secretary (Tax Policy)  
Department of the Treasury  
  
Thomas C. West, Jr.  
Tax Legislative Counsel  
Department of the Treasury

The Honorable Mark Mazur  
The Honorable John Koskinen  
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November 29, 2016

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