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

October 14, 2016

Via email: taxpolicy@finance.gov.ie

Consultation on Double Tax Treaty with the United States of America
Tax Policy Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583

Re: Managed Funds Association

Comments in Respect of the Double Tax Treaty Update Discussions with the United States of America

Dear Sir / Madam:

The Managed Funds Association ("**MFA**")[1] appreciates the opportunity to submit for your consideration comments in the context of anticipated discussions between Ireland and the United States Treasury on updating certain elements of the Double Tax Treaty between Ireland and the United States of America (the "**Treaty**"). Given Ireland's position as global domicile of choice for international investment funds, we believe that an important objective in the discussions should be to ensure that any amendment to the Treaty does not inadvertently affect valuable investment activity or impose an additional layer of tax on investors that choose to invest via a pooled investment vehicle instead of investing directly in capital markets. In our view, some provisions in the new US model income tax convention (the "**Model Treaty**"), which we understand in large part may have been targeted at policy concerns regarding multinational operating companies (including with regard to "corporate inversions"), have the potential to create adverse, unintended consequences for investment funds without any countervailing benefit to Ireland or the US.

As a general matter, we believe that the Treaty should provide a framework that promotes cross-border investment and capital flows by promoting tax neutrality for investors in investment funds. In this

[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, North and South America, and many other regions where MFA members are market participants.

context, tax neutrality means providing investors in investment funds with similar tax treatment to what they would receive if they invested directly in capital markets, instead of through a pooled investment vehicle. We further believe that, to achieve these goals, the Treaty should distinguish, as appropriate, investment funds from multinational operating companies, given important differences in the structure and operations of investment funds as compared to operating companies.

There are three features of the current Treaty that are particularly important for investment funds and which could be jeopardized if the Model Treaty is implemented in its current form. Firstly, Irish regulated funds are expressly regarded in the Treaty as resident in Ireland for treaty purposes. Secondly, the ownership test for Irish fund vehicles under the current Treaty could be restricted if all of the measures of the Model Treaty were implemented. Thirdly, Irish exchange traded funds ("**ETFs**") are generally entitled to claim US treaty benefits when their shares are listed a recognized stock exchange.

We believe that these current provisions in the Treaty benefit both Ireland, in maintaining its global standing as a leading domicile for investment funds under a controlled and regulated environment, and the US, in facilitating the investment of substantial investment capital into the US, subject to highly precise controls established by the US to address tax abuse concerns.

In addition, we consider that renegotiation of the Treaty creates an opportunity to include a sensible proposal on proportional benefits for regulated funds which we have made to the Organization for Economic Co-operation and Development ("**OECD**") in the context of its Base Erosion and Profit Shifting project ("**BEPS**").[2] This and other constructive suggestions are made in more detail below.

1. IRISH INVESTMENT FUNDS AS 'RESIDENTS OF IRELAND'

The current Treaty expressly confirms in Article 4(1)(f) that Irish regulated investment funds are 'residents of Ireland' for the purposes of the Treaty. This has been a very important provision for the past 20 years, as it confirms that Irish regulated funds are expressly entitled to the benefits of the treaty, once they satisfy the limitation-on-benefits ("**LoB**") requirements.

While regulated Irish funds that are established as Irish incorporated companies may qualify as resident in any event, this leaves out units trusts, which are taxed in Ireland on the same basis, and we believe creates uncertainty generally that is unnecessary given that the LoB is there to prevent any perceived tax avoidance.[3]

2. THE "OWNERSHIP TESTS" UNDER THE LIMITATION ON BENEFIT (LoB) CLAUSE

Many Irish funds that are currently claiming eligibility under the existing Treaty rely on the '50% ownership' test in the LoB to confirm their entitlement to treaty benefits under the Treaty. Broadly, this '50% ownership' test provides that a company will satisfy the LoB if 50% of its direct or indirect

[2] A copy of our submission to the OECD is attached to this letter.

[3] As a reciprocation, our view is that Ireland should continue to accept that US REITs and RICs also continue to be treated as 'residents of the United States' for the purposes of the Treaty.

shareholders are either Irish qualifying residents or US residents or US citizens. Where there is a chain of ownership, this 50% ownership test must be satisfied by the last owners in the chain.

There are two proposed changes to this 50% ownership test under the Model Treaty:

First, the Model Treaty does not permit the counting of ownership by US residents or US citizens. Instead, the Model Treaty provides that the '50% ownership' test can only be satisfied if 50% of the shareholders are qualifying residents of the same country as the company seeking the treaty benefits. In other words, if this provision of the Model Treaty were to be applied to Irish resident companies, it would mean that the 50% ownership test could only be satisfied if 50% of the ultimate beneficial owners of the vote and value in the Irish resident company were themselves Irish qualifying residents.

Second, the Model Treaty imposes an additional requirement where there is a chain of ownership. In such cases, the Model Treaty provides that any intermediate owner must be a resident of either (a) the same country as the company claiming the treaty benefits, (*i.e.*, Ireland) or (b) another country which has agreed to a new tax treaty with the US which includes provisions dealing with special tax regimes and notional deductions (currently, there are no such countries).

These are fundamental changes to the LoB.

(a) Irish regulated funds are established by international investment firms to invest and manage capital from global investors. Irish funds can attract global capital and benefit from the performance and experience of investment managers based in the US, Europe and the rest of the world who manage Irish regulated funds. These funds can invest in non-US asset classes that may not be as readily available to domestic US funds.

Such Irish regulated funds also often invest in US assets and when they do, they do so with the knowledge that the Irish regulated fund should be able to reduce US withholding taxes on the US assets held by Irish funds, provided the Irish fund can ensure that it has over 50% Irish and US investors. This ability of Irish funds to claim US treaty benefits in years when they maintain over 50% US and Irish investors, gives US investors an outlet to invest outside the US with the knowledge that the fund in which they invest may be entitled to US treaty benefits. This entitlement to treaty benefits ensures that US taxable investors are not subject to double taxation and that US tax-exempt investors are not subject to withholding taxes that they would not have incurred if they invested directly, rather than through the investment fund. In addition, we believe this provision has the benefit of attracting international investment generally into the US.

While Ireland has a limited investor base of its own, is a global centre of investment funds. Irish domiciled regulated funds now hold over $2 trillion in investment capital in an environment that meets international regulatory standards. These funds invest substantial investment capital in the US, given its size and importance in global financial markets. If Irish investment funds cease to be entitled to the benefit of the Treaty, then many of those investment funds will make the decision to allocate that capital elsewhere. We understand that one policy rationale for this change to the ownership test was to prevent operating companies that had engaged in an inversion transaction from relying on the ownership test to qualify for treaty benefits. To address this policy concern, we suggest the Treaty include a more targeted

measure focused on those types of structures, which avoids unintentionally creating adverse effects on investment funds, which do not present such policy concerns.

(b) The 'qualifying intermediate owner' requirement in the Model Treaty also is of concern. US investors in Irish funds often hold their investments through one or more intermediate entities, the general purpose of which is to pool capital from different sources or to ease administration. As a result of the requirement in the Model Treaty, however, an Irish fund seeking treaty relief will generally fail the 'qualifying intermediate owner' test if it has any intermediate owner. We believe that the Treaty should not disqualify Irish investment funds that otherwise meet the other ownership and base erosion provisions of the LoB simply because those funds do not meet the 'qualifying intermediate owners' provision. We further note in this regard that, sometimes the intermediate owners are fiscally transparent entities (*e.g.*, limited partnerships), though this may not always be the case. If such 'qualifying intermediate owner' provisions are included in the Treaty, at a minimum it should be confirmed in the technical explanation that accompanies the new double tax treaty that entities that are fiscally transparent can be disregarded when applying the ownership test, regardless of where they may be established.

3. DERIVATIVE BENEFITS FOR IRISH INVESTMENT FUNDS UNDER THE LoB CLAUSE

We consider that certain aspects of the LoB provisions in the current Treaty are unnecessarily restrictive with respect to Irish regulated funds. In particular, most regulated funds cannot in practice satisfy the "seven or fewer" requirement in the derivative benefits provision in the current Treaty.

(a) We would contend that the "seven or fewer" requirement should be removed so that if any number of investors together can satisfy the "derivative benefit" requirement, then the fund should be fully eligible, provided that the fund can document the eligibility of its ultimate investors.

(b) Secondly, as noted above, MFA made a submission to the OECD on BEPS Action 6 on 22 April 2016 in which we urged the OECD to create a treaty benefit framework that avoids imposing double taxation on investors that would be entitled to treaty benefits when making a direct investment, but that choose to invest through a fund in order to have some of their capital managed by third-party managers. To this end, MFA recommended that regulated funds should be entitled to proportional treaty benefits to the extent that the ultimate investors in the fund would be entitled to treaty benefits if they had made an investment directly, rather than through the investment fund. This is consistent with the object and purpose of the Treaty, the Model Treaty and long-standing OECD principles on the taxation of collective investment vehicles. Moreover, this is consistent with the "look-through" method that the US already applies to determine the eligibility of investors for US tax treaty benefits when they invest in an entity that is treated under local law as a partnership. We would urge Ireland and the US to consider this approach when amending the Treaty.

In particular, this proposed framework would provide proportional treaty benefits to an investment fund to the extent the fund is able to document the information necessary to determine the treaty eligibility of ultimate investors. Many intermediary entities are under common control of the managers of the investment fund and would not present additional challenges. For intermediary entities

not under common control, those intermediaries could provide representations or certifications regarding their ultimate owners and proportional benefits would be given to the extent the ultimate investors would be entitled to treaty benefits if they invested directly. For this purpose, we urge Ireland to adopt the certification regime proposed by the Treaty Relief and Compliance Enhancement ("**TRACE**") project.

Investors in many private investment funds hold their interests directly. Further, regulatory requirements, including know your customer rules, U.S. Foreign Account Tax Compliance Act ("FATCA"), U.K. Agreements with Crown Dependencies and Overseas Territories ("U.K. CDOT"), and OECD's Common Reporting Standard ("CRS") require fund managers to gather information about their investors. To the extent investment funds have intermediary investors, such as funds of funds or bank-sponsored funds, those intermediary investors can conduct similar diligence on their investors to provide representations or certifications to the investment fund seeking proportional treaty benefits. We note that other tax frameworks, including FATCA, U.K. CDOT, and CRS recognize that investor certifications are an important mechanism for investment funds and other entities to be able to use as part of their diligence process. Under our proposed proportional approach, investment funds would only be entitled to proportional treaty benefits to the extent they can determine the tax status of their investor base.

4. COMPATIBILITY OF LoB WITH EU LAW

We would note that the LoB test in the US Model Treaty raises complex issues under European Union law, as discussed in more detail below. This has been highlighted recently by the OECD in the context of the BEPS project in which one of the recommendations to member states was to include in their treaties an LoB style clause. In its final report on BEPS Action 6, the OECD stated that:

> "…the LoB rule will need to be adapted to reflect certain constraints or policy choices concerning other aspects of a bilateral tax treaty between two Contracting States (*e.g.*, constitutional restrictions or concerns based on EU law or policy choices concerning the treatment of collective investment vehicles)."

Reflecting these issues, the European Commission's Recommendation of 28 January 2016 on the Implementation of Measures against Tax Treaty Abuse emphasised the need for new measures to be in compliance with European Union law and specifically recommended that a Principle Purpose Test be adapted in Tax Treaties.

Additionally, by way of a "reasoned opinion" issued on 19 November 2015 the European Commission has asked the Netherlands to amend the LoB clause in its tax treaty with Japan. The European Commission based this opinion on the fundamental freedoms guaranteed under the Treaty on the Functioning of the European Union. By virtue of these freedoms, the European Commission contends that a Member State cannot agree to better treatment for companies held by shareholders residing in the Member State's own territory, as opposed to companies held by shareholders residing elsewhere.

As such, we believe that any amendment to the current form LoB Test will have to consider these complex issues and consider whether alternatives to the Model Treaty's LoB provision would better address the policy considerations underlying those provisions without creating unintended consequences with respect to EU law.

5. THE LoB AND IRISH EXCHANGE TRADED FUNDS (ETFs)

The Model Treaty provides that a publicly traded company would be denied treaty benefits unless its "primary place of management and control" is in Ireland or its shares are primarily traded on the Irish Stock Exchange. The current Treaty permits Irish companies to satisfy the LoB if, broadly, their shares are publicly and actively traded on a recognized stock exchange, which is defined to include a number of major international exchanges.

ETFs seeking to raise equity capital from the international capital markets typically list on the major European exchanges. We believe that the amended treaty should, at a minimum, include the following as recognized exchanges, being the most important for ETFs: SIX Swiss Exchange; Deutsche Borse; London Stock Exchange; Borsa Italiana; and Euronext Amsterdam.

If the Model Treaty provisions were to be adopted, the "primary place of management and control" of such ETFs would need to be located in Ireland. However, in practice ETFs (as with other investment funds) will in many cases engage managers to manage investments on their behalf and these may be based in another EU Member State. Accordingly, it may be difficult to say with clarity where the "primary place of management and control" is located. Furthermore, "primary place of management and control" could change over the life of an ETF.

ETFs are established to facilitate collective investment in financial assets by a wide and unconnected group of investors in a cost efficient manner. They are not established for tax avoidance purposes. Further, it is a condition of the regulatory approval from the Central Bank of Ireland that Irish ETFs only make portfolio investments in financial assets; they cannot acquire controlling or majority stakes in any company. Accordingly, the operations of ETFs can be entirely distinguished from policy concerns that may be applicable to operating companies, for example, concerns about corporate inversion transactions. Given key differences between the structure and operations of ETFs and operating companies, we believe that it should be sufficient that an ETF is resident in Ireland for treaty purposes like any other entity and meets the conditions of the LoB.

Accordingly, we consider that there should be an exception from the new condition (of needing to look to the "primary place of management and control") for persons who are residents of Ireland by virtue of being Irish regulated funds.

6. OTHER POINTS RELEVANT TO INVESTMENT FUNDS

We consider that the following points of relevance to the Irish investment fund industry should be raised in Treaty negotiations.

(a) We believe that US Treasury should confirm that the Irish regulated fund regime is not a 'special tax regime' as defined in Article 3 of the Model Treaty. We do not believe that the US is seeking to cover regulated investment funds within this concept; however, it would be useful to get agreement for the avoidance of doubt.

(b) Ireland and the US should seek to delete the prior-year "look-back" requirement for the base erosion test. This measure is confusing to apply in practice and creates unintended results and is not in line with other treaties.

(c) Irish regulated investment funds sometimes use Irish securitization or "section 110" companies to hold certain assets for administrative reasons or to segregate assets and liabilities. In such cases, the company would be entitled to claim benefits under the Treaty if the Irish fund satisfies the LoB. In the Model Treaty there is a new concept of 'special tax regime' ("**STR**") that may create uncertainty regarding the status of certain investment funds. While we do not consider that the section 110 regime meets the five STR conditions in the Model Treaty, this should be confirmed in a technical note to avoid unnecessary uncertainty in the application of the new treaty.

(d) The Model Treaty provisions include a 12-month waiting period before an entity can avail itself of the 5% rate of withholding on dividends received from a 10% or more owned investee. This means if an investment fund acquires a 10% or greater interest in a US company, it will have to pay a 15% withholding tax for the first year of ownership. We do not believe there is a policy rationale for this approach if the entity will be holding a 10% or greater interest for at least 12 months.

If you have any questions regarding any of the information provided above, or if we can provide further information with respect to the application of the Treaty to private investment funds, 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 and Managing
Director, General Counsel

Encl. MFA's April 22, 2016 comment letter to the OECD's consultation document on the Treaty Entitlement of Non-CIV Funds

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

April 22, 2016

Via email: taxtreaties@OECD.org

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France

Re: Managed Funds Association Comments on Discussion Draft, Treaty Entitlement of Non-CIV Funds

Dear Sir / Madam:

The Managed Funds Association[4] appreciates the opportunity to submit for your consideration comments regarding the Organisation for Economic Co-Operation and Development's ("OECD") consultation document on the Treaty Entitlement of Non-CIV Funds, as part of its Base Erosion and Profit Shifting ("BEPS") project. We support the goals underlying the OECD's project of preventing tax abuse in connection with granting tax treaty benefits.

We also believe that it is important for the BEPS project to establish a treaty benefit framework that avoids imposing double taxation on investors who would be entitled to treaty benefits when making a direct investment, but that choose to invest through a pooled investment vehicle, such as a private investment fund, in order to have some of their capital managed by third-party managers. As we noted in our June 2015 letter responding to the prior consultation paper on BEPS Action 6,[5] to the extent investors, including pension plans, sovereign funds, endowments, and charitable foundations, would be subjected to an additional layer of tax simply because they choose to invest through a pooled vehicle, they likely would no longer choose to invest through that type of asset management structure. Those investors that forego such investments would thereby forego the potential returns they generate from investing in

[4] 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, North and South America, and many other regions where MFA members are market participants.

[5] Available at: https://www.managedfunds.org/wp-content/uploads/2015/06/MFA-Letter-on-OECD-Discussion-Paper-Action-61.pdf.

private funds, and the available private fund capital for international investment would shrink to that extent.

We continue to believe that any regulated, "widely-held" CIV, such as a U.S. mutual fund or a European UCITS fund, should qualify as a treaty resident and as a *per se* "qualified person," in addition to our proposed framework for non-widely held investment funds.

We further encourage the OECD to develop a framework for non-widely held investment funds that would allow them to be regarded as collective investment vehicles ("CIVs") and therefore qualify for treaty benefits on the basis set out below. We believe that the appropriate requirement for an investment fund to be regarded as a CIV should be that the fund or the fund's investment manager is subject to regulation in the country in which it was established[6] – for example, alternative investment funds with investment managers subject to regulation under the Alternative Investment Fund Managers Directive (the "AIFMD"). We believe that limiting the definition of CIV to these regulated funds significantly reduces the risk of providing tax treaty benefits to entities structured to avoid taxes. Regulated funds and their managers are subject to significant compliance and regulatory costs and provide significant transparency to their government regulators with respect to their investment activities and, as such, are highly unlikely to be established or operated as tax avoidance vehicles.

Including regulated funds within the scope of the definition of a CIV also would allow the OECD to use relevant definitions from the securities and financial services regulations of a treaty country, rather than having to create a stand-alone definition for purposes of tax treaties, which could cause confusion and uncertainty for market participants and policy-makers.

To the extent the OECD does not agree with the above recommendation, at a minimum, we believe the OECD should include funds that are regulated in their country of establishment within the definition of a CIV. As a precedent, the tax treaty between Ireland and the United States does not include references to "widely-held" or "diversified"; it simply refers to "Collective Investment Undertakings", which includes Irish Qualifying Investor Alternative Investment Funds ("QIAIFs") that are not widely-held.

We acknowledge the OECD's concerns that regulation alone may not fully address concerns about treaty shopping by investors. To address these concerns, we believe the framework for CIVs that are not widely-held but regulated should permit such investment funds to receive proportional treaty benefits, to the extent that ultimate investors in a fund would be entitled to treaty benefits if they had made the investment directly, rather than through a pooled investment fund. We believe this two-step framework would address OECD's concerns about treaty-shopping.

We note that the commentary regarding CIVs in the OECD's October 2015 report focused on widely-held CIVs. We believe the OECD should provide explicit commentary regarding non-widely held CIVs, which would, at a minimum, provide greater clarity to OECD members that choose to address non-widely held investment funds through bilateral treaties. We would suggest the OECD provide the following guidance:

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[6] In this letter, we refer to investment funds subject to regulation or whose investment manager or investment adviser is subject to regulation with respect to the management of the investment fund as "regulated funds."

As with CIVs, private investment funds are a type of collective investment vehicle that provide investors the ability to pool capital with other investors for the purpose of having an asset manager make investment decisions, except that private investment funds raise capital through private placements instead of public offerings. While some private investment funds may be widely-held and regulated in the country of establishment, other funds may not be widely-held or directly regulated at the fund level. Private investment funds generally are subject to investor-protection regulation through regulation of the manager, with respect to the management of such funds, in the country in which the manager operates. Denying treaty benefits to non-widely held private investment funds presents the same risk of double taxation on their investors as on investors in widely-held funds. States may wish to expand the scope of the term "collective investment vehicle" ("CIV") to include those funds that are not widely-held and that are subject to investor-protection regulation of the fund directly or through regulation of the fund's manager with respect to management of the fund, in either the fund's country of establishment or the country in which its manager is regulated. Weighing against such risk of double taxation is the concern that providing treaty benefits to non-widely held regulated funds would present risks of treaty shopping or other tax abuse. In considering options for providing treaty benefits to non-widely held regulated funds, States should consider granting treaty benefits in proportion to the treaty benefits that their ultimate investors would have been entitled to receive had they made the investment directly, as this option is consistent with the neutrality principle and addresses treaty-shopping concerns. In considering when to grant proportional treaty benefits to non-widely held, regulated, investment funds, States should consider fixed, periodic documentation requirements for establishing the tax residence of their investors, which, in some cases, may require funds to obtain documentation or certifications from intermediary investors.

Set out below are the questions from the OECD's Consultation Paper and MFA's responses. We note that we have not responded to all of the questions set out in the Consultation Paper.

SUGGESTION THAT TREATY BENEFITS BE GRANTED TO REGULATED AND/OR WIDELY-HELD NON-CIV FUNDS

1. What would be the threshold for determining that a fund is "widely held" for the purpose of such a proposal?

We have considered various definitions used to define "widely held" in the context of funds such as the U.K. investment manager exemption and the Australian Investment Manager Regime. Based on the foregoing, we would suggest the following test, which we consider clear enough to be workable and broad enough to allay concerns that a fund is being used to secure treaty benefits.

A CIV would be regarded as 'widely held' if the fund has at least 50 beneficial owners of the fund's capital interests, and no single beneficial owner owns more than 20% of the capital interests in the fund (counting an owner and its connected persons as a single beneficial owner for purposes of the foregoing).

As noted above, we continue to believe that any regulated, "widely-held" CIV, such as a U.S. mutual fund or a European UCITS fund, should qualify as a treaty resident and as a *per se* "qualified person," in addition to our proposed framework for non-widely held investment funds.

2. What types of regulatory frameworks would be acceptable in order to conclude that a fund is "regulated" for the purposes of such a proposal? For instance, would these include the types of regulatory requirements described in paragraph 16 of the 2010 CIV report (i.e. "regulatory requirements relating to concentration of investments, restricting a CIV's ability to acquire a controlling interest in a company, prohibiting or restricting certain types of investments, and limiting the use of leverage by the CIV") as well as disclosure requirements relating to distribution of interests (e.g. "know your customer" rules)?

We believe there are a variety of regulatory frameworks that provide investor protections that should be deemed acceptable for purposes of our proposal set out above. Regulatory frameworks that provide for (1) fund or fund manager registration or similar notification requirements with a government agency; (2) government oversight of the fund or manager through reporting and/or examination authority; and (3) rules regarding operational or compliance obligations should be deemed acceptable for purposes of our proposal. We believe the AIFMD[7] in EU Member States that have implemented it, the Irish QIAIF, the Luxembourg Specialised Investment Fund, the U.S. Investment Advisers Act of 1940, and the Resident Fund Scheme in Singapore are all examples of regulatory frameworks that should be deemed acceptable, as should other similar regulatory frameworks. In that regard, we would note that the new draft EU Directive on tax avoidance contains a concept of "financial undertaking" which benefit from certain safe harbors and which includes an "alternative investment fund" managed by an "alternative investment fund manager", each as defined in the AIFMD. We encourage the OECD to similarly consider referencing regulatory frameworks such as the AIFMD for purposes of determining the scope of investment funds eligible to obtain treaty benefits.

The AIFMD imposes substantive requirements on fund managers subject to regulations under the Directive, including: authorization as an alternative investment fund manager; regulatory reporting to government authorities; disclosures to investors; requirements to use third-party depositaries; and requirements to have policies and procedures regarding issues such as valuation of investment fund assets, conflicts of interest, and risk and liquidity risk management related to the investment fund. Notably, the AIFMD applies to managers of "alternative investment funds",[8] which the Directive defines as "collective undertakings, including investment components thereof, which: (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) do not require authorisation [under the UCITS Directive]." As such, we believe these regulatory requirements provide a useful framework for determining that an investment fund is subject to regulation and engaged in meaningful activities as an investment fund, similar to UCITS funds or U.S. mutual funds.

Similarly, investment advisers registered under the U.S. Investment Advisers Act of 1940 are subject to reporting to government authorities; disclosures to investors; requirements to keep client securities and funds with qualified custodians, undergo annual audits of the funds they manage; have a chief compliance officer and compliance policies and procedures designed to ensure compliance

[7] Directive 2011/61/EU.

[8] To distinguish from publicly-offered, regulated funds such as U.S. mutual funds and UCITS, we refer generally herein to the investment funds that constitute the bulk of the funds managed by our member firms as private investment funds.

with U.S. securities laws. Notably, for a person or entity to be an investment adviser, that person has to engage in the business of advising other people, for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. Similar to the AIFMD, we believe these regulatory requirements provide a useful framework for determining that an investment fund is subject to regulation and engaged in meaningful activities as an investment fund, similar to UCITS funds or U.S. mutual funds.

Under our proposal, non-widely held investment funds subject to a regulatory framework of the type described, above, would only be entitled to proportional treaty benefits, which would require investment funds to be able to identify the tax residences of their ultimate investors. As such our proposal is designed to ensure that investment entities formed and operated for the purpose of pooling investor capital for investing purposes would be entitled to receive at most the same treaty benefits that the investors in the fund would have received had they invested directly. Our proportional treaty benefits proposal prevents treaty shopping by investors and is consistent with the neutrality principle recognized by the OECD. For further detail regarding how funds can determine the tax status of their investors, see our answer to question 14 below.

3. Since the proposed exception would apply regardless of who invests in the funds, it would seem relatively easy for a fund to be used primarily to invest in a country on behalf of a large number of investors who would not otherwise be entitled to the same or better treaty benefits with respect to income derived from that country. How would this treaty-shopping concern be addressed?

See our proposed framework above regarding proportional treaty benefits based on the ability of ultimate investors to obtain treaty benefits had they invested directly.

4. Is it correct that investors in a non-CIV are typically taxable only when they receive a distribution? Would there be mandatory distribution requirements for a fund to be eligible for the proposed exception and if yes, would intermediate entities be required to distribute earnings up the chain of ownership on a mandatory basis? If not, how would concerns about deferral of tax be addressed?

It is not correct that investors in private investment funds are typically taxable only when they receive a distribution. For example, taxable U.S. taxable investors invest through fund entities that are transparent for U.S. tax purposes – so they are taxable on their allocation of income regardless of whether they have received a distribution. Further, many institutional investors in private investment funds are exempt from taxation in their state of residence – either as pension funds and/or as government institutions enjoying sovereign tax immunity – and, as such, would not be taxed upon distribution. As shown on the following chart, which is derived from Preqin's 2016 Global Hedge Fund Report,[9] the vast majority of capital invested in hedge funds, which are a

[9] Preqin's 2016 Global Hedge Fund Report is available (fee required) at: https://www.preqin.com/item/2016-preqin-global-hedge-fund-report/2/13359. The term "hedge fund" is sometimes used interchangeably with "alternative investment fund", but we note a distinction among private investment funds between hedge funds and private equity funds in our answer to Question 13, below.

particular type of private investment fund, comes from tax-exempt investors such as public and private sector pension plans.

Breakdown of Institutional Investor Capital Invested in Hedge Funds by Investor Type

	As of	
	Dec-14	Dec-15
Public Pension Fund	20%	23%
Private Sector Pension Fund	19%	19%
Sovereign Wealth Fund	11%	11%
Endowment Plan	11%	11%
Asset Manager	10%	8%
Foundation	8%	9%
Insurance Company	7%	7%
Bank	6%	3%
Family Office	3%	2%
Wealth Manager	3%	3%
Corporate Investor	1%	0%
Superannuation Scheme	1%	1%
Other	1%	1%

We do not believe that the proposed exception for proportional treaty benefits for regulated funds should contain a mandatory distribution requirement. Requiring investment funds that invest in more illiquid assets to have mandatory redemptions would raise investor protection and other concerns identified by securities regulators by creating potential mismatches in the liquidity of the portfolio of assets and the liquidity of investor redemption rights. In particular, any mandatory distribution requirement to qualify for treaty benefits would shrink the pool of long-term capital provided by private investment funds that is needed for the type of less liquid investment strategies that provide recovery capital during economic downturns.

We believe concerns about deferral of income are best addressed by the residence countries of investors, through anti-deferral rules such as the U.S. passive foreign investment company ("PFIC") framework or the U.K. reporting fund framework. We would note that if there is any deferral for investors under the tax laws of their residence State, that deferral presumably applies to both income and loss – so the issue is not solely deferral of income.

Under U.S. tax rules, an investment fund that holds assets through a foreign corporation generally would be deemed a PFIC, which is defined as a foreign corporation with either 75% of its gross income as passive income or if the average percentage of assets which produce passive income (or are held for the purpose of producing passive income) is at least 50%. Direct and indirect U.S.

shareholders of a PFIC are all subject to PFIC rules and are subject to U.S. tax as set out in the rules. We believe the U.S. PFIC rules provide an example of an anti-deferral framework that individual jurisdictions could consider as a means of addressing policy concerns regarding investor deferral of income.

We believe the U.K. reporting fund regime also provides such an example.[10] The reporting fund framework replaced the U.K.'s prior distributing fund framework for offshore funds, which created significant challenges for many investment funds. Reporting funds must comply with reporting requirements to investors and to U.K. tax authorities that include the income returns for the offshore fund on a per-share basis for each reporting period. U.K. investors in reporting funds are then subject to tax on cash distributions from the fund as well as any excess reportable income (*i.e.,* they are subject to tax on the offshore fund's reportable income even if that income is not distributed). Under the reporting fund regime, U.K. investors in offshore funds that are non-reporting funds are subject to higher taxes on the sale or other disposal of their interest in the fund, creating a strong disincentive to invest in non-reporting funds.

5. States that support the inclusion of LOB rules in their treaties are unlikely to agree to a broad exception from the LOB rule that would apply to any widely-held fund, even if it is regulated, especially since that exception would seem more generous than the exception already provided for publicly-listed companies. What features could be incorporated into a specific non-CIV exception in order to make it more acceptable to these States?

As discussed above, our proposed framework would only provide proportional treaty benefits to non-widely held, regulated investment funds.

6. One argument that was put forward in relation to suggestions for a specific LOB exception for non-CIV funds was that it would avoid or reduce the cascading tax when investment is made through a chain of intermediaries. In practice, what is the intermediate entity-level tax, if any, that is typically payable with respect to income received from a State of source? Are there special purpose vehicles that are commonly used by funds to invest indirectly? How are intermediate entities typically funded, debt or equity? If debt, is it unrelated party financing?

We believe the investor identification issues discussed elsewhere in this letter are of greater relevance with respect to intermediaries than concerns about cascading tax. See our response to question 17 for discussion on treaty eligible investors that invest through intermediary entities.

NON-CIV FUNDS SET UP AS TRANSPARENT ENTITIES

7. Where an entity with a wide investor base is treated as fiscally transparent under the domestic law of a State that entered into tax treaties, the application of the relevant tax treaties raises a number of practical difficulties. Are there ways in which these difficulties could be addressed? Are there other practical problems that would prevent the application of the new transparent

[10] We note that Germany, Italy, Switzerland, Austria, and Denmark also have their own anti-deferral regimes with similar foreign fund reporting rules.

entity provision in order to ensure that investors who are residents of a State are entitled to the benefits of the treaties concluded by that State?

A fund vehicle that is fiscally transparent in its residence State and the source State is impracticable for funds with a wide investor base. Such transparent vehicles are economically viable only in very limited circumstances – primarily in a fund with a single investor that is willing to comply with its own tax filing obligations and claim its own treaty benefits in respect of the fund's investments. The vast majority of the investors that invest in private investment funds do not have the resources to undertake such efforts for each of a fund's investments that would be directly attributed to them in a fiscally transparent structure. It is part of the economic efficiencies of pooling capital in a fund vehicle that such a vehicle can claim treaty benefits and comply with tax filing obligations on its own behalf and spare each of its investors of the duplicative time and effort of doing so.

SUGGESTION THAT THE LOB INCLUDE A DERIVATIVE BENEFIT RULE APPLICABLE TO CERTAIN NON-CIV FUNDS

8. The rationale that was given for the above proposal refers to the fact that "investors in Alternative Funds are primarily institutional investors, and are often entitled to benefits that are at least as good as the benefits that might be claimed by the Alternative Fund". What is the meaning of "institutional investors" in that context? In particular, does it include taxable entities or other non-CIVs? Absent a clear definition of "institutional investors", how can it be concluded that institutional investors "are often entitled to benefits that are at least as good as the benefits that might be claimed by the Alternative Fund"? Also, is it suggested that "institutional investors" are less likely to engage in treaty-shopping and, if yes, why?

Institutional investors, broadly speaking, are all investors other than individuals. As noted in the table provided in our answer to Question 4, the institutional investors that comprise the largest percentage of capital invested in hedge funds – public and private pension funds, sovereign funds, endowments, and foundations are generally tax-exempt in their residence State. Further, many taxable institutional investors (such as insurance companies, banks, and corporates) are eligible for treaty benefits in their own right, because corporate capital comes primarily from companies resident in treaty countries. For this reason, treaty shopping is not pursued by the institutional investors that comprise the vast majority of capital invested in hedge funds – rather, their concern is about whether they lose treaty benefits by investing in a hedge fund or other private investment fund. For private investment fund investors, the use of a treaty eligible fund vehicle aims to preserve neutrality.

9. Unlike CIVs, which are defined in paragraph 6.8 of the 2010 Report on CIVs, the term "non-CIV" has no established definition. What would be the main types of investment vehicles to which the proposal could apply?

See our response to question 2 above.

10. Paragraph 17 above refers to the possible inclusion of "specific anti-abuse rules". What would these rules be?

We have no comment on this question.

11. What would constitute a "bona fide investment objective" for the purpose of paragraph 17 above?

We have no comment on this question.

12. How would it be determined that a fund is "marketed to a diverse investor base" for the purpose of paragraph 17 above?

We have no comment on this question.

QUESTIONS RELATED TO THE IDENTIFICATION OF THE INVESTORS IN A NON-CIV

13. Is the ownership of interests in non-CIV funds fairly stable or does it change frequently like the interests in a typical collective investment fund that is widely distributed?

The answer is both of the above. The stability of the ownership of private investment funds depend on whether they are open and evergreen (sometimes referred to as "hedge fund" style within the private investment fund industry) or closed with a limited term (sometimes referred to as "private equity" style). A private investment fund may be open and evergreen in the sense that new investors can be admitted (through private placement), existing investors can redeem their interests (only at specified intervals and with advance notice), and the fund does not expect to liquidate and return all capital to investors in the foreseeable future. A private investment fund is closed with a limited term if investors do not have the right to redeem their investment and have to await the return of their capital at end of the fund's fixed term. Whether a private investment fund is structured as an open or closed fund is largely determined by the type of assets it plans to hold or trade. Funds pursuing liquid trading strategies tend to be open; funds pursuing less liquid, long-term investments tend to be closed. It is a matter of trying to match the liquidity and term of the capital with the liquidity and term of the assets for which the capital is intended.

14. How would the proposal address the concern, expressed by some commentators, that many non-CIV funds would be unable to determine who their ultimate beneficial owners are and, therefore, would not know the treaty residence and tax status of these beneficial owners?

Investors in many private investment funds hold their interests directly, rather than in "street name" as with listed securities. Further, regulatory requirements, including know your customer rules, U.S. Foreign Account Tax Compliance Act ("FATCA"), U.K. Agreements with Crown Dependencies and Overseas Territories ("U.K. CDOT"), and OECD's Common Reporting Standards ("CRS") require fund managers to gather information about their investors. To the extent investment funds have intermediary investors, such as funds of funds or bank-sponsored funds,

those intermediary investors can conduct similar diligence on their investors to provide representations or certifications to the investment fund seeking proportional treaty benefits. We note that other tax frameworks, including FATCA, U.K. CDOT, and CRS recognize that investor certifications are an important mechanism for investment funds and other entities to be able to use as part of their diligence process. Under our proposed proportional approach, investment funds would only be entitled to proportional treaty benefits to the extent they can determine the tax status of their investor base.

15. What information do those concerned with the management and administration of non-CIV funds currently have concerning persons who ultimately own interests in the fund (for example under anti-money laundering, FATCA or common reporting standard rules)?

Managers collect information about investors under a variety of regulations, to the extent applicable, including anti-money laundering rules, U.S. FATCA, U.K. CDOT, and CRS.

16. Is this information currently sufficient for relevant parties to identify the treaty benefits that an owner would have been entitled to if it had received the income directly? If not, what types of documents and procedures could be used by a non-CIV to demonstrate to tax authorities and/or payors that the residence and treaty entitlement of its ultimate beneficial owners are such that the non-CIV qualifies for treaty benefits under that suggested derivative benefits rule? What barriers would exist to the communication of these documents or the implementation of these procedures? In particular, does intermediate ownership present obstacles to obtaining information about ultimate beneficial ownership and, if yes, how might these obstacles be addressed?

This information currently collected from investors generally is not sufficient for purposes of our proposed proportional benefits framework. We therefore strongly support the adoption of the investor self-certification system developed in TRACE as a mechanism to document the investor's tax status and remit the appropriate information to tax authorities, and urge the OECD to encourage member States to do so. We note that even if TRACE's "authorized intermediary system" is not adopted by member States, member States could adopt or adapt TRACE's investor self-certification form or a TRACE-type of self-certification, for example by extending established FATCA or CRS self-certification processes.

QUESTIONS RELATED TO THE PREVENTION OF TREATY-SHOPPING

17. Since beneficial interests in non-CIV funds are frequently held through a chain of intermediaries, including multiple subsidiary entities (which is not the case of typical CIVs), how would the proposal overcome the difficulties derived from such complex investment structures with multiple layers and ensure that a fund is not used to provide treaty benefits to investors that are not themselves entitled to treaty benefits?

As discussed above, our proposal would only provide proportional treaty benefits to an investment fund to the extent the fund is able to document the information necessary to determine the treaty eligibility of ultimate investors. Many intermediary entities are under common control of the managers of the investment fund and would not present additional challenges. For intermediary

entities not under common control, those intermediaries could provide representations or certifications regarding their ultimate owners and proportional benefits would be given to the extent the ultimate investors would be entitled to treaty benefits if they invested directly.

Enclosed with this letter is a structure diagram as an illustrative example of a potential future fund structure that might be used by private investment funds if our proposed framework for non-widely held CIV were adopted by contracting States.

18. The proposal would grant treaty benefits if a certain high percentage of a non-CIV is beneficially owned by investors entitled to similar or better benefits. Even a percentage as high as 80% would leave substantial room for treaty-shopping as a 20% participation in a very large fund could represent a significant investment. How could this concern be addressed?

While we do not oppose such an approach, our proposed framework would only provide proportional treaty benefits to non-widely held, regulated investment funds. We note as a precedent that the LOB provision in the U.S. Model Treaty would grant treaty benefits for a resident company if at least 95% of its shares are directly or indirectly owned by equivalent beneficiaries. (We also note in our answer to Question 22, below, that the U.S. Model Treaty LOB provision is problematic in several respects for non-widely held, regulated funds.)

19. One of the proposed requirements for the application of the suggested derivative benefits rule would be a 50% base erosion test. Since one of the main concerns expressed by governments relates to the possible use of non-CIV funds for treaty-shopping purposes, wouldn't the 50% threshold proposed for the base erosion test be too generous?

The regulated private investment funds that we propose should be eligible for proportional treaty benefits are generally not taxed at the entity level by the residence State (provided that the entity complies with applicable regulations). As such, a base erosion test should not apply to such funds.

QUESTIONS RELATED TO THE PREVENTION OF DEFERRAL

20. According to the proposal, acceptable ultimate beneficial owners would include persons who would "include their proportionate share of the fund's income on a current basis". How would a State of source be able to determine when this requirement is met? Also, what would be considered an acceptable anti-deferral regime? In particular, would a regime under which a taxpayer is taxed on a deemed amount of income or deemed return on investment be considered as an anti-deferral regime even if the amount that is taxed is significantly lower than the actual return? Would the United States PFIC regime be an example of an acceptable anti-deferral regime?

We understand tax authorities' policy concerns with respect to deferral of income. As discussed above in response to question 4, however, given the significant percentage of capital invested by tax-exempt entities, we believe that the potential for deferral is substantially lower than generally perceived, and that such concerns about deferral of income are best addressed by the

residence countries of investors, through rules such as the U.S. PFIC framework or the U.K. reporting fund framework, rather than as part of the Action 6 workstream, which we believe is more appropriately focused on issues relating to treaty shopping.

21. As regards the application of the proposal in the case of indirect ownership, who will be tested in relation to the condition that an ultimate owner is either tax exempt or taxed on a current basis?

We have no comment on this question.

QUESTIONS RELATED TO THE NEW DERIVATIVE BENEFITS PROVISION OF THE UNITED STATES MODEL

22. The proposal above was presented as a possible additional derivative benefits rule that would apply specifically to non-CIV funds but that would not replace the more general derivative benefits provision that appeared in the detailed version of the LOB rule included in the Report on Action 6. The Working Party is now looking at possible changes to that derivative benefits provision in the light of the new derivative benefits provision included in the United States Model Treaty released on 12 February 2016. Based on previous comments, it is acknowledged that many non-CIV funds could not satisfy the "seven or fewer" condition of that derivative benefits provision. What other aspects of the new derivative benefits provision included in the United States Model Treaty would be problematic for non-CIV funds?

We believe that a derivatives benefit provision in general is likely to problematic for many private investment funds, which is why we encourage adopting our proposed approach of proportional treaty benefits for regulated, non-widely held investment funds. Other problems with the U.S. Model Treaty's LOB provision include its base erosion restriction, its restrictive definition of "equivalent beneficiary," and the minimum six-month period (over a trailing twelve-month period) for which the ownership by equivalent beneficiaries must be demonstrated. In some regulated funds, the tax exemption may operate by granting a tax deduction for dividends paid by the fund (as is the case with U.S. mutual funds). But that type of tax exemption is intended to act as penalty for a fund that does not comply with the applicable regulations and should not inadvertently be subject to base erosion restrictions under an LOB provision. And the U.S. Model Treaty's definition of "equivalent beneficiary" in effect exports the U.S. style LOB requirements to the equivalent beneficiary's resident State tax treaty with the source State that is being tested for equivalent benefits. In sum, our proposal for proportional treaty benefits to the extent of a fund's investors that are equivalent beneficiaries is an altogether different LOB regime than the one contained in the U.S. Model Treaty.

SUGGESTION THAT A "SUBSTANTIAL CONNECTION" APPROACH BE ADOPTED

23. Are there practicable ways to design a "substantial connection" approach that would not raise the treaty-shopping and tax deferral concerns described in paragraph 21 above?

We have no comment on this question.

SUGGESTION OF A "GLOBAL STREAMED FUND" REGIME

24. Although the above proposal for a "Global Streamed Fund" regime is very recent and has not yet been examined by Working Party 1, the Working Party wishes to invite commentators to offer their views on its different features. In particular, the Working Party invites comments on:

> **Whether the approach would create difficulties for non-CIV funds that do not currently distribute all their income on a current basis?**
> **Whether the approach would create difficulties for non-CIV funds that cannot, for various reasons, determine who their investors are?**
> **Whether the suggestion that tax on distributions be collected by the State of residence and remitted to the State of source would create legal and practical difficulties?**
> **What should be the consequences if, after a payment is made to a GSF, it is subsequently discovered that the fund did not meet the requirements for qualifying as a GSF or did not distribute 100% of its income on a current basis?**

We believe that the GSF framework accords with the principle of proportional benefits that we advocate and may therefore be appropriate for certain types of investment funds; however, not all private investment funds are able to make current distributions without creating investor protection or other regulatory concerns (see our answer to Question 13, above). To the extent the OECD considers the GSF framework, we believe it should do so only as one potential option for investment funds and not as the sole option. Moreover, we are concerned that the GSF framework may take longer to resolve than the other elements of the consultation and therefore potentially delay their resolution.

ADDITIONAL EXAMPLES FOR THE COMMENTARY ON THE PPT RULE

25. Commentators wishing to suggest new examples related to the application of the PPT rule to common types of legitimate arrangements that are commonly entered into by non-CIV funds are invited to do so. These examples should be brief and should focus on common transactions that do not raise concerns related to treaty-shopping or inappropriate granting of treaty benefits.

We believe that a widely-held, regulated investment fund (as described in our response to question 2 above) should automatically pass the PPT. We also believe that a non-widely held, regulated investment fund (as described in our response to question 2 above) and which seeks to claim proportional treaty benefits should be deemed to pass the PPT. In fact, the OECD's wording of the PPT includes an exception for granting treaty benefits that "would be in accordance with the object and purpose of the *relevant provision* of this Convention" (emphasis added). Granting proportional treaty benefits to eligible funds pursuant to a specific treaty provision would be "in accordance with the object and purpose of the relevant provision."

For any other type of investment fund or investment entity, guidance should be provided to assist in determining whether that fund or entity has been formed with a principal purpose of obtaining treaty benefits. This should include a list of factors that would indicate no such purpose such as where there is diversity of investors, diversity of investments, a significant proportion of investors entitled to treaty benefits if they held the investment directly, prospectus documentation indicating clear commercial objectives, investor preference for legal regime, political stability, investor familiarity and preferred professional service providers in the chosen jurisdiction. The mere fact that the jurisdiction in which the entity is formed has a wide network of double tax treaties should not, of itself, indicate that obtaining treaty benefits is a principal purpose of the entity or investments its makes.

CONCERNS WITH RESPECT TO CONDUIT ARRANGEMENTS

26. Commentators who share the concern described above in relation to conduit arrangements are invited to provide one or more examples where the PPT rule could apply to legitimate types of arrangements that are commonly entered into by non-CIV funds because these could be seen as conduit arrangements in the light of the examples already included in paragraph 19 of the Commentary on the PPT rule included in paragraph 26 of the Report. These examples should be brief and should focus on common transactions that do not raise concerns related to treaty-shopping or inappropriate granting of treaty benefits.

We have no comment on this question.

CONCERNS RELATED TO THE “SPECIAL TAX REGIMES” PROPOSAL

27. Commentators who shared the concern described above in relation to the proposal for “special tax regime” rules are invited to indicate whether they have similar or different concerns with respect to the new version of the proposal that was included in the new United States Model Tax Treaty released in February 2016 (see question 22 above). If yes, what is the type of “statute, regulation or administrative practice” related to non-CIV funds that could constitute a special tax regime and that would give rise to these concerns?

We have no comment on this question.

OTHER SUGGESTIONS

28. Please describe briefly any approach not already mentioned in this consultation document or in previous comments that could address concerns related to the way in which the new treaty provisions included in the Report on Action 6 may affect the treaty entitlement of non-CIV funds without creating opportunities for treaty-shopping or tax deferral.

Although we have already urged the OECD to encourage member States to adopt the TRACE Implementation Package, we note that in light of the continuing work on Action 15 (for developing a multilateral instrument to modify tax treaties), the Package contains model language for a multilateral (and bilateral) adoption of our proposed proportional benefits framework by member States. These

thoughtfully drafted model agreements (as well as the model investor self-certification form) can be adopted without the implementation of the "authorised intermediary system" that is the other part of the Package.

Conclusion

If you have any questions regarding any of the information provided above, or if we can provide further information with respect to the application of the limitation on treaty benefits to private investment funds, please do not hesitate to contact Benjamin Allensworth or me at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell

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