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Internal Revenue Service
CC:PA:01:PR (CC-00349656-26)
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Income of Foreign Governments and of International Organizations — Proposed Regulations under Section 892 (CC-00349656-26; RIN 1545-BR10)

MFA[1] appreciates the opportunity to provide comments to the Department of the Treasury ("**Treasury**") and the Internal Revenue Service (the "**IRS**") on the notice of proposed rulemaking addressing the applicability dates of proposed rules relating to the taxation of foreign governments from investment in the U.S. (the "**2026 Proposed Regulations**").[2]

We commend Treasury and the IRS for clarifying that the substantive aspects of the formerly proposed rules (the "**2025 Proposed Regulations**"),[3] once finalized, are not intended to apply retroactively to existing foreign government holdings of debt and of interests in entities, and for providing additional transitional relief under which debt and interests in entities acquired before either the end of the 90-day period or the start of the first taxable year after the publication date, or pursuant to a binding commitment entered into before the end of these transition periods, would be evaluated under the existing rules applicable before the final regulations are published.

We also commend Treasury and the IRS for clarifying that, because it is the acquisition of debt, and not the mere holding of debt, that is potentially treated as commercial activity, a debt acquirer is not engaged in commercial activity

[1] Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] 91 Fed. Reg. 32366 (June 1, 2026).

[3] 90 Fed. Reg. 57928 (Dec. 15, 2025).

in taxable years following the taxable year of the acquisition of the debt solely by reason of holding the debt in subsequent taxable years and, accordingly, that debt that was acquired in a previous year and held in the current year does not cause other debt acquisitions in the current year to be treated as commercial activity.

We respectfully submit these additional comments, which supplement our February 13, 2026, comment letter,[4] with a specific focus on additional transitional relief for certain debt investments and the substantive aspects of the 2025 Proposed Regulations regarding debt acquisitions. In our prior letter, we encouraged Treasury and the IRS to modify Examples 4 and 5, which inappropriately treat a significant modification (within the meaning of Treas. Reg. § 1.1001-3) as giving rise to a new loan for commercial activity purposes or, in the alternative, provide additional transitional relief for the significant modification of loans held prior to the applicability date of the final regulations (including any transition periods from the 2026 Proposed Regulations, once finalized). We also encouraged Treasury and the IRS to abandon the proposed debt-acquisition framework in favor of a principles-based approach that preserves the historical presumption that loans and other debt investments are not commercial activities. This submission offers additional recommendations with respect to both issues.

I. Executive Summary

A. 2026 Proposed Regulations: Recommended Additional Transitional Relief for Certain Debt Investments

With respect to additional transitional relief, to the extent our recommendations regarding the treatment of significant modifications and the treatment of revolving credit facilities and delayed-draw term loans are not adopted, we recommend providing additional transitional relief for (i) significant modifications of loans and (ii) draws under revolving credit facilities and delayed-draw term loans, in each case, held prior to the applicability date of the final regulations.

B. 2025 Proposed Regulations: Recommended Framework for Commercial Activities and Debt Acquisitions

With respect to the substantive aspects of the 2025 Proposed Regulations regarding debt acquisitions, in addition to a general presumption that loans and other debt investments are not commercial activities, we recommend the following:

1. Delineate banking activities from nonbank activities in defining “commercial activities” with respect to debt acquisitions, and
2. Clarify that secondary acquisitions in a nondealer capacity constitute investment activity.

[4] Letter from MFA to Treasury and the IRS (Feb. 13, 2026), https://downloads.regulations.gov/IRS-2025-0532-0018/attachment_1.pdf.

II. Discussion

A. 2026 Proposed Regulations: Recommended Additional Transitional Relief for Certain Debt Investments

To the extent applicable, we recommend providing additional transitional relief for (i) significant modifications of loans and (ii) draws under revolving credit facilities and delayed-draw term loans, in each case, held prior to the applicability date of the final regulations.

Examples 4 and 5 treat significant modifications of debt within the meaning of Treas. Reg. § 1.1001-3 as resulting in an exchange of the original debt instrument for a modified instrument for the purpose of evaluating whether its holder's participation in the deemed acquisition rises to the level of commercial activity. However, as explained in our February 13, 2026, comment letter, in cases where no new money is being lent to the borrower, a significant modification should not be treated as a deemed acquisition when testing for commercial activity. The deemed debt-for-debt exchange resulting from a significant modification is a tax fiction. It has no bearing on whether a foreign government is acting like an investor or engaged in a commercial activity.[5]

Accordingly, we recommend modifying Examples 4 and 5 to not treat a significant modification as giving rise to a new loan for commercial activity purposes. Final regulations should also acknowledge that certain significant modifications are broadly consistent with investment activity, for example, where additional funds are advanced to a distressed borrower by an existing shareholder or lender, since the new loan is being extended to preserve the shareholder's or lender's existing investment of capital.

Similar principles should apply to *not* treat draws under a revolving credit facility or delayed-draw term loan as separate acquisitions of debt but rather as an integrated and previously contemplated part of a single acquisition for commercial activity purposes.

To the extent these recommendations are not adopted, we recommend providing additional transitional relief for (i) significant modifications of loans and (ii) draws under revolving credit facilities or delayed-draw term loans, in each case, held prior to the applicability date of the final regulations (including any transition periods from the 2026 Proposed Regulations, once finalized). For the reasons noted above, we believe this alternative is broadly consistent with the view expressed by commenters that the existing rules under Section 892 should be preserved with respect to arrangements in place before the publication date. This additional transitional relief is arguably even more appropriate in

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[5] At least two other respondents also commented that there are broadly applicable circumstances in which a significant modification is consistent with investment activity (even if the lender materially participates in negotiating or structuring the modification). *See* Letter from The Real Estate Roundtable to the Hon. Scott Bessent, Secretary, U.S. Department of the Treasury (Feb. 12, 2026), https://downloads.regulations.gov/IRS-2025-0532-0011/attachment_1.pdf; Comment from Jay Buchman (Jan. 6, 2026), https://www.regulations.gov/comment/IRS-2025-0532-0002.

the case of draws under a revolving credit facility or delayed-draw term loan, because such draws were previously contemplated, and subject to a binding commitment of the lender to advance additional funds under the terms of the facility or loan, at the time of the establishment of the facility or original issuance of the loan (prior to the publication date).

B. 2025 Proposed Regulations: Recommended Framework for Commercial Activities and Debt Acquisitions

Background

The history leading to the inclusion of a commercial activities limitation in Section 892[6] generally reflects a focus on activities that are clearly commercial in nature, such as traditional banking functions. A predecessor to Section 892 was first enacted in 1917,[7] revised in early 1919,[8] and remained largely unchanged until the Tax Reform Act of 1986 (the "**1986 Act**").[9] Although "commercial activities" is not defined in the Code, one early use appears in Section 895, enacted in 1961, which exempts income earned by foreign central banks of issue from U.S. obligations and bank deposits, unless such obligations or deposits "are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities."[10]

In 1975, the IRS issued Revenue Ruling 75-298,[11] providing that income earned by a foreign central bank of issue or other foreign governmental organization, which "does not engage in the United States in either commercial banking functions as described in section 1.864-4(c)(5)(i)" or "in other commercial activities (on more than a de minimis basis in the United States)," qualifies for the Section 892 exemption, provided, in part, that its investments in the U.S. include "only those which produce passive income, such as currencies, fixed interest deposits, stocks, bonds, and notes or other securities evidencing loans."

In 1978, Treasury and the IRS proposed,[12] and in 1980 finalized,[13] regulations under Section 892 generally treating income derived from commercial activities in the U.S. as not eligible for the Section 892 exclusion.[14] The final regulations (the "**1980 Final Regulations**") provided that investments in stocks, bonds, or other securities and loans are not

[6] Unless otherwise indicated, all "Section" or "§" references are to the Internal Revenue Code of 1986, as amended (the "**Code**"), or the Treasury Regulations promulgated thereunder, respectively.

[7] War Revenue Act, Pub. L. No. 65-50, § 1211, 40 Stat. 300, 337 (1917).

[8] Revenue Act of 1918, Pub. L. No. 65-254, § 213(b)(5), 40 Stat. 1057, 1065-66 (1919).

[9] Tax Reform Act of 1986, Pub. L. No. 99-514, § 1247, 100 Stat. 2085, 2583-84 (1986).

[10] Pub. L. No. 87-29, § 1(a), 75 Stat. 64 (1961).

[11] Rev. Rul. 75-298, 1975-2 C.B. 290 (revoking Rev. Rul. 66-73, 1966-1 C.B. 174), *obsoleted by* Rev. Rul. 2003-99, 2003-2 C.B. 388.

[12] 43 Fed. Reg. 36111 (Aug. 15, 1978).

[13] T.D. 7707, 45 Fed. Reg. 48882 (July 22, 1980).

[14] Treas. Reg. § 1.892-1(a)(3) (1980).

commercial activities. However, “[c]onsideration of the facts and circumstances” determined whether an activity with respect to such property constitutes an investment. The 1980 Final Regulations provided the following principles for making such determination:

> (a) An activity undertaken as a dealer will not be an investment [for these purposes].
>
> (b) An activity will not cease to be an investment solely because of the volume of transactions of that activity or because of other unrelated activities.
>
> (c) Except in the case of holding stock, an activity will not be an investment merely because the income derived from the activity is not effectively connected with the conduct of a trade or business in the United States. For example, a loan made by a bank, loan company, or similar financial business (open in the United States to the general public) does not constitute an investment.[15]

The 1980 Final Regulations additionally provided that “[f]or purposes of this paragraph, a particular activity in the United States that does not constitute the conduct of a trade or business in the United States under section 864(b) will be deemed not to be a commercial activity.”[16]

The 1980 Final Regulations reserved on providing rules for determining whether loans or net leases would be considered investments, and contemporaneously, Treasury and the IRS proposed regulations describing such rules (the “**1980 Proposed Regulations**”).[17] The 1980 Proposed Regulations provided, in part, that “[a] loan made as a private placement by a person other than a bank, loan company, or similar financial business (open to the general public) will generally be considered an investment.”[18]

The 1986 Act significantly revised Section 892, including by codifying the regulatory commercial activities limitation to the Section 892 exception.[19] As revised by the 1986 Act, Section 892(a)(1) provides, in pertinent part, that “[t]he income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities owned by such foreign governments” is not included in gross income and is exempt from Federal tax.[20] However,

[15] Treas. Reg. § 1.892-1(c)(2)(i) (1980).

[16] Treas. Reg. § 1.892-1(c)(2)(iv) (1980).

[17] 45 Fed. Reg. 48921 (July 22, 1980). The 1980 Proposed Regulations were later withdrawn in 1985 (50 Fed. Reg. 37381 (Sept. 13, 1985)).

[18] Prop. Treas. Reg. § 1.892-1(c)(2)(i)(d), 45 Fed. Reg. at 48921 (July 22, 1980).

[19] *See* S. Rep. No. 99-313, at 415 (1986) (“Regulations make clear that this exemption does not apply to any income from commercial activities in the United States. (Reg. sec. 1.892-1(a)(3)). That is, the exemption extends only to investment income.”); *id.* at 417 (“The bill codifies the rule limiting the tax exemption for foreign governments to investment income.”).

[20] The 1986 Act removed the phrase “or from any other source within the United States” to make clear that, consistent with Treasury Regulations issued under the prior version of Section 892, the exemption applies only to specified (investment) income items.

Section 892(a)(2) provides that the exclusion in Section 892(a)(1) does not apply to income derived from the conduct of a commercial activity,[21] or to income received by or from (or derived from the disposition of an interest in) a controlled commercial entity.[22] The controlled commercial entity rules were enacted (i) to treat state-owned business corporations similarly to privately-owned foreign business corporations with respect to U.S.-source investment income and (ii) to treat payments from a U.S. corporation in which a foreign government owns a controlling interest as a return on a direct investment instead of passive investment income.[23]

Consistent with the 1980 Final Regulations that the 1986 Act codified, the legislative history to the 1986 Act provides as an example of commercial activities a bank wholly owned by a foreign government:

> For example, an incidental loan into the United States by a bank, wholly owned by a foreign government, might not in and of itself constitute commercial activity in the United States. Assume that the interest does not qualify as portfolio interest, and that the U.S. tax on that interest is not eliminated by treaty. Interest on that loan would be subject to tax under the bill, because the foreign entity, though not engaged in a U.S. trade or business, is engaged in the business elsewhere.[24]

Section 892 has, in large measure, remained unchanged for the last 40 years.

As noted above, we recommend preserving the historical presumption that loans and other debt investments are not commercial activities. Our recommendations below outline a framework that is consistent with both the legislative history and the principles most market participants generally believe delineate commercial activity in the context of debt acquisitions.

1. **Delineate banking activities from nonbank activities in defining "commercial activities" with respect to debt acquisitions.**

We acknowledge the position in the preamble to the contemporaneous final regulations under Section 892 (the "**2025 Final Regulations**") that "commercial activities" as used in Section 892 has "a different and broader meaning"

See Staff of the Joint Comm. on Tax'n, 99th Cong., *General Explanation of the Tax Reform Act of 1986*, at 1058-1059 (JCS-10-87) (1987).

[21] Section 892(a)(2)(A)(i).

[22] Section 892(a)(2)(A)(ii)-(iii). Section 892(a)(2)(A)(iii), regarding income derived from the disposition of an interest in a controlled commercial entity, was added with retroactive effect by the Technical and Miscellaneous Revenue Act of 1988. Pub. L. No. 100-647, § 1012(t), 102 Stat. 3342, 3527 (1988).

[23] S. Rep. No. 99-313, at 416 (1986).

[24] S. Rep. No. 99-313, at 417 (1986). For purposes of disambiguation, the bank in this example would not be a central bank of issue given the flush language in Section 892(a)(2)(B), which provides that a central bank of issue shall be treated as a controlled commercial entity only if engaged in commercial activities within the U.S.

than "trade or business" under Sections 162 and 864,[25] although we believe there are compelling arguments to the contrary,[26] particularly with respect to debt investments.[27]

We also acknowledge that Treasury and the IRS "do not agree that making loans to the general public or making a particular minimum number of loans constitute necessary conditions for loan (or other debt) acquisitions to be commercial in character, or that a lack of those characteristics necessarily indicates absence of commercial activities."[28] However, Treasury and the IRS have not clearly articulated their reasoning for this conclusion, and the 2025 Proposed Regulations do not otherwise provide a clear principle for distinguishing commercial from noncommercial activities with respect to debt acquisitions.

We urge Treasury and the IRS to reaffirm the principle that a "banking, financing or similar business" is the touchstone of commercial activity in the context of debt acquisitions. This perspective is reflected in the regulations preceding the 1986 Act (on which the 1986 Act changes were based). The 1980 Final Regulations refer to loans made by "a bank, loan company, or similar financial business (open in the United States to the general public)" as commercial activity.[29] The 1980 Proposed Regulations would have drawn this line even more distinctly, providing that "[a] loan made as a private placement by a person other than a bank, loan company, or similar financial business (open to the general public) will generally be considered an investment."[30] The emphasis on "general public" in both the 1980 Final Regulations

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[25] T.D. 10042, 90 Fed. Reg. 57901, 57902 (Dec. 15, 2025).

[26] For example, as noted above, the 1986 Act codified the regulatory rule excluding commercial activities income from the Section 892 exception. At the time of the 1986 Act, Treas. Reg. § 1.892-1(c)(2)(iv) provided that "a particular activity in the United States that does not constitute the conduct of a trade or business in the United States under section 864(b) will be deemed not to be a commercial activity" (as illustrated in Treas. Reg. § 1.892-1(g) (1980) Examples 1 and 4). *See also* S. Rep. No. 99-313, at 417 (1986) ("The bill defines commercial activity to include ownership of a controlling interest in a corporation or other entity engaged in trade or business in the United States.").

[27] For example, Treas. Reg. § 1.892-4T(c)(1)(iii) (1988), as well as proposed regulations issued in 2011 (76 Fed. Reg. 68119), provides that "[i]nvestments (including loans) made by a banking, financing, or similar business constitute commercial activities, even if the income derived from such investments is not considered to be income effectively connected to the active conduct of a banking, financing, or similar business in the U.S. by reason of the application of § 1.864-4(c)(5)." Section 864(c)(4) and Treas. Reg. § 1.864-4(c)(5) also use the phrase "banking, financing, or similar business," suggesting that Section 892 employs a similar standard but without the geographic requirement that the business take place "in the U.S." *See also* PLR 9235061 (concluding that a controlled entity was not engaged in commercial activities in part because its activities did not constitute a banking, financing, or similar business within the meaning of Treas. Reg. § 1.864-4(c)(5)); Rev. Rul. 75-298, *supra* note 11 (referring to "commercial banking functions as described in section 1.864-4(c)(5)(i)").

[28] 90 Fed. Reg. at 57903 (Dec. 15, 2025).

[29] Treas. Reg. § 1.892-1(c)(2)(i)(c) (1980). As noted above, the 1980 Final Regulations also include a general limitation on activities undertaken as a dealer.

[30] *Supra* note 18.

and 1980 Proposed Regulations suggests a concept of commercial activity akin to retail banking. The legislative history to the 1986 Act also reflects a focus on traditional banking functions.[31]

Accordingly, we recommend replacing the existing facts-and-circumstances test with principles that clearly identify hallmarks of traditional banking functions to guide the determination of whether the acquisition of a debt obligation (by neither a bank nor a dealer) is a commercial activity.[32] We note that, while not clear, the factors provided in the 2025 Proposed Regulations seem concerned primarily with the acquisition of debt at original issuance (or situations where original issuance is attributed to the acquirer). While the acquisition of debt at original issuance is often present when debt acquisitions appear to be commercial activities, the debt acquisition being proximate to such debt's origination is not *per se* indicative of commercial activity. At most, debt acquisition at original issuance merely serves to indicate that other elements—themselves indicative of commercial activities relating to debt—may also be present and potentially attributable to the debt acquisition at issue.

The following two principles, when present in conjunction with one another, are often viewed by market participants as indicating that the acquisition of a debt obligation at original issuance may constitute a commercial activity:

a. Whether amounts received by the debtholder reflect a payment for services rather than a return on capital

The only potential guiding principle in the 2025 Proposed Regulations for determining whether the acquisition of a debt obligation is a commercial activity appears in the preamble: "In general, facts and circumstances would be relevant to the extent they indicate that the entity's expected return from acquiring the debt is exclusively a return on its capital rather than including a return on activities it conducts."[33] We agree that payment for services is a useful principle in distinguishing commercial from noncommercial activity, with the following important caveats.

A return based on payment for services rather than invested capital is a hallmark of traditional banking functions, such as acting as an underwriter or dealer (who may earn fees for acting as an intermediary between the borrower and investors or be compensated through an underwriting spread). However, the 2025 Proposed Regulations include as a factor "[w]hether the acquirer materially participated in negotiating or structuring the terms of the debt."[34]

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[31] Such a standard would align with other areas of the Code. *See*, *e.g.*, Section 881(c)(3) (excluding from the portfolio interest exemption interest received by "a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business").

[32] For example, one of the principles provided in the 1980 Final Regulations identified "a loan made by a bank, loan company, or similar financial business (open in the United States to the general public)" as not constituting an investment. Treas. Reg. § 1.892-1(c)(2)(i)(c) (1980).

[33] 90 Fed. Reg. at 57930 (Dec. 15, 2025).

[34] Prop. Treas. Reg. § 1.892-4(c)(1)(ii)(C)(2).

The implication appears to be that interest derived from a debt obligation negotiated and structured by the debtholder reflects a return on "activities it conducts" (*i.e.*, services) rather than a return on capital. We disagree.

Negotiating the terms of a loan, even with an unrelated borrower, does not in and of itself suggest a return on services rather than a return on capital any more than does negotiating the terms of an equity investment.[35] For example, many debt investments include terms and features similar to preferred equity, and vice versa. Section 892 does not distinguish between public and private securities, and we are not aware of any indication that Congress intended to preclude a foreign government (or a partnership in which it is invested) from structuring the terms of an equity investment. Moreover, many payments labelled as "fees" (even "fees" nominally received for negotiating and structuring the loan) are properly treated as interest and not service income.[36]

The 2025 Proposed Regulations also include as a factor "[w]hether the acquirer is entitled to compensation (whether or not labelled as a fee) that is not treated as interest (including original issue discount) for Federal tax purposes."[37] However, certain payments commonly labelled as "fees" in debt transactions may not be treated as interest but may be still properly treated as investment income (as not service income).[38] For example, commitment fees paid for a commitment to make funds available in the future generally are not treated as interest but may not be treated as payment for services either.[39]

b. Whether a customer relationship exists between the debtholder and the borrower

In conjunction with the payment-for-services principle, the presence of a customer relationship between the debtholder and borrower is also a useful principle in distinguishing commercial from noncommercial activity, as a customer relationship may be indicative of activities beyond investing, such as a public-facing business providing traditional banking functions (*e.g.*, accepting deposits or issuing letters of credit). As noted above, earlier regulations similarly emphasized openness to the "general public".

However, we note that the 2025 Proposed Regulations include as a factor "[w]hether the acquirer solicited prospective borrowers, or otherwise held itself out as willing to make loans or otherwise acquire debt at or in connection

[35] Based on the facts presented, Example 1 (isolated loan) appears to reflect merely a return on capital that should not be treated as commercial activity.

[36] *See* N.Y. State Bar Ass'n Tax Section, Report No. 1500, *Report on Certain Fees* at 8-17 (Sept. 13, 2024) (distinguishing services performed for the investor's own benefit (*i.e.*, to facilitate putting capital at risk) from services performed for the benefit of the debt issuer (such as underwriting, arranging, or placement services)). Given the unsettled treatment of certain payments in respect of debt instruments, we do not agree a debtholder's expected return from acquiring the debt must be *exclusively* a return on its capital to be treated as an investment.

[37] Prop. Treas. Reg. § 1.892-4(c)(1)(ii)(C)(3).

[38] *See* N.Y. State Bar Ass'n Tax Section, Report No. 1500, *Report on Certain Fees* at 20-24 (Sept. 13, 2024).

[39] *See id.* at 20-21.

with its original issuance."[40] If the implication is that merely holding oneself out as willing to acquire debt is indicative of service activity or a customer relationship, we disagree. Borrowers and their advisors may prefer to have well-established investors (which may include investment partnerships in which foreign governments are invested) among their debtholders, just as they may prefer to have such well-established investors among their equity holders.

For example, a debt issuer may engage a bank to provide arrangement and placement services. The bank may then contact potential purchasers that are well-known in the market and with whom it may have a relationship from prior placements. The purchaser would not view the bank as its customer, even if it previously indicated its willingness to acquire debt at original issuance. Nor would the purchaser view the debt issuer as its customer. Rather, the customer relationship exists between the debt issuer and the bank in respect of its arranging and placement services—services performed for the benefit of the debt issuer and for which the bank is compensated.

For the reasons noted above, a strategic debt investment in the capital structure of a borrower should not in and of itself give rise to a customer relationship, in that the borrower is the recipient of available investment capital (rather than the recipient of services). In contrast, the activities of the bank in the example above suggest not an investment of available capital but a business predicated on offloading originated debt to meet the borrowing needs of its customers.

In addition, a shareholder loan generally would not suggest a customer relationship between the shareholder and corporation, as it is well-established that investors can choose to capitalize an entity with debt, equity, or a combination thereof. Lastly, we note that the modification of a debt instrument (whether or not the borrower is distressed) generally does not suggest the creation of a customer relationship where one previously did not exist.

2. Clarify that secondary acquisitions in a nondealer capacity constitute investment activity.

It is critical that existing trading safe harbors—such as Treas. Reg. § 1.892-4(c)(2) (foreign government trading for its own account) and Treas. Reg. § 1.892-5(d)(5) (partnership, with a foreign government partner, trading for its own account)—be preserved.[41] As noted above, the 2025 Proposed Regulations appear primarily concerned with the treatment of debt acquired at original issuance or situations where original issuance (and related activity) is attributed to the

[40] Prop. Treas. Reg. § 1.892-4(c)(1)(ii)(C)(1).

[41] The 2025 Proposed Regulations are unclear as to how the framework in Prop. Treas. Reg. § 1.892-4(c)(1)(ii) would interact with the trading safe harbor in Treas. Reg. § 1.892-4(c)(2) (as finalized in the 2025 Final Regulations). Prop. Treas. Reg. § 1.892-4(c)(1)(ii) provides that "[a]n acquisition of debt is considered a commercial activity for purposes of paragraph (b) of this section notwithstanding any other provision of this section, unless…," seemingly overriding other exceptions provided in Treas. Reg. § 1.892-4. Importantly, however, it is even less clear how Prop. Treas. Reg. § 1.892-4(c)(1)(ii) is intended to interact with Treas. Reg. § 1.892-5(d)(5) (as finalized in the 2025 Final Regulations), which provides a similar "trading for one's own account" exception for partnerships, and which would seemingly not be overridden by the language in Prop. Treas. Reg. § 1.892-4(c)(1)(ii) providing "notwithstanding any other provision of this *section*" (emphasis added).

acquirer. By this measure, it is unclear why existing agency principles and attribution rules are insufficient to address these concerns.

We note that the 2025 Proposed Regulations include as a factor "[t]he percentage of the debt issuance acquired by the acquirer relative to the percentages acquired by other purchasers."[42] While factors that consider a debtholder's percentage ownership or relative size of an issuance may, as a practical matter, suggest whether or not the debtholder has the ability to influence or dictate a loan's terms, such factors are blunt instruments for purposes of breaking agency relationships and wholly inapplicable in the case of "old and cold" loans. Moreover, these facts are often not in the foreign government's control or not knowable by the foreign government at the time it makes its investment decision. Further, it is often the case that the borrowers and their advisors do not or cannot share this information with potential investors. Accordingly, we recommend expanding the existing qualified secondary market debt acquisition safe harbor to include all secondary acquisitions in a nondealer capacity without regard to whether the debt is traded on an "established securities market".

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We appreciate the opportunity to provide these additional comments to Treasury and the IRS with respect to the 2026 and 2025 Proposed Regulations, and we would be pleased to meet with Treasury and the IRS to discuss our comments. If Treasury or the IRS has questions or comments, please do not hesitate to contact the undersigned at jhan@MFAalts.org.

Respectfully submitted,

/s/ Jennifer W. Han

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[42] *See*, *e.g.*, Prop. Treas. Reg. § 1.892-4(c)(1)(ii)(C)(5).