

## Internal Revenue Service

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## Legend

Taxpayer =

Dear :

This is in response to your letter dated July 18, 2017, requesting a ruling that certain loans be considered obligations in registered form, as described in § 5f.103-1 of the Temporary Income Tax Regulations.

## Facts

Taxpayer operates a business in which it connects borrowers and investors. The loans facilitated by Taxpayer's operations are unsecured, fixed-rate, intermediate-term debt and pay principal and interest on a monthly basis (each, a Loan). Each Loan is originated by a bank with which Taxpayer has a business relationship.

To obtain a Loan facilitated by Taxpayer's operations, a borrower must execute an agreement (the Borrower Agreement) providing, among other things, that Taxpayer will act as the servicer of any Loan obtained through Taxpayer. The Borrower Agreement also provides that the borrower grants Taxpayer a limited power of attorney to execute on the borrower's behalf a promissory note that memorializes the Loan obtained through Taxpayer's operations (the Promissory Note). Both the Borrower Agreement and the Promissory Note provide that the borrower appoints Taxpayer to be the borrower's agent for the purpose of maintaining a register for recording the name and address of each owner of a beneficial interest in the Loan and the principal and interest owed to each owner. The Borrower Agreement and the Promissory Note also provide that the persons identified in the register as owners of the Loan are treated as the owners of the Loan for all purposes. The Borrower Agreement and the Promissory Note

further provide that, if a registered owner of the Loan transfers its beneficial interest in the Loan to another person, the right of that transferee to payment of principal and interest on the Loan is not effective until the transfer is recorded in the register.

### **Law**

Section 5f.103-1(c)(1)(ii) provides in part that an obligation is in registered form if the right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer or its agent. Section 5f.103-1(c)(2) provides that an obligation will be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. Section 5f.103-1(c)(2) further provides that a book entry is a record of ownership that identifies the owner of an interest in the obligation. Section 5f.103-1(e) provides in part that an obligation is not considered to be in registered form as of a particular time if it can be transferred at that time or at any time until its maturity by any means not described in § 5f.103-1(c).

### **Analysis**

Both the Borrower Agreement and the Promissory Note provide that Taxpayer, acting as the borrower's agent, will maintain in the register a record of ownership that identifies each owner of a beneficial interest in the Loan by name and address. Each such record qualifies as a book entry within the meaning of the second sentence of § 5f.103-1(c)(2).

The Borrower Agreement and the Promissory Note both provide that the person identified in a book entry as the owner of a beneficial interest in the Loan is treated as the owner of that beneficial interest for all purposes, including payment of principal and interest. This provision effectively requires that ownership of an interest in a Loan be reflected in a book entry. Therefore, the Loans are considered transferrable through a book entry system, as contemplated in the first sentence of § 5f.103-1(c)(2).

The Borrower Agreement and the Promissory Note both provide that a transferee of a beneficial interest in a Loan has no right to payment of principal or interest on the Loan until the transfer is recorded in the book entry system maintained by Taxpayer. Thus, the right to principal and interest on the Loan may be transferred only through a book entry system maintained by the borrower's agent, as described in § 5f.103-1(c)(1)(ii). No fact presented in the ruling request suggests that a Loan may be transferred outside of this book entry system at any time prior to its maturity.

**Conclusion**

We conclude that the Loans are obligations in registered form, as described in § 5f.103-1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,  
Associate Chief Counsel (Financial Institutions and Products)

/S/

By: \_\_\_\_\_  
Diana Imholtz  
Special Counsel  
(Financial Institutions & Products)