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Third Party Communication: None

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**From:** [REDACTED]

**Sent:** Wednesday, August 24, 2022 4:40:23 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** QDD Eligible Entity

Good Afternoon [REDACTED],

You asked whether an entity that is not eligible for QDD status under Treas. Reg. § 1.1441-1(e)(6)(ii)(A)-(C) (copied below) and is not subject to comparable regulatory supervision is an eligible entity under Treas. Reg. § 1.1441-1(e)(6)(ii)(D). As discussed below, it is not an eligible entity under Treas. Reg. § 1.1441-1(e)(6)(ii)(D) and therefore the QDD application should be rejected.

Treas. Reg. §1.1441-1(e)(6)(ii) specifies that a qualified intermediary (“QI”) home office or branch is a qualified derivatives dealer (“QDD”) eligible entity if the home office or branch, as applicable, when treated as a separate entity, is:

- (A) An equity derivatives dealer subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;
- (B) A bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which it was organized, or operates or an entity that is wholly-owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which the bank or bank holding company (as applicable) was organized or operates and that in its equity derivatives dealer capacity—
  - (1) Issues potential section 871(m) transactions to customers; and
  - (2) Receives dividends with respect to stock or dividend equivalent payments with respect to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;
- (C) A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A) or (B) of this section if it were a separate entity; or
- (D) Any person otherwise acceptable to the IRS.

With respect to Treas. Reg. § 1.1441-1(e)(6)(ii)(D), an FAQ explained that “[t]his limited category is intended to allow the IRS the discretion to treat an entity that is very similar to the specified categories of eligible entities but that does not satisfy the precise technical requirements in the definition as an eligible entity. It is not intended to function

as a significant expansion of the definition of eligible entity.” [Qualified Intermediary General FAQs | Internal Revenue Service \(irs.gov\)](#), New Applications/Renewals, Q14.

The QDD eligible entity categories described in Treas. Reg. § 1.1441-1(e)(6)(ii)(A)-(C) are limited to entities subject to the dealer, bank, or bank holding company regulatory regimes (directly or indirectly). An entity that does not establish that it is subject to comparable regulatory supervision is not intended to be covered by Treas. Reg. § 1.1441-1(e)(6)(ii)(D) and therefore, the IRS should reject the application as not “otherwise acceptable to the IRS” pursuant to Treas. Reg. § 1.1441-1(e)(6)(ii)(D).

In certain cases, it may not be clear from the application whether an applicant’s regulatory supervision is comparable to the regulatory supervision required of the QDD eligible entity categories described in Treas. Reg. § 1.1441-1(e)(6)(ii)(A)-(C). Therefore, in applying this advice to an application made for QDD status pursuant to Treas. Reg. § 1.1441-1(e)(6)(ii)(D), we recommend asking the applicant to provide information regarding its regulatory environment (including how that environment is comparable to a dealer, bank, or bank holding company regulatory regime) and ensuring that the information provided is specific to the entity requesting QDD status, as opposed to other entities, including the administrator of the entity.

Note that, in addition, there may be factors beyond comparable regulatory supervision that are relevant to determine whether an applicant is “otherwise acceptable to the IRS.” Therefore, additional information may be necessary to determine whether an applicant is an eligible entity under Treas. Reg. § 1.1441-1(e)(6)(ii)(D).

Thanks,

