UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

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VIA EMAIL

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Re: USCIB Comment Letter on the OECD Discussion Draft on BEPS Actions 8 -10 – Financial Transactions ("Discussion Draft")

USCIB[1] is pleased to have the opportunity to comment on the discussion draft on BEPS Actions 8 -10 Financial Transactions ("discussion draft"). We support the BIAC comments and write separately to emphasize a few points.

Capital Structure

Many valid factors impact an entity's choice of debt vs. equity financing, and, subject to anti-abuse provisions that should only apply in exceptional circumstances, taxpayers and not tax authorities should determine an entity's capital structure. In particular, for most non-financial-services companies, the sole objective of intercompany financing is cash management and the internal Treasury group's desire to avoid equity investments in affiliates because it is very difficult to pull equity capital out of an affiliate. Companies do not want to trap cash in their affiliates; therefore, debt is preferred. The existing OECD Model Income Tax Treaty and Commentary permits some testing of capital structure under Article 9. The Commentary provides: "the Article is relevant not only in determining whether the rate of interest provided for in a loan contract is an arm's length rate, but also whether a prima facie loan can be regarded as a loan or should be regarded as some other kind of payment"[2]. This statement should be put into context.

[1] USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide and works to facilitate international trade and investment.

[2] OECD Model Tax Convention on Income and Capital, Commentary on Article 9, paragraph 3(b). The Commentary grew out of an OECD report on "Thin Capitalization" adopted by the Council of the OECD on 26 November 1986 and reproduced in Volume II of the full of version of the OECD Model Tax Convention at page R (4)-1, hereinafter "Report" or "Report on Thin Capitalization".

The Report on Thin Capitalization identifies the problem (thin capitalization), identifies country practices to address it, discusses the relevance of tax treaties, addresses the practical application of the ALP to thin capitalization, and reaches conclusions. In addition to the Commentary quoted above, an important conclusion of the Report was that Article 9 "does not prevent the application of national rules on thin capitalization insofar (but only insofar) as their effect is to assimilate the profits of the borrower to an amount corresponding to the profits which would have accrued in an arm's length situation."[3] The discussion draft[4] provides that "other approaches may be taken to address the issue of the capital structure under domestic legislation before pricing the interest on the debt so determined … this guidance is not intended to prevent countries from implementing approaches to address capital structure and interest deductibility under domestic legislation." This statement at least implies that domestic rules on capital structure and interest deductibility could allow the country of the borrower to disallow interest expense such that the profit attributable to the borrower's state could exceed an arm's length amount. The Report on Thin Capitalization reached the opposite conclusion: "the application of rules designed to deal with thin capitalization ought not normally to increase the taxable profits of the relevant domestic enterprise to any amount greater than the arm's length profit".[5] Assuming the OECD still accepts this conclusion of the Report, then that result should be reaffirmed in the transfer pricing guidance. To the extent that Article 9 restricts the ability of the source country to limit the deduction for interest (to an amount that would be arm's length) then referencing other methods of determining the capital structure, as suggested by paragraphs 8 through 10 of the discussion draft, will only increase uncertainty – does the result need to be arm's length or not -- and complexity. Accordingly, paragraphs 8 through 10 of the discussion draft should be deleted.

The Report on Thin Capitalization, in the context of discussing country approaches, mentions hybrid financing[6] and debt/equity ratios for disallowing interest expense.[7] These were alternatives to Article 9 approaches to addressing thin capitalization. As part of the BEPs project, Final Reports under Actions 2 and 4 provide comprehensive best practices for dealing with hybrid financing and the deductibility of interest expense and target the same problem (thin capitalization) that is addressed by the discussion draft. The OECD should, therefore, consider the impact of these developments in designing rules that address the capital structure of related entities under Article 9. As a result, recharacterization under Article 9 should be extremely rare and should be limited to tax consequences only.

Whereas Action 2 addresses tax avoidance that may arise as a result of hybrid entities, the discussion draft's focus on the substance of a controlled lender appears to address the possibility of "hybrid structures" (for instance, if a CFC, capitalized by a related party in a high tax jurisdiction, passively lends to another related entity), which hybridity is not covered in Action 2 nor intended to be. Relying on effective CFC rules would address these sorts of "hybrid structure" arrangement more effectively, if they are indeed a concern.

[3] Report, paragraph 84(c), page R(4)-32.
[4] Paragraphs 8 -10, page 5.
[5] Report, paragraph 50, page R(4)-19.
[6] Report, paragraph 23, page R(4)-10.
[7] Report, paragraph 25(ii), page R(4)-11 and paragraph 79, page R(4)-30. Although the Report is discussing debt/equity ratios rather than interest expense to EBITDA, the Report provides that unless the fixed ratio included an option for a taxpayer to prove its capital structure is arm's length, "the majority of countries consider that the results would undoubtedly be inconsistent with the arm's length principle".

Issues such as non-taxation, double deduction and limitation of excess deductions of financing transactions are being addressed through a combination of local country legislation and other initiatives, including BEPS. Many of these initiatives are relatively new but may be effective in limiting deductions and ensuring income is taxed. The OECD should consider deferring new guidance until the impact of these new provisions is better understood. If these rules achieve the desired results, then recharacterization with its many associated problems would be avoided.

In USCIB's view, if a country were to adopt the best practices of Action 4, then Article 9 may still apply to determine whether a prima facie loan should be regarded as a loan or a contribution to equity capital, but it should only apply to address problems that cannot be addressed using those other tools and then only in exceptional circumstances. This is so because the fixed ratio and group ratio best practices of Action 4 are intended to prevent base erosion through excessive interest deductions; that is, they address the problem of thin capitalization. The ratios function as both a cap on the deductibility of interest and a safe harbor; a company whose interest deduction is within the caps set by the ratios is determined not to have an excessive amount of interest relative to earnings. Or to state this affirmatively, a company with interest expense below the caps determined under the Action 4 best practices has a level of interest to earnings that is within an acceptable range and that company therefore has adequate capital. The Action 4 ratios are intended to simplify the problem of excessive interest deductions by eliminating the need to analyze each situation on a case-by-case basis. If a full Article 9 analysis is nevertheless undertaken with respect to all related party debt of a company – including debt that is essentially blessed under Action 4 best practices – then the certainty that those rules are intended to provide would be undercut.

Paragraph 4 of the discussion draft states that "it may be the case that the capital structure of a borrowing entity that is part of an MNE group differs from that which would exist if it were an independent entity operating under the same or similar circumstances." This suggests that a taxpayer should be required to maintain the same capital structure as an independent entity. This implication has three serious flaws.

First, taxpayers should not be required to structure their related party transactions in the same manner as unrelated parties; arm's length dealings are not required, only arm's length results. Businesses are typically funded with a mix of debt and equity. In this respect, it is critically important to recognize that businesses have cash requirements that vary daily and that equity as, defined under corporate law, is much more difficult to increase and decrease than debt. The analysis in deciding the appropriate debt/equity mix is complex because investments involve different risk, economic, and tax considerations. Thus, subject to rules that address abuses, taxpayers and not tax authorities should decide the appropriate capital mix for a business.[8] The burden should be on tax authorities to demonstrate that the situation is abusive.

Second, given the individuality of circumstances, described above, it will be extremely difficult to define an arm's length capital structure. Unless there are some guard rails, it would potentially be possible for tax authorities to challenge virtually any capital structure.

Third, the consequences of converting debt to equity can be extreme. There are innumerable rules that have thresholds relating to percentage ownership of shares. Converting debt into equity can cause taxpayers to fall in or out of these provisions with serious consequences that may ripple through an organization. For example, if a debt holder becomes a shareholder because debt is recharacterized as

[8] Corporate laws generally reflect this reality as seen in business judgment and similar rules in jurisdictions such as Delaware (U.S.) and France.

equity, entities may be deconsolidated from affiliates groups and new entities may be deemed to arise such as joint ventures and partnerships.[9] Entities may be deconsolidated from a group. These changes may have significant ripple effects causing gains (or losses) to be recognized. Rules like the best practices under Action 4, which limit interest expense without causing these ripple effects, are preferred over more radical alternatives which seek to recharacterize debt as equity. Without deference to the business' decision concerning its capital structure, there would be unacceptable limits on the ability of the MNE group to adjust funding levels to support operational requirements.

As noted above, the Report on Thin Capitalization also discussed the use of hybrids. The Action 2 Final Report addresses the use of hybrids, including hybrid financial instruments. In cases in which a financial instrument has characteristics of both debt and equity (and therefore might be a hybrid financial instrument) using the best practices of Action 2 to disallow a deduction to avoid the deduction/no inclusion result would be less disruptive than recharacterizing a debt instrument as equity. Applying the Action 2 best practices is intended to achieve "the alignment of tax outcomes that should take some pressure off the distinction between the use of debt and equity in cross-border investment."[10] The Action 2 Final Report also notes that: "this consistency is important for achieving the overall design objectives, which are to create a network of domestic rules that comprehensively and automatically neutralize the effect of cross-border hybrid mismatch arrangements in a way that minimizes disruption to domestic laws and the risk of double taxation."[11] Focusing on the deduction/no inclusion outcome eliminates the need to characterize or recharacterize the instrument as debt or equity and thus avoids the consequences – which may be largely unintended – of recharacterizing the debt instrument. Thus, if the country in question has adopted best practices from Action 2 and Action 4 there should be little scope left for recharacterizing debt as equity under Article 9.

The discussion draft needs to create a sense of proportionality. Challenging capital structures under Article 9 should be exceptionally rare and the discussion draft should make that clear. Countries would be better advised to adopt best practices under Actions 2 and 4 and limit the application of Article 9 to capital structures that are not caught by those Actions 2 and 4 and yet are considered abusive in some fashion. That is likely to be a very small number of cases.

Pricing

USCIB's comments are not intended to critique each of the pricing methodologies in the discussion draft. Rather we raise some general points that apply broadly to the pricing guidance.

Paragraph 19 of the discussion draft suggests tax authorities are in a position to impose their views on the "realistic alternatives" and business judgments of taxpayers. Failure to respect the business judgment of, and commercial arrangements within, an MNE could have costly consequences. The vast majority of MNEs' financing structures and arrangements are not driven by tax avoidance but rather by the need for operational efficiencies, risk management and the need to manage liquidity and working capital. For instance, MNE's generally borrow externally at a single point of contact, such as in the U.S., given access

[9] If a creditor is considered to have an equity investment in a business, sharing in its profits, some jurisdictions may consider the creditor to have entered into a joint venture with the nominal equity holder. As a result of the recharacterization, collateral consequences may arise for the existing shareholders and the creditor, both at the time of the recharacterization and at the time the respective indebtedness is repaid.
[10] Action 2 Final Report, paragraph 303, page 99.
[11] Action 2 Final Report, paragraph 305, page 100.

to capital markets. These external funds are then made available within the multinational group through intracompany lending[12], and then later repaid from positive cash flow. Similarly, cash pools allow for efficient management of working capital requirements. The discussion draft may have the effect of re-creating separate groups in each country, which would eliminate these efficiencies and effectively unravel the benefits of operating as multinational group.

Multinational enterprises enter into very many financial transactions, not all of which should be analyzed under a full-blown transfer pricing analysis. It would be administratively impractical to require that commercial credit rating methodologies be applied to all related party financing transactions. Consequently, we recommend that the guidance include materiality thresholds and also safe harbors or other benchmarks. While the discussion draft does suggest some presumptions, those presumptions do not provide much, if any, protection for taxpayers if the presumptions may be rebutted by the tax authorities with no guard rails on when rebuttal is appropriate.[13] Safe harbors or other benchmarks would provide the needed guard rails and provide the certainty necessary for taxpayers in navigating numerous jurisdictional requirements. Tax authorities should bear the burden of proving a safe harbor ought not to apply. For example, U.S. Treas. Reg. § 1.482-2(a)(2)(iii) concerning safe-haven interest rates permits the use of an interest rate on a related party loan if that interest rate is within a band based on the applicable Federal rate. While this is limited to certain loans in US dollars, this is a significant simplifying rule. Similar rules should be encouraged.

In respect of the discussion draft's proposal to use a risk-free return in cases in which the funder lacks the capability, or does not perform the decision-making functions, to control the risk associated with investing in a financial asset,[14] USCIB believes this guidance should be sparingly applied. As the discussion draft acknowledges[15], there is no investment with zero risk. Furthermore, in a MNE with decisionmakers in multiple jurisdictions, it may be difficult to assign decision-making functions to a single location. Thus, identifying the location of the risk may be very difficult in the context of financial transactions. Furthermore, the discussion draft appears to dismiss the possibility of their being a passive lender. There are numerous examples of passive lending in financial markets (for example, mutual funds and qualified retirement plans). Unrelated passive investors often expect and do earn more than a risk-free return. The OECD has already explored a similar issue in respect of passive portfolio investments and agreed that passive investors who retain ultimate oversight of their portfolios but who transfer day-to-day risk mitigation to others, such as fund managers, do not necessarily transfer control of investment risk to such other persons.[16] Therefore, limiting a related party investor to a risk-free return does not reflect an arm's length return. USCIB believes that the reluctance to recognize a return to capital reflects a downplaying of the importance of capital to business returns. Since there is no risk-free return in business and both debt holders and equity shareholders risk the loss of their entire investment, there should be an opportunity to return an appropriate, risk-weighted return on capital.

By introducing limitations on the ability of members of a MNE group to enter into transactions that are available in the unrelated party context, one could argue that the proposed rules are in violation of many

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[12] The adoption of Action 4 best practices by countries would reinforce this practice, as the external debt financing will only be fully deductible if interest were pushed down into entities that have the capacity to deduct interest under the Action 4 best practices.

[13] See, discussion draft, Box C.2, page 19.

[14] See, discussion draft, Box B.4, page 11.

[15] Ibid.

[16] OECD BEPS Project, *Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports*, ¶1.70, OECD Publishing, Paris (Oct. 2015).

double tax treaties. At a minimum, these limitations seem contrary to a core tenet of the arm's length principle. That is, similarly situated taxpayers should be treated the same way whether or not they belong to a MNE group.

The discussion draft spends a great deal of time attempting to price implicit support or actual guarantees but ignores the not uncommon case in which a MNE may deliberately isolate risky assets in a separate legal entity to protect the other assets of the group. In such a case, there should be no implicit support and the entity's credit ratings (and the resulting interest rate) should be determined on a stand-alone basis.

In addition, in the context of borrowing from uncontrolled lenders, the discussion draft may overstate the extent to which "implicit support" provides an uplift to the credit rating of a member of a MNE group. If membership in a MNE group favorably influences a third-party lenders' credit assessment of a potential borrower, this may reflect underlying economic attributes of the borrower's business, such as increased confidence in the accuracy of future cash flow projections, rather than participation in the group. The resulting increased certainty of repayment, consequently, may be attributable to the use of a recognized trade name or valuable technologies and not passive association with other group members. When other related party services and intangibles are identified and priced appropriately, it would be incorrect to also separately adjust a borrower's stand-alone credit rating for "implicit support."

In respect of the discussion draft's analysis of hedging transactions, USCIB has two concerns. First, paragraph 134 describes three "possible mechanisms by which an MNE group may centralize the hedging of risk." It would be useful to clarify that this list is not exhaustive. Second, due to the technical complexity of accounting for hedge transactions, tax authorities' concerns often appear to arise from confusion about how hedges are reported on an entity's profit and loss statement. For instance, when an operating entity recognizes revenue generated in a non-functional currency that has appreciated relative to the functional currency, foreign exchange related gain is embedded within revenue. If a hedge was created for this cash flow, the foreign exchange losses will be reported as a separate line item. This can create the incorrect impression that the operating entity has reported only the foreign exchange losses, or that the foreign exchange transaction has been separated from the underlying transaction. We recommend that the final OECD guidelines provide an analysis of hedge accounting and provide detailed illustrations of hedging transactions in practice to avoid any confusion.

Regulated Financial Groups present unique considerations that warrant a different approach

The discussion draft's guidance is inapposite to the financial services industry. The guidance implicitly views intercompany financial transactions as ancillary to the activities of an MNE's primary businesses, but for financial services firms, financial transactions are the primary business. Although there is a nod to the relevance of non-tax regulatory mandates with respect to the accurate delineation of the transaction, in the financial services sector, non-tax regulatory mandates can dictate the structure and terms of intercompany financial dealings. These factual distinctions necessitate a special approach.

Banks, securities dealers, and other firms that provide financial services to consumers and businesses must routinely engage in the kinds of intercompany financial transactions addressed in the discussion draft—intragroup loans, cash pooling, hedging, etc.—to meet the needs of their third-party customers. Such firms (referred to here as "Regulated Financial Groups," or "RFGs") must also comply with highly complex, multijurisdictional non-tax regulatory demands, including in respect of their intercompany financial transactions. These demands have grown more numerous and more pervasive since the worldwide financial crisis of 2008, as governments have sought to de-risk capital markets and protect consumers.

Simply put, RFGs' intercompany financial transactions were not and are not a major source of BEPS concerns. Intense scrutiny and control by regulators in multiple jurisdictions reduce transfer pricing risk on such transactions to near-zero. Rather than layer another, potentially conflicting, set of rules atop an existing web of non-tax regulation, USCIB believes the financial transactions guidance should exempt RFGs' intercompany financial transactions. Failing that, the guidance should adopt a strong presumption that such transactions are consistent with the arm's length standard.

Business Fundamentals of RFGs

Intercompany debt at financial institutions reflects business fundamentals. Borrowing and lending are the very substance of the banking business. Stripped to its basics, banking involves seeking a profit on the spread between the interest paid and the interest received. Without the appropriate level of leverage, the business model does not make sense. Like other MNE groups, RFGs often raise third-party debt centrally for economic and/or regulatory reasons, using intercompany loans to distribute such debt among the affiliates consistent with the economic realities of the business. But unlike for other MNE groups, for RFGs, the intercompany arrangements are subject to close regulatory scrutiny and also inextricably linked to the group's core business – financing others. RFGs receive cash from customers or counterparties in a given jurisdiction and provide that cash to other customers or counterparties who need it, often in another jurisdiction. Due to local regulations, the customers providing the cash and the customers receiving the cash typically deal with different legal entities.[17] Cash must be redeployed between these different legal entities. These transactions have real, non-tax drivers and consequences.

Intercompany financial transactions are likewise central to a dealing business. Transactions entered into with third parties may be matched by hedging transactions with affiliates. A transaction with a third party may be undertaken, in the first instance, by an affiliate in or near the third party's jurisdiction. Hedging transfers risk assumed by the RFG in such transactions to the legal entities that are functionally equipped to manage the risk. Non-financial firms also engage in intercompany hedging, but not with the same regularity as a global dealing business, which may be involved in thousands or even millions of transactions on an annual basis.

Non-Tax Regulatory Constraints of RFGs

Global RFGs are heavily regulated at both the local and group level. Indeed, almost all jurisdictions regulate the capital structure of a broker-dealer or bank.

U.S. legal entities are subject to extensive oversight by multiple domestic regulators. For example, the U.S. Federal Reserve under Regulation K sets limits on and reviews for approval investments of equity capital by U.S. RFGs in their overseas subsidiaries. Regulation W governs intercompany transactions

[17] Although some RFGs operate in part (or even primarily) through networks of branches rather than separate juridical entities, any amendments or supplements to the OECD Transfer Pricing Guidelines relating to financial transactions would apply by analogy to dealings between and among such permanent establishments and the head office, under the AOA. As discussed further below, the proposed guidance may have significant implications for the AOA.

between a licensed bank (and its subsidiaries) and related non-bank legal entities within the same RFG. At a high level, Regulation W is designed to prohibit non-bank affiliates from taking advantage of bank affiliates. This includes, for example, imposing quantitative limits and collateralization requirements for any exposure of a bank to a non-bank affiliate and requiring that transactions between bank and non-bank affiliates be entered into on an arm's length basis. Further, U.S. regulators have the authority to restrict or block equity contributions to certain subsidiaries. These regulatory limitations present major constraints on using equity to accommodate the substantial fluctuation in funding needs inherent to a financial services business.

Generally, foreign jurisdictions require ring-fencing of sufficient capital in local subsidiaries to protect against a financial failure. Increasingly, those jurisdictions want the capital structure of local subsidiaries to include longer-term intercompany debt. Conversely, U.S. regulators of a U.S.-headquartered RFG want to ensure capital is available to absorb losses across the RFG, not trapped within a foreign jurisdiction. Post-enactment of the Dodd-Frank financial reform law in 2010, the U.S. Federal Reserve's Total Loss-Absorbing Capacity ("TLAC") rules and the capital requirements arising from regulator-mandated resolution ("living will") planning have heightened the tension between these competing incentives.

Potential for Conflicting Mandates

Various aspects of the discussion draft may conflict with, or effectively penalize compliance with, non-tax regulatory obligations of RFGs. For example, as explained above, the discussion draft leans, unduly in USCIB's view, toward recharacterizing debt as equity and offers no analytical framework for distinguishing a mispriced loan from mislabeled equity, affording wide latitude to tax authorities to recharacterize rather than merely reprice. The discussion draft's heavy focus on capital structures and its questionable approach to them pose particular dangers for RFGs. It may well be true for taxpayers in other industries that "an MNE group has the discretion to decide upon the amount of debt and equity that will be used to fund any MNE within the group."[18] But that is <u>not</u> the case for RFGs.

RFGs' capital structures are tightly and extensively governed by multijurisdictional non-tax regulation. For example, an RFG generally may not introduce excessive leverage into a subsidiary in a high-tax country for base erosion purposes because doing so would likely violate local capitalization rules. Conversely, non-tax regulation in the RFG's headquarters jurisdiction could limit the amount of equity the RFG can have at risk in a subsidiary.

Non-tax regulators may also require RFGs to include certain terms and conditions in intercompany debt. Such terms and conditions may very well "differ from those that would have been adopted by independent enterprises behaving in a commercially rational manner"[19]—but the associated enterprises must adopt them or risk losing the ability to do business in the jurisdiction concerned.

As stated above, USCIB believes that intercompany financial transactions of RFGs should simply be carved out from the instant guidance exercise. If they are not, the guidance should prescribe a strong presumption that if such a transaction complies with applicable non-tax financial regulation, it also complies with the arm's length principle. As a bare minimum, the guidance should emphasize the centrality of regulation to the comparability analysis, both for accurately delineating and for pricing RFGs' intercompany financial transactions.

[18] See, discussion draft, paragraph 3, page 4.
[19] See, discussion draft, paragraph 7, page 5.

Inapposite Rules / Undue Burdens

The application of certain aspects of the discussion draft to RFGs either makes no sense or would be unduly burdensome for RFGs, or both. For example, the discussion draft includes a lengthy analysis of how credit ratings can be used in selecting comparables.[20] It also seeks commentators' views on the use of group-level credit ratings in this vein (rather than mandating the determination and use of standalone entity ratings) "for the purpose of tax certainty and tax compliance," and requests comments on two, alternative, rebuttable presumptions.[21] Broadly, USCIB favors proposals that enhance tax certainty and reduce taxpayers' compliance burdens, which either of these might do.

However, for RFGs, only the first of the potential presumptions, which does not require borrower-specific adjustments (and an associated economic analysis) for each intragroup loan, is practically feasible. The volume of intragroup loans within an RFG renders it prohibitively costly and practically impossible to conduct a borrower-specific economic analysis for each such loan. RFGs certainly have the competence to assess creditworthiness, but initiating such assessments for affiliates that are themselves in the business of extending credit is somewhat circular. For RFGs, group-level credit ratings should be rebuttably presumed appropriate for each affiliate.

The discussion draft's intricate guidance on cash pooling arrangements is similarly a poor fit for RFGs. For a bank, in particular, cash is effectively inventory. RFGs move cash across jurisdictions and between entities in response to customer demand. Such movements are subject to heavy non-tax regulation and scrutiny. Accordingly, applying the discussion draft guidance to RFGs' cash movements would be both highly burdensome and unnecessary.

Implications for the AOA

In 2010, the OECD developed a comprehensive approach to the allocation of profits to permanent establishments, the AOA. The 2010 report includes extensive guidance specific to banks, global dealing businesses, and insurance companies, all of which frequently operate primarily through networks of permanent establishments rather than through separate juridical entities. USCIB strongly cautions against producing new guidance that may not align with the AOA's carefully designed rules. To the extent the OECD perceives that RFGs' business models or functional analyses have materially shifted, the sensible approach would be to revisit and update the AOA—not to undermine it accidentally or intentionally, as the guidance in the discussion draft might well do.

[20] See, discussion draft, paragraphs 58-66, pages 17-18.
[21] See, discussion draft, Box C.2, page 19.

For the reasons set forth above, USCIB believes that intercompany financial transactions of RFGs should simply be carved out from the instant guidance exercise. If they are not, the guidance should adopt a strong presumption that such transactions are consistent with the arm's length standard. To the extent the OECD nevertheless concludes that supplemental guidance is needed with respect to such transactions, they should be specially and separately considered in the context of an update to the AOA.

Sincerely,

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