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VIA FEDERAL E-RULEMAKING PORTAL

CC:PA:01:PR (REG-101952-24)
Room 5503
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
UNITED STATES OF AMERICA

Re: Proposed Regulation §1.892-4 & -5 (REG-101952-24)

(Effective Control and Acquisition of Debt)

Dear Sir or Madam:

We appreciate the efforts of the United States Department of the Treasury ("**Treasury**") and the Internal Revenue Service ("**IRS**") in issuing further guidance in respect of § 892 of the Internal Revenue Code of 1986, as amended (the **"Code"**) in the form of the 2025 Final Regulations ("**Final Regulations"**) and the 2025 Proposed Regulations ("**Proposed Regulations**").

The New Zealand Superannuation Fund ("**NZSF**") welcomes the opportunity to provide written comments on the Proposed Regulations. Our submission, which is set out as follows, focusses on:

- Acquisition of debt - refer to Appendix 1; and
- Effective control – refer to Appendix 2.

Background

NZSF is a long-term, growth-oriented, global investment fund invested largely in diversified investments throughout the world with a significant number of investments in the United States, including U.S. real estate, infrastructure, credit and private equity. NZSF is treated as a "foreign government" under § 892. We are a long-term investor managing over US$54 billion in assets as at 31 December 2025.

The views expressed in this submission are our own, but we have also discussed the issues with peer sovereign investors who share our concerns with some of the proposals and endorse our recommendations.

Executive Summary

- We want to acknowledge Treasury's work on the application of § 892 and the many positive clarifications contained within the Final Regulations, such as:
    - Confirming that holding partnership interests is not commercial activity;
    - Modernising and expanding the definition of "financial instruments" to clarify that most market-standard derivatives and hedging arrangements should avoid being treated as commercial activity;
    - Providing meaningful enhancements to the inadvertent commercial activity exception;
    - Confirming that dispositions of U.S. real property interests are not commercial activity; and
    - Narrowing the U.S. Real Property Holding Corporation 'trap' to domestic corporations only.
- We are concerned that aspects of the Proposed Regulations relating to debt investments and effective control depart from long-established § 892 interpretations and market practice, introducing uncertainty for sovereign investors, particularly in relation to private credit, restructurings and minority governance arrangements.
- We believe the proposed expansion of the "effective control" concept would benefit from further refinement and clarification, to ensure that customary minority protections, negative consent rights and other ordinary investor actions are not inadvertently treated as conferring control, and that the rules remain aligned with established commercial practice and legal principles.
- We are concerned about the combined impact of the proposed effective control guidance and the recent changes to the qualified partnership interest exception ("**QPIE**") contained in the Final Regulations, which together may significantly narrow the availability of this important safeguard for sovereign investors and undermine the certainty originally intended by the limited partner exception.

Conclusion

We appreciate the opportunity to comment and hope that you will consider our comments when finalising the Proposed Regulations. We would welcome the opportunity to discuss these issues further with the Treasury.

Please feel free to contact us if you have any questions.

Yours sincerely

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ACQUISITION OF DEBT

I. EXISTING MARKET PRACTICE ON DEBT

Existing § 892 rules make the following principal points with respect to debt:

- First, under the statute, an investment in "bonds" or "other domestic securities" is eligible for the exemption under § 892.

- Second, under the regulations, the term "other securities" – the regulatory analogue of "other domestic securities" – includes "any note or other evidence of indebtedness."

- Third, under the regulations, investments in bonds, other securities, and "loans" are not treated as commercial activities.

- Fourth, notwithstanding the third point above, under the regulations, investments made by a "banking, financing, or similar business" constitute commercial activities even if the income therefrom is not effectively connected income "by reason of the application of § 1.864-4(c)(5)."

Accordingly, under current rules, investments in debt – including loans – are not commercial activity *unless* made by a "banking, financing, or similar business." And while neither the statute nor the regulations expressly define a "banking, financing, or similar business" for purposes of § 892, investors have reasonably believed that the term likely enjoys a meaning similar to that under § 864 given the regulatory cross-reference to § 1.864-4(c)(5), though without the geographical requirement that the trade or business be *within* the United States.

Foreign sovereign investors have followed these administrable precepts since the Temporary Regulations were introduced in 1988. Unfortunately, the Proposed Regulations addressing the acquisition of debt fundamentally change the manner in which sovereign investors have understood the § 892 rules to apply and will significantly impact how they invest in debt.

II. RECOMMENDATION

We wish to offer some high-level observations on the proposals and recommend certain changes.

- **Restore the Presumption of Non-Commerciality for Debt Investments**. The Proposed Regulations reverse the existing presumption by treating debt investments as inherently commercial unless they fall within two safe harbors or satisfy a general facts-and-circumstances test. We recommend restoring the longstanding presumption that debt (including loans) should not be considered commercial *unless* they meet specific criteria. An investment in debt is inherently no more commercial than an investment in equity, as the statute makes clear by including "stock, bonds, or other domestic securities" within the scope of the § 892 exemption. As such, absent special circumstances, an investment in debt (or stock) should not be commercial. Restoring the presumption of non-commerciality would not

only align with widespread market practice, but also with the plain meaning of the statute and the policy intention.

- **Expand and Clarify Safe Harbors for Private Credit Transactions**. Private credit transactions, including loan origination, are often (but not exclusively) arranged by third party managers for sovereign investors. While the two safe harbors are somewhat helpful, they do not address the areas of greatest concern for investors and are very narrow in scope in the context of the broad, diverse private and public market debt securities that the majority of sovereigns pursue. There was little risk that registered offerings or secondary market acquisitions would be treated as commercial activities, and the safe harbors offer only modest comfort and could be improved by including non-U.S. registered offerings within the scope of the first safe harbor. The broad facts-and-circumstances analysis will be most relevant for private credit transactions which are a significant and growing area for sovereign investors. These transactions include debt acquired on initial issuance and on the secondary market, and any subsequent restructures or workouts involving such debt. Treasury should consider providing a clear, administrable safe harbor for private credit transactions, supplemented by illustrative examples that reflect common market practices.

- **Clarify the Relationship Between § 892 and § 864 Analyses**. The proposed regulations seek to distinguish the § 892 (Exempt income of foreign governments) analysis from that under § 864 (U.S. trade or business), yet the facts-and-circumstances test in the Proposed Regulations closely mirrors the considerations used to determine whether an entity is a "banking, financing, or similar business" under § 864. This divergence in applying different standards for debt investments is confusing and we recommend that Treasury provide a consistent approach to the treatment of debt investments. Alternatively, we urge Treasury to clarify how the two regimes differ in practical application, and to ensure the new framework does not create unintended ambiguity or duplicative analysis.

- **Provide Realistic Examples for Shareholder Loans**. Example 2, addressing shareholder loans, is helpful in principle but does not reflect market realities. In practice, debt-to-equity ratios of 3:1 or higher are common. As written, the example leaves sovereign investors uncertain as to how much debt capitalization relative to equity is permissible before causing commercial activity. Further, sovereign investors sometimes use different entities to make debt and equity investments in a particular entity. The commercial choice of bifurcating equity from debt should not cause the debt to fall outside the protections afforded by this example. We recommend that Treasury provide a general safe harbor for shareholder loans or at least some examples reflecting realistic debt-to-equity ratios, as well as clarify the boundaries for acceptable shareholder loan structures.

- **Offer Practical Guidance on Private Placement Negotiations**. Example 3, involving private placements, presents an idealized scenario in which the investor's preferences are perfectly matched by placement agents. In reality, some negotiation or structuring is commonplace and undertaken to safeguard the sovereign's investment, and the line between "material participation" and passive investment is unclear. Any back-and-forth may be construed as participating in the structuring or negotiation of the debt. Treasury should provide examples and guidance that reflect market practice, clarifying when investor involvement crosses the threshold into commercial activity.

- **Address Creditor Committee Participation in Debt Workouts**. The distinction between Examples 4 and 5 – where participation on a creditors' committee is treated as commercial activity – places investors in a difficult position. In distressed situations, investors often need to participate actively to preserve value and creditor committees generally represent all investors, not just those on the committee. The fear of commercial activity "tainting" may discourage constructive engagement and harm both investors and borrowers. Treasury should reconsider this approach and provide a safe harbor or exception for reasonable participation in debt workouts, particularly where the investor's actions are aimed at protecting its capital rather than operating a business.

- **Include a Grandfathering Provision**. To avoid retroactive disruption and preserve investor expectations, we recommend that Treasury include a grandfathering provision for investments made prior to the effective date of any final regulations. This would ensure that sovereign investors relying on the existing regulatory framework are not unfairly penalized by subsequent changes.

EFFECTIVE CONTROL

I. EXISTING MARKET PRACTICE ON EFFECTIVE CONTROL

An § 892 investor is treated as possessing "control" over an entity in two situations:

- First, where the investor holds a 50% or more interest in the entity, whether directly or indirectly and measured by either value or voting interest. This is the traditional and more easily administrable limb of control.

- Second, where the investor does not meet this percentage threshold but nevertheless possesses certain rights such that it is deemed to possess Effective Control ("**EC**" or effective practical control under the previously issued § 892 regulations) over the entity. This represents the more conceptually uncertain, and less well-understood, limb of control – previously only relevant for establishing whether an entity was a "controlled commercial entity" but now also relevant under the recently issued Final Regulations for determining whether the new QPIE can be relied upon.

With respect to this second limb, and in the absence of any meaningful guidance since these rules were first introduced nearly 40 years ago, the prevailing market practice is to regard only *extraordinary* rights, when coupled with a minority equity interest, as conferring EC. Sovereign investors have relied upon this reasonable interpretation when making investment decisions and negotiating their information and governance rights with investment funds and portfolio companies in which they invest.

Sovereign investors often deploy hundreds of millions or even billions of dollars in a single investment. It is common for sovereign investors to seek important assurances from the managers or companies in which they invest. These assurances can take the form of protective provisions in fund limited partnership agreements, side letter agreements, shareholder agreements, or investor-rights agreements. Generally, these understandings are intended to ensure the business deal of the parties is preserved and that the minority investors who, from a voting perspective may be in a position of relatively unequal or limited bargaining power, get the benefit and protection of their investment. To the extent a manager or company wishes to do something that potentially deviates from that expectation, is a special action for which shareholder approval is customarily required or is a matter that may cause an issue from the investor's governance perspective (eg making an investment in an entity that undertakes certain activities which the investor may be prohibited from being invested in), the investor may expect to be consulted and approve the matter. In certain extraordinary circumstances, supermajority or unanimous approval or individual investor consent may be required.

None of these investor-level decisions is generally regarded as conferring EC under prevailing market practice except to the extent these actions permit the investor to direct managerial or day-to-day operations of the entity.

II. POSITIVE VS NEGATIVE CONTROL

The proposed definition of EC requires a consideration of all of the facts and circumstances related to the interests in an entity. Among these interests are "[v]oting rights in the entity, including the power to appoint directors or managers, and to veto decisions."

It is important to distinguish positive control from negative control. "Positive control" rights generally mean the ability to initiate direct actions, while "negative control" rights generally mean the ability to block, veto, or prevent actions.

The Proposed Regulations create significant uncertainty regarding whether EC can be achieved through the possession of either positive control rights or negative control rights. This is illustrated through two proposed examples:

- Example 4 illustrates *positive* control. In the example, FX is a minority investor in Corp 1 with the power to appoint 1 out of 3 directors of the company. FX's director "alone is authorized under Corp 1's governing documents to unilaterally appoint or dismiss the manager, an officer of Corp 1 whose responsibilities are to manage Corp 1's operations." FX does not otherwise have other rights to unilaterally authorize or veto any other Corp 1 action. Example 4 concludes that FX has EC over Corp 1.

- Example 5 illustrates *negative* control. In the example, FX is a minority investor in Corp 1 with the power to appoint 1 out of 3 directors of the company. FX's director "alone has rights to unilaterally veto dividend distributions, material capital expenditures, sales of new equity interests in Corp 1, and the operating budget of Corp 1." FX does not otherwise have other rights to unilaterally authorize or veto any other Corp 1 action. Example 5 concludes that FX has EC over Corp 1.

We disagree with this approach and believe the concept of EC should be confined to clear instances of positive control. There is a material and commercially significant distinction between the power to cause action (positive control) and the ability merely to prevent action (negative control). Extending EC to cover negative control rights – particularly those that require collective or supermajority action – risks producing inappropriate outcomes by deeming control where none exists in practice, substantially increases uncertainty and risk for investors, and would introduce a significant change to the historic approach adopted by sovereign investors.

Moreover, including negative consent or blocking rights as a basis for EC appears inconsistent with the reassurance provided elsewhere in the Proposed Regulations, specifically the statement that "mere consultation rights with respect to operational, managerial, board-level, or investor-level decisions of an entity (such as extending the term of the entity's investment period, change in control of the entity, or liquidation of the entity) do not alone give rise to effective control." In our experience, the examples cited – extension of investment period, change in control, and liquidation – are all matters that typically require supermajority or unanimous consent by investors; these are not matters where consultation alone is involved and such rights have been negotiated by sovereign investors to ensure there is appropriate protection of the significant capital they are investing for and on behalf of governments.

We are concerned that if every investor in a fund or company holds a blocking right, then multiple parties would simultaneously be deemed to have EC, an outcome that is inconsistent with commercial reality and that would create significant practical and compliance risk for investors as well as administration difficulties for the Internal Revenue Service ("**IRS**"). Taken to its limit, in the unanimous consent scenario, even a 0.1% investor could be taken to have EC – a conclusion that is far removed from commercial reality. We therefore request clarification that EC is limited to only positive control rights.

Examples 4 and 5 appear to address this issue by using the terms "alone" and "unilaterally," implying that EC should exist only where a single investor or its appointee can exercise such power independently. If this is correct, it would be helpful for the regulations to clarify explicitly that EC arises only in circumstances where a single investor or its representative holds such unilateral and comprehensive power, and not where blocking rights are held collectively or require group action, noting however our view that negative rights should generally not be relevant for determining EC.

While we would strongly counsel against it, to the extent Treasury wishes to include negative control rights within the EC analysis, we recommend that the test for EC should require that:

- The negative control right needs to be held unilaterally rather than jointly or collectively;
- Only negative rights that extend to all or substantially all major managerial or operational decisions would confer EC whereas limited or specific vetoes (such as those relating to a particular transaction or category of decisions) should not; and
- The focus should be on whether, in substance, the holder can dictate the entity's managerial or day-to-day activities rather than merely prevent isolated actions.

III. MATERIALITY OF CONTROL

The Proposed Regulations provide that EC may be achieved by holding any interest that results in control over the entity's "operational, managerial, board-level, or investor-level decisions" whether held directly or indirectly, and either separately or in combination with other interests. As currently drafted, this language appears to suggest that control over any such decision, regardless of materiality, could confer EC.

This approach stands in contrast to the existing Temporary Regulations, which focus on whether a party has effective practical control "over the entity," not merely over discrete decisions or immaterial aspects of its operations. We do not believe it is the intention of Treasury to treat control over minor or technical matters as conferring EC for purposes of these rules.

Consider the following illustrations of this point:

> *Example 1. A minority investor in a company requires, as a condition to its investment, that the portfolio company use a particular brand of office stationery going forward, and that any change to its use must be approved by the investor.*
>
> While this authority grants the investor control over a specific operational decision, it does not amount to control over the entity as a whole.

> *Example 2. An investor is granted the right to approve the color of the company's annual report or the selection of art in the company's lobby.*
>
> These rights, while technically "operational" or "managerial," are immaterial and should not confer EC.

Treating an entity as a controlled commercial entity under such circumstances would be unduly harsh and inconsistent with the historical understanding of these rules as applied to sovereign investors. We therefore recommend that Treasury revise the regulations to restore the framing adopted in the Temporary Regulations, namely by asking whether the rights in question confer EC over the entity as a whole, rather than over discrete and/or immaterial decisions.

We further suggest that the regulations clarify that only rights over material decisions – i.e., those that affect the core management, or fundamental operations of the entity – should be relevant in assessing EC. Technical, transitory, governance, or minor rights should be excluded from consideration.

IV. INFLUENCE

The Proposed Regulations explain that EC may be achieved by holding any interest that results in control over an entity's operational, managerial, board-level, or investor-level decisions. They also identify a non-exhaustive set of interests relevant to this assessment, including equity, debt, voting, contractual, and business interests as well as potential regulatory authority over the entity. These items largely align with the Temporary Regulations' reference to "creditor, contractual, or regulatory relationships" that may, in conjunction with an equity stake, confer control.

However, the Proposed Regulations go further by adding an additional, open-ended catch-all for "[a]ny other interest in or other relationship with the entity that may provide *influence* over decisions relating to the entity's operations, management, board-level, or investor-level matters" (*emphasis added*). The inclusion of this additional category raises significant concerns for several reasons.

First, while we appreciate Treasury's intention that EC should be determined under a holistic, facts-and-circumstances analysis, and recognize the practical utility of a catch-all to address unforeseen circumstances, the absence of any limiting principle risks making the EC inquiry effectively limitless. The phrase "may provide influence" is particularly problematic. It offers no meaningful threshold for when influence crystallizes into "control," or any objective basis by which such influence could be identified or measured. In practice, all investors, particularly those with some degree of industry reputation, commercial leverage, or a long-standing relationship, may exercise some degree of influence over an entity. If influence of this kind is sufficient, the concept of control is diluted to the point of incoherence, capturing ordinary commercial interactions that fall well short of any genuine capacity to direct decision-making or outcomes.

Consider the following examples:

> *Example 1. A foreign government is a 10% investor in a portfolio company, entitled to appoint 1 out of 9 directors to a board. The foreign government has no other governance rights, and its board appointee has no special voting or other rights. However, the board appointee is a person of considerable stature in the investment community whose opinion is widely respected in the company's industry.*

Might the investor be treated as possessing EC merely because its director's views are relatively influential? If so, the standard would capture circumstances far removed from actual control.

Example 2. A foreign government is a significant lender to a company but has no formal veto or approval rights. The borrower, however, is motivated to maintain a good relationship with the lender in hopes of future financing and is therefore inclined to conduct itself in a manner viewed favorably by the lender.

Could this general commercial leverage be viewed as "influence" that rises to the level of EC? Most would agree this is not control in any commercial sense.

Second, the catch-all blurs the distinction between "influence," which is inherent in many business relationships, and "control," which requires the power to direct or determine outcomes. Most legal and commercial frameworks distinguish between these concepts. Influence, whether arising from reputation, economic leverage, or informal relationships, should not be sufficient to trigger a finding of EC unless it is coupled with formal, enforceable rights or a demonstrable ability to dictate the entity's managerial and day-to-day operations.

Third, the open-ended standard raises significant administrative and compliance challenges. Both investors and the IRS may struggle to apply an influence-based test in a consistent and predictable manner. The result will be increased uncertainty, disputes, and potentially inconsistent results. The regulations should instead focus on clear, objective indicia of control such as unilateral veto rights, the ability to appoint or remove management (without cause), or formal contractual rights over major decisions.

Fourth, the breadth of the catch-all category, in the absence of a clear limiting principle, risks chilling foreign investment and undermining commercial certainty. If investors cannot be confident that their routine commercial relationships, industry reputation, or standard minority protections will not be deemed to confer EC, they may be deterred from investing or may insist on sub-optimal governance structures solely to avoid tax regulatory risk. This would impose real commercial costs and would be inconsistent with the stated policy objectives of encouraging cross-border investment and providing clear, predictable, and administrable rules.

V. INTERACTION WITH QPIE

The Final Regulations' revisions to the QPIE, formerly known as the "limited partner exception" ("**LPE**"), have significantly narrowed the availability of this important safe harbor for sovereign investors against the upward attribution ('tainting') of commercial activity. Under the revised rules, reliance on QPIE is precluded wherever a partnership is "controlled" by a foreign sovereign – meaning, where the sovereign holds a 50% or greater interest, or is otherwise deemed to possess EC as newly defined. This represents a marked and, in our view, unfortunate departure from the LPE as introduced under the 2011 Proposed Regulations.

It is relevant that the legal framework governing limited partnerships has traditionally prohibited operational control by limited partners on pain of losing the benefit of limited liability. Against that backdrop, it is also important to recall that the policy rationale underpinning the original LPE was to provide clarity and certainty to sovereign investors that, so long as they invested solely as limited partners without the ability to participate in management or business operations, there would be no upward attribution of commercial activity from the partnership. The test was clear, objective, and readily administrable: it turned exclusively on whether the limited partner had rights to manage or conduct the partnership's business under the applicable governing law or the partnership agreement and related documents. This bright-line approach was widely praised for the certainty it provided and for its role in facilitating cross-border investment.

The revised QPIE rules, by contrast, are problematic in at least five respects:

First, the new focus on "control" means that, even a purely passive sovereign limited partner will be disqualified from relying on QPIE if it owns a majority interest or is otherwise deemed to possess EC, notwithstanding the absence of any actual participation in management or business operations. This is a common feature of many investment funds, where large institutional investors, including sovereigns, may hold majority or near-majority interests while having no role in the partnership's management or day-to-day operations. As a result, QPIE is now unavailable to many sovereign investors in precisely the types of passive investment structures for which the LPE was originally designed.

> *Example 1. A sovereign wealth fund acquires a 60% interest as a limited partner in a real estate fund. The general partner retains exclusive authority over all management decisions and the limited partner has no rights to direct, veto, or approve fund actions other than customary minority / governance protections (e.g., changes to the partnership agreement or the admission of new partners).*
>
> Despite having no meaningful control over the fund, the investor is now ineligible for QPIE solely due to the size of its capital commitment. Further noting that such rights are generally not deemed to create control for accounting standard purposes.

Second, by tying QPIE eligibility to the proposed "effective control" standard (which, as discussed above, is open-ended and potentially overbroad), the revised rules introduce a significant degree of uncertainty. Investors that previously benefited from a clear and predictable safe harbor must now navigate the ambiguities of the EC analysis, which may turn on subjective assessments of "influence" or other facts and circumstances. The resulting loss of certainty undermines the original purpose of the LPE and creates material compliance and financial risk for sovereign investors seeking to avoid inadvertent attribution of commercial activity.

> *Example 2. A foreign government holds a 20% interest in a private equity fund and is a member of the fund's limited partner advisory committee, but has no day-to-day operational or management rights. The fund manager, seeking to secure further commitments, regularly consults the investor for feedback and occasionally adjusts fund strategy to align with the investor's preferences.*
>
> Under the proposed EC standard, there is a risk, however remote, that such informal "influence" could be viewed as sufficient to establish EC, thereby disqualifying the investor from QPIE and exposing it to attribution of commercial activity.

Third, these changes may have the unintended effect of distorting investment structuring. In order to manage the risk of commercial activity "tainting" and to minimize the risk of being denied QPIE protection, sovereign investors may seek to avoid majority positions, even where such positions are commercially desired. If customary, minority, and governance protections or advisory arrangements were removed, this in turn could result in weaker governance frameworks and fewer investment opportunities for both investors and sponsors.

> *Example 3. A sovereign investor is one of several large limited partners (each holding between 15-30% interests) in a fund. The partnership agreement requires super-majority or unanimous consent for certain extraordinary matters such as dissolution or merger.*
>
> Under the new rules, it is unclear whether the fact that the sovereign's consent is required for these matters could be treated as conferring EC. If so, routine minority / governance protections could become a trap for the unwary, potentially forcing sovereign investors to choose between foregoing such protections or limiting their participation in pooled vehicles. In practice, the former option may not be viable, as a sovereign's fiduciary obligations would generally preclude abandoning protections that represent accepted risk-management practice.

Fourth, the shift away from an objective, rights-based test toward a subjective, control-based standard increases administrative burdens for both taxpayers and the IRS. The need to analyze the facts and circumstances of each investment, and the inherent uncertainty in how EC will be interpreted and applied, will likely lead to greater disputes, more frequent requests for rulings, and inconsistent results. Above all, it will significantly diminish (and possibly entirely eliminate) reliance on the QPIE, which is unlikely to have been the intended outcome.

Fifth and finally, the inclusion of the EC concept in the new QPIE rule in the Final Regulations, when read together with the proposed guidance on EC in the Proposed Regulations, has created considerable uncertainty and confusion regarding the application of the QPIE under the Final Regulations. We further note the inclusion of the new 50% threshold in the QPIE, which represents a significant (and, in our view, unfortunate) change to the LPE.

For these reasons, we recommend Treasury consider (i) partially withdrawing the Final Regulations to the extent they preclude QPIE reliance where a foreign government holds a 50% or greater interest, or otherwise possesses EC, of a partnership; and (ii) reissuing those new control limitations in the Final Regulation as proposed regulations for comment.

VI. RECOMMENDATIONS

We respectfully urge Treasury to:

- **Clarify that negative control rights, such as veto or blocking rights, do not of themselves confer effective control**. If Treasury nevertheless wish to include negative control rights within the concept of EC, this should be strictly limited to circumstances where such rights are unilateral and extend to all or substantially all managerial and operational decisions (that is, where they are effectively a proxy for 50% or greater ownership). Where matters require super-majority or unanimous consent, such rights should be recognized as customary minority protections and should not amount to EC, as no single investor is able to direct action independently.

- **Restore the "control over the entity" standard when evaluating EC, with a clear distinction between material and immaterial decisions**. The test should focus on whether a party is able to direct or dictate the entity's overall managerial and operational matters, rather than exercise influence over isolated, technical or immaterial matters. In doing so Treasury should be mindful that an overly broad, facts-and-circumstances approach, risks over-inclusiveness and unintended consequences for sovereign investors. Accordingly, we recommend that Treasury adopt a more objective, bright-line standard for EC, supported by clear examples and safe harbors, and limit the facts-and-circumstances test to cases where formal, unilateral, and material control rights are present. The test should be designed to exclude routine minority and governance protections and technical, transitory or immaterial rights, ensuring that only genuine, substantive control triggers EC status.

- **Clarify that "influence" alone, absent formal rights or enforceable powers, does not amount to effective control**. Factors such as industry reputation, commercial leverage, or longstanding business relationships – without more – should not be sufficient to establish EC. We recommend that the final regulations include illustrative examples distinguishing mere influence from actual control. The standard for EC should remain grounded in substantive, objective indicia of control, and should not extend to circumstances involving influence, reputation, or prominence alone.

- **Reconsider the approach to QPIE**. Specifically, we urge Treasury to restore the original bright-line, rights-based test for LPE eligibility, or, at a minimum, provide clear guidance and illustrative examples confirming that passive limited partners do not lose QPIE protection unless there exist formal rights to participate in management or day-to-day operations. Certainty in this area is critical to preserving the attractiveness of investment funds for sovereign investors and ensuring the rules align with their original policy objectives.

- **Adopt a bright-line safe harbor for minority equity stakes**. To further promote certainty and administrability, we recommend the adoption of a safe harbor under which a foreign sovereign holding a direct or indirect equity stake of 30% or less in an entity – absent additional special factors such as unilateral management or veto rights – would not be deemed to possess EC. This threshold is consistent with commercial practice and would provide much-needed clarity for investors in partnership and fund structures.

- **Provide for grandfathering of existing investments**. To avoid retroactive disruption and preserve legitimate investor expectations, we recommend that Treasury include a grandfathering provision for investments made prior to the effective date of any final regulations. This would ensure that sovereign investors that entered into partnerships or other investment arrangements under the existing regulatory framework are not unfairly penalized by subsequent changes in the rules.

By incorporating these recommendations, Treasury can strike an appropriate balance between regulatory integrity and commercial certainty, supporting cross-border investment while maintaining clear, objective standards for effective control.