

MEMO# 25689

December 5, 2011

Draft Comment Letter on Proposed NPC Rules; Comments Due by December 13th

[25689]

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TO: TAX COMMITTEE No. 75-11 RE: DRAFT COMMENT LETTER ON PROPOSED NPC RULES;
COMMENTS DUE BY DECEMBER 13TH

The ICI has prepared the attached draft comments in response to the proposed notional principal contract (“NPC”) regulations issued in September. [\[1\]](#) As discussed at the Tax Committee meeting in October, the proposed regulations provide guidance on the scope of the section 1256(b)(2)(B) exclusion for certain swap contracts that was passed as part of the Dodd Frank Act. [\[2\]](#) The proposed regulations extend the exclusion to cover all NPCs, and expand the definition of NPC to cover credit default swaps (“CDS”) and potentially bullet swaps under the new interim fixed amount concept.

The comment letter is divided into two parts. The first part addresses three important issues raised by the proposed regulations:

1. Additional guidance is necessary regarding the definition of “payment” in the context of bullet swaps and interim fixed amounts;
2. Additional guidance is necessary regarding the types of contracts that are “similar agreements” for purposes of the section 1256(b)(2)(B) exclusion; and
3. Guidance should be issued on exchange traded notes (“ETNs”) which appear not to be covered by the proposed regulations.

In the second part, the letter addresses character and timing concerns that are outside the scope of the proposed regulations but are critically important to the fund industry:

1. Due to their distribution requirements, RICs have a special interest in the characterization of payments under NPCs;
2. Further consideration should be given to the treatment of CDS; we urge that CDS be accounted for under the “wait and see” method; and
3. NPC rules should address the proper accounting of amounts that become fixed during the contract, but are not paid until maturity.

Written comments to Treasury and the IRS are due by December 15th. Please provide your comments on the draft by December 13th.

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[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) [25496] dated September 19, 2011.

[2] See Institute [Memorandum](#) [24430] dated July 16, 2010.

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