

MEMO# 29495

November 17, 2015

2015 ISDA Protocol to Address Section 871 (m)

[29495]

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TO:

TAX COMMITTEE No. 40-15

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 81-15

RE:

2015 ISDA PROTOCOL TO ADDRESS SECTION 871 (m)

ISDA has published two previous protocols to address the impact of Section 871(m) of the U.S. Internal Revenue Code on derivatives transactions: the ISDA 2010 HIRE Act Protocol and the ISDA 2010 Short Form HIRE Act Protocol. The Treasury Department and IRS issued final regulations under section 871(m) on September 17, 2015. In response to the final regulations, ISDA has released this new protocol.

ISDA's goal with the new 2015 protocol was to create a revised protocol that enjoys both buy side and sell side support, since mutual adherence streamlines the document remediation process. ISDA document remediation for section 871(m) must generally be accomplished by January 1, 2016. The new protocol reflects input from the ICI and its members and generally operates to carve out withholding taxes imposed under Section 871(m) from the definition of indemnifiable taxes under an ISDA master agreement. The burden of withholding tax in all three protocols is effectively the same.

For adherents to a prior protocol, the latest 2015 protocol preserves existing provisions under the 2010 protocols for transactions entered into before January 1, 2017. The new protocol provisions would apply from that date.

At the ISDA website members can:

- [View a List of Adhering Parties](#);
- [View Protocol Material](#);
- [Submit an Adherence Letter](#);
- [Read an FAQ on the Protocol](#); and
- [View Open Orders](#)

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