Part III – Administrative, Procedural, and Miscellaneous

Initial Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code

Notice 2023-7

SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing the application of the new corporate alternative minimum tax (CAMT), as added to the Internal Revenue Code (Code)[1] by the enactment of § 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Sections 3 through 7 of this notice provide interim guidance regarding certain time-sensitive issues intended to be addressed by the forthcoming proposed regulations. Taxpayers may rely on the guidance provided in sections 3 through 7 of this notice until the issuance of the forthcoming proposed regulations.

In addition, the Treasury Department and the IRS intend to issue additional interim guidance to address other CAMT issues prior to the issuance of the forthcoming proposed regulations. Such additional interim guidance is expected to address, among other issues, certain issues related to the treatment under the

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

CAMT of items that are marked-to-market for financial statement purposes (such as life insurance company separate account assets and certain financial products), the treatment of certain items reported in other comprehensive income (OCI), and the treatment of embedded derivatives arising from certain reinsurance contracts. This additional interim guidance would be intended to help avoid substantial unintended adverse consequences to the insurance industry and certain other industries. See section 9.02 of this notice, which requests comments on these as well as other issues under the CAMT not addressed by this notice but that will be addressed in forthcoming proposed regulations.

Section 2 of this notice provides a summary of relevant law underlying the rules described in sections 3 through 7 of this notice. Section 3 of this notice describes rules that address certain issues under the CAMT regarding (i) subchapter C of chapter 1 of the Code (subchapter C) and subchapter K of chapter 1 of the Code (subchapter K), (ii) troubled corporations, and (iii) affiliated groups of corporations that join in filing (or that are required to join in filing) a consolidated return for Federal income tax purposes (tax consolidated groups). Section 4 of this notice describes rules that address certain CAMT issues with respect to the depreciation of property to which § 168 applies. Section 5 of this notice describes a safe harbor method for determining whether a corporation is an "applicable corporation" subject to the CAMT. Section 6 of this notice describes rules that address issues regarding the treatment of certain Federal income tax credits under the CAMT. Section 7 of this notice describes rules that address the determination of applicable corporation status in circumstances involving certain partnerships.

Section 8 of this notice describes the anticipated applicability dates of the forthcoming proposed regulations. Section 9 of this notice requests comments on the issues addressed in this notice as well as specific issues not so addressed. Section 10 of this notice provides drafting and contact information.

SECTION 2. BACKGROUND

.01 CAMT Under the Inflation Reduction Act

(1) Overview. Section 10101 of the IRA amended § 55 to impose the new CAMT based on the "adjusted financial statement income" (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. In general, a corporation is an applicable corporation subject to the CAMT for a taxable year if it meets an average annual AFSI test for one or more taxable years that (i) are before that taxable year and (ii) end after December 31, 2021. See section 2.01(4) of this notice.

(2) Imposition of CAMT. Section 55(a) provides that, for the taxable year of an applicable corporation, the amount of CAMT imposed by § 55 equals the excess (if any) of (i) the tentative minimum tax for the taxable year, over (ii) the sum of the regular income tax imposed for the taxable year plus the tax imposed under § 59A (commonly referred to as the base erosion and anti-abuse tax, or BEAT). Section 55(b)(2)(A) provides that, in the case of an applicable corporation, the tentative minimum tax for the taxable year is the excess of (i) 15 percent of AFSI for the taxable year (as determined under § 56A), over (ii) the CAMT foreign tax credit for the taxable year. See § 59(l). In the case of any corporation that is not an applicable corporation, § 55(b)(2)(B) provides that the tentative minimum tax for the

taxable year is zero.

(3) AFSI under § 56A.

(a) General definition of AFSI. For purposes of §§ 55 through 59, the term AFSI means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement (AFS) for that taxable year, adjusted as provided in § 56A. See § 56A(a).

(b) General definition of AFS. For purposes of § 56A, the term AFS means, with respect to any taxable year, an AFS, as defined in § 451(b)(3) or as specified by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance, that covers that taxable year. See § 56A(b).

(c) General adjustments to AFSI.

(i) Special rule regarding consolidated financial statements. Section 56A(c)(2)(A) provides that, if the financial results of a taxpayer are reported on the AFS for a group of entities (AFS Group), rules similar to the rules of § 451(b)(5) apply. Section 451(b)(5) provides that in such a situation the AFS of the AFS Group is the AFS of the taxpayer. Section 1.451-3(h)(1) through (3) provide rules under § 451(b)(5), including rules for determining the extent to which amounts reflected on the AFS of the AFS Group and the underlying source documents are allocable to the taxpayer for purposes of applying the rules under § 451(b). For purposes of this notice, the term AFS Group also includes a single entity with an AFS that does not consolidate the financial results of such entity with the financial results of any other entity.

(ii) Special rule regarding consolidated returns. Section 56A(c)(2)(B)

provides a general rule that, if the taxpayer is part of a tax consolidated group for any taxable year, AFSI for that group for that taxable year must take into account items on the group's AFS that are properly allocable to members of that group. However, § 56A(c)(2)(B) provides the Secretary with authority to prescribe by regulation exceptions to that general rule.

(iii) AFSI of partners and partnerships. Section 56A(c)(2)(D)(i) provides that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, the taxpayer's AFSI with respect to such partnership is adjusted to take into account only the taxpayer's distributive share of such partnership's AFSI. Section 56A(c)(2)(D)(ii) provides that, for purposes of §§ 55 through 59, the AFSI of a partnership is the partnership's net income or loss set forth on that partnership's AFS (adjusted under rules similar to the rules set forth in § 56A).

(iv) Adjustments with respect to certain Federal income tax credits. Section 56A(c)(9) requires AFSI to be appropriately adjusted to disregard any amount treated as a payment against the tax imposed by subtitle A of the Code pursuant to an election under §§ 48D(d) or 6417 and included in the net income or loss set forth on the taxpayer's AFS. However, if such amount is otherwise disregarded under the adjustment rule in § 56A(c)(5) (regarding AFSI adjustments for certain taxes), the adjustment in § 56A(c)(9) does not apply. See § 56A(c)(9).

(v) Adjustments with regard to Federal income tax depreciation. Section 56A(c)(13)(A) requires AFSI to be reduced by depreciation deductions allowed under § 167 with respect to property to which § 168 applies, to the extent of the amount allowed as deductions in computing taxable income for the taxable year. In addition,

§ 56A(c)(13)(B)(i) requires appropriate adjustments to AFSI to disregard any amount of depreciation expense that is taken into account on the taxpayer's AFS with respect to property to which § 168 applies. Lastly, § 56A(c)(13)(B)(ii) provides that AFSI is appropriately adjusted to take into account any other item specified by the Secretary in order to provide that the property to which § 168 applies is accounted for in the same manner as that property is accounted for under chapter 1 of the Code.

(d) Authority of the Secretary to provide necessary adjustments. Section 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of § 56A, including adjustments to AFSI (i) to prevent the omission or duplication of any item, and (ii) to carry out the principles of part II of subchapter C (relating to corporate liquidations), part III of subchapter C (relating to corporate organizations and reorganizations), and part II of subchapter K (relating to partnership contributions and distributions).

(e) General authority of the Secretary. Section 56A(e) authorizes the Secretary to provide such regulations and other guidance as necessary to carry out the purposes of § 56A, including regulations and other guidance relating to the effect of the rules of § 56A on partnerships with income taken into account by an applicable corporation.

(4) Qualification as an applicable corporation under § 59(k).

(a) Overview. Section 59(k)(1)(A) provides that, for purposes of §§ 55 through 59, the term applicable corporation means, with respect to any taxable year,

any corporation (other than an S corporation (as defined in § 1361(a)(1)), a regulated investment company (as defined in § 851), or a real estate investment trust (as defined in § 856)) that meets one of the average annual AFSI tests under § 59(k)(1)(B) (each, an AFSI test) for one or more taxable years that (i) are prior to that taxable year and (ii) end after December 31, 2021.

(b) AFSI tests.

(i) Overview. Section 59(k)(1)(B) provides two sets of rules for determining whether a corporation meets an AFSI test. First, under § 59(k)(1)(B)(i), a corporation meets the AFSI test for a taxable year if the average annual AFSI of that corporation (determined without regard to the adjustment under § 56A(d) for financial statement net operating losses) for the three-taxable-year period ending with that taxable year (Three-Taxable-Year Period) exceeds $1,000,000,000 (general AFSI test). Second, in the case of a corporation that is a member of a foreign-parented multinational group (as defined in § 59(k)(2)(B)) for any taxable year, that corporation meets the AFSI test for that taxable year under § 59(k)(1)(B)(ii) if (i) that corporation meets the general AFSI test (determined after applying the special foreign-parented multinational group rule in § 59(k)(2)), and (ii) the average annual AFSI of that corporation (determined without regard to the special foreign-parented multinational group rule in § 59(k)(2) and without regard to the adjustment described in § 56A(d) for financial statement net operating losses) for the Three-Taxable-Year Period is at least $100,000,000 (foreign-parented multinational group AFSI test).

(ii) Special aggregation rules and AFSI rules for determining applicable corporation status. Solely for purposes of determining whether a corporation is an

applicable corporation under § 59(k)(1), § 59(k)(1)(D) requires that all AFSI of persons treated as a single employer with that corporation under § 52(a) or (b) is treated as AFSI of that corporation. Section 59(k)(1)(D) also provides that, solely for purposes of determining whether a corporation is an applicable corporation, the AFSI of such corporation must be determined without regard to the distributive share adjustment under § 56A(c)(2)(D)(i) (see section 2.01(3)(c)(iii) of this notice) and the adjustments under § 56A(c)(11) pertaining to covered benefit plans (as defined in § 56A(c)(11)(B)). In addition, § 59(k)(2)(A) provides a special foreign-parented multinational group rule pursuant to which, solely for purposes of determining whether a corporation that is a member of a foreign-parented multinational group meets the general AFSI test, (i) the AFSI of such corporation must include the AFSI of all members of such group, and (ii) AFSI is determined without regard to the partnership distributive share adjustment under § 56A(c)(2)(D)(i) (see section 2.01(3)(c)(iii) of this notice), the foreign income pro rata share adjustment under § 56A(c)(3), the effectively connected income adjustment under § 56A(c)(4), and the adjustments under § 56A(c)(11) pertaining to covered benefit plans (as defined in § 56A(c)(11)(B)).

(c) Special rules regarding AFSI and the AFSI tests. Section 59(k)(1)(E) provides additional special rules for purposes of determining whether a corporation is an applicable corporation.

(i) AFSI calculation for short taxable years. With regard to a corporation with AFSI for any taxable year of less than 12 months, the AFSI of that corporation (including any predecessor) is annualized by multiplying the AFSI for the short period

by 12 and dividing the result by the number of months composing the short period. See §§ 59(k)(1)(E)(ii) and (iii).

(ii) AFSI tests for corporations in existence for less than three taxable years. If a corporation has been in existence for less than three taxable years, the AFSI tests are applied to that corporation on the basis of the period during which that corporation was in existence. See § 59(k)(1)(E)(i). Section 59(k)(1)(E)(iii) provides that a reference in § 59(k)(1)(E) to a corporation includes a reference to any predecessor of such corporation. Accordingly, for purposes of this section 2.01(4)(c)(ii), whether a corporation was in existence for less than three taxable years and, if so, the period on the basis of which the AFSI tests are applied to that corporation include the period(s) of existence of any predecessor(s) of such corporation. See § 59(k)(1)(E)(i) and (iii).

(d) Corporations excluded from applicable corporation status. Section 59(k)(1)(C) excludes corporations from the definition of applicable corporation if the following requirements are satisfied. First, the corporation must have either (i) a change in ownership, or (ii) a specified number of consecutive taxable years (as determined by the Secretary, taking into account the taxpayer's facts and circumstances), including the most recent taxable year, in which the corporation does not meet an AFSI test. See § 59(k)(1)(C)(i). Second, the Secretary must determine that it would not be appropriate to continue to treat that corporation as an applicable corporation (appropriateness determination). See § 59(k)(1)(C)(ii). However, as provided in the last sentence of § 59(k)(1)(C), a corporation that satisfies these two requirements for exclusion from applicable corporation status

nonetheless will be treated as an applicable corporation if that corporation subsequently meets an AFSI test for any taxable year beginning after the first taxable year for which an appropriateness determination applies.

(e) Regulations and other guidance to carry out statutory applicable corporation rules. Section 59(k)(3) authorizes the Secretary to provide regulations or other guidance for the purposes of carrying out § 59(k), including regulations or other guidance (i) to provide a simplified method for determining whether a corporation meets the requirements to qualify as an applicable corporation, and (ii) to address the application of § 59(k) to a corporation that experiences a change in ownership.

.02 Cancellation of Indebtedness (COD) Income.

(1) Overview. Section 61(a)(11) provides that, except as otherwise provided in subtitle A of the Code, gross income includes income from the discharge of indebtedness. Section 108(a)(1) provides that gross income does not include any amount that otherwise would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer, if the discharge occurs under circumstances specified in § 108(a)(1)(A) through (E), including: (i) in a title 11 case, (ii) when the taxpayer is insolvent, or (iii) with respect to qualified farm indebtedness (excluded COD income). See § 108(a)(1)(A), (B), and (C), respectively. In the case of a discharge to which the insolvency exclusion of § 108(a)(1)(B) applies, the amount of excluded COD income is limited under § 108(a)(3) to the amount by which the taxpayer is insolvent.

(2) Reduction of tax attributes.

(a) In general. Section 108(b)(1) provides that the amount of excluded COD income is applied to reduce the tax attributes of the taxpayer as provided in § 108(b)(2), subject to the special rules of § 108(g) for discharges of qualified farm indebtedness.

(b) Order in which attributes are reduced. Section 108(b)(2) provides that, except as provided in § 108(b)(5), the following tax attributes are reduced in the following order: (i) any net operating loss (NOL) for the taxable year of the discharge, and any NOL carryover to that taxable year; (ii) any amounts carried to or from the taxable year of the discharge for purposes of determining the amount allowable as a general business credit under § 38; (iii) the amount of the minimum tax credit available under § 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge; (iv) any net capital loss for the taxable year of the discharge, and any capital loss carryover to that taxable year under § 1212; (v) the basis of the property of the taxpayer (see § 1017 for provisions for making this reduction); (vi) any passive activity loss or credit carryover of the taxpayer under § 469(b) from the taxable year of the discharge; and (vii) any carryover to or from the taxable year of the discharge for purposes of determining the amount of the foreign tax credit allowable under § 27.

(c) Election to reduce basis before other attributes. In lieu of applying the rules of § 108(b)(2) to reduce a taxpayer's attributes by the amount referred to in § 108(b)(1), a taxpayer may elect under § 108(b)(5) to reduce under § 1017 the basis of the taxpayer's depreciable property by that amount, to the extent of the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs. Section 108(b)(2) does not apply to any amount to which an election under § 108(b)(5) applies.

(3) Exclusion of remaining amounts. Any amount of debt discharge that remains after attribute reduction is not includible in income. See H.R. Rep. 96-833 at 11 (1980); S. Rep. No. 96-1035 at 12 (1980). This type of excluded COD income is commonly referred to as "black hole excluded COD income."

.03 Consolidated Return Regulations. Section 1502 authorizes the Secretary to prescribe regulations to clearly reflect the Federal income tax liability of a tax consolidated group, and to prevent avoidance of such tax liability. See § 1.1502-1(h) (defining the term consolidated group for Federal income tax purposes). For purposes of carrying out those objectives, § 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the tax consolidated group filed separate returns.

.04 Treatment of Certain Credits in Computing Taxable Income.

(1) Elective payments under § 6417. Section 6417(a) applies to an applicable entity (as defined in § 6417(d)(1)) that makes an election under § 6417 with regard to any applicable credit (as defined in § 6417(b)) determined with regard to that applicable entity. If § 6417(a) applies, that entity is treated as making a payment against the tax imposed by subtitle A of the Code (for the taxable year with respect to which that applicable credit was determined) equal to the amount of that applicable credit. See § 6417(a). Section 6417(c) provides, in part, that, in the case of any facility or property held directly by a partnership, any election under § 6417(a) must be made by such partnership. If such partnership makes the election under § 6417(a), the Secretary is authorized to make a payment to such partnership equal

to the amount of such credit, and the payment is treated as tax exempt income for purposes of § 705. See § 6417(c)(1). The Treasury Department and the IRS intend to provide guidance regarding how and when an election under § 6417 may be made.

(2) Elective transfers under § 6418. Section 6418(a) Code applies to an eligible taxpayer (as defined in § 6418(f)(2)) that elects to transfer all (or any portion specified in the election) of an eligible credit (as defined in § 6418(f)(1)) determined with regard to that taxpayer for any taxable year to another taxpayer (transferee taxpayer) that is not related (within the meaning of §§ 267(b) or 707(b)(1)) to the eligible taxpayer. The transferee taxpayer specified in that election is treated as the taxpayer for purposes of the Code with regard to that credit (or such portion thereof). See § 6418(a). Pursuant to § 6418(b)(2), any amount received from the transfer of an eligible credit is excluded from gross income of the eligible taxpayer. Section 6418(c)(1) provides, in part, that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership, if such partnership makes an election under § 6418(a) with respect to such credit, any amount received from the transfer of the credit is treated as tax exempt income for purposes of § 705. The Treasury Department and the IRS intend to provide guidance regarding how and when an election under § 6418 may be made.

(3) Advanced Manufacturing Investment Credit under § 48D. Section 48D(a) provides that, for purposes of § 46 (which provides rules for determining the amount of the investment tax credit for purposes of the general business tax credit under § 38), the advanced manufacturing investment credit under § 48D (§ 48D credit) for

any taxable year is an amount equal to 25 percent of the qualified investment (as defined in § 48D(b)) for such taxable year with respect to any advanced manufacturing facility (as defined in § 48D(b)(3)) of an eligible taxpayer (as defined in § 48D(c)). Section 48D(d)(1) provides that, in the case of a taxpayer (other than a partnership or S corporation) making an election with respect to the § 48D credit determined with respect to such taxpayer, such taxpayer is treated as making a payment against the tax imposed by subtitle A (for the taxable year with respect to which such credit was determined) equal to the amount of such credit. Section 48D(d)(2)(A)(i) provides, in part, that, in the case of the § 48D credit determined with respect to any property held directly by a partnership, any election under § 48D(d)(1) must be made by such partnership. If such partnership makes the election under § 48D(d)(1), the Secretary is authorized to make a payment to such partnership equal to the amount of such credit, and the payment is treated as tax exempt income for purposes of § 705. See § 48D(d)(2)(A)(i). The Treasury Department and the IRS intend to provide guidance regarding how and when an election under § 48D(d) may be made.

SECTION 3. AFSI AND APPLICABLE CORPORATION STATUS RESULTING FROM CERTAIN TRANSACTIONS; TAX CONSOLIDATED GROUPS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 3. The Treasury Department and the IRS are providing this interim guidance to facilitate the ability for taxpayers to apply the CAMT to certain corporate transactions and other situations occurring prior to the issuance of the forthcoming proposed regulations.

.02 Defined Terms. For purposes of this section 3:

(1) Accounting Standards Codification. The term Accounting Standards Codification means the single source of authoritative nongovernmental U.S. generally accepted accounting principles (that is, U.S. GAAP).

(2) Common Parent Corporation. The term Common Parent Corporation means the parent corporation of a group of entities whose activities are consolidated for financial accounting purposes.

(3) Acquirer AFS Group. The term Acquirer AFS Group means a corporation or one or more chains of entities connected through ownership with a Common Parent Corporation that--

(a) composes or compose an AFS Group,

(b) is or are a Party to a Covered Transaction, and

(c) is or are treated on its AFS as acquiring a Target or Target AFS Group (or the assets thereof).

(4) Controlled. The term Controlled means one corporation, or one or more chains of entities connected through ownership with a Common Parent Corporation, that--

(a) composes or compose a portion of a Distributing AFS Group (as defined in section 3.02(8) of this notice),

(b) is or are a Party to a Covered Transaction, and

(c) is or are treated as the corporation the stock of which is distributed by a Distributing AFS Group on the AFS of the Distributing AFS Group (for example, a spinnee under the Accounting Standards Codification).

(5) Covered Nonrecognition Transaction.

(a) In general. The term Covered Nonrecognition Transaction means a transaction that, solely with regard to a corporation or a partnership (as appropriate), qualifies for nonrecognition treatment for Federal income tax purposes, respectively, under §§ 332, 337, 351, 354, 355, 357, 361, 368, 721, 731, or 1032, or a combination thereof, and is not treated as resulting in any amount of gain or loss for Federal income tax purposes (that is, solely with regard to the corporation or partnership, as appropriate).

(b) Qualification of each component transaction determined separately. For purposes of section 3.02(5)(a) of this notice, each component transaction of a larger transaction is examined separately for qualification as a Covered Nonrecognition Transaction (for example, nonrecognition treatment of a liability assumption component under § 357 and a transfer component under § 361(c)(3) are evaluated separately for determining qualification of each component as a Covered Nonrecognition Transaction, notwithstanding that each component could be a component transaction of a larger transaction that includes Covered Nonrecognition Transactions under §§ 368(a)(1)(D) and 355). Because Covered Nonrecognition Transaction status requires nonrecognition treatment for Federal income tax purposes, the treatment of a component transaction as a Covered Nonrecognition Transaction may be affected by the Federal income tax consequences of any other component transaction of the larger transaction as well as all other component transactions of the larger transaction (for example, taking into account all relevant provisions of the Code and general principles of tax law, including the step

transaction doctrine).

(6) Covered Recognition Transaction.

(a) In general. The term Covered Recognition Transaction means a transfer, sale, contribution, distribution, or other disposition of property treated as resulting in gain or loss for Federal income tax purposes (that is, a transfer, sale, contribution, distribution, or other disposition of property that does not qualify as a Covered Nonrecognition Transaction).

(b) Qualification of each component transaction determined separately. For purposes of section 3.02(6)(a) of this notice, each component transaction of a larger transaction is examined separately for qualification as a Covered Recognition Transaction (for example, recognition treatment of a liability assumption component under § 357 and a transfer component under § 361(c)(3) are evaluated separately for determining qualification of each component as a Covered Recognition Transaction, notwithstanding that each component could be a component transaction of a larger transaction that includes Covered Nonrecognition Transactions under §§ 368(a)(1)(D) and 355). Because Covered Recognition Transaction status requires recognition treatment for Federal income tax purposes, the treatment of a component transaction as a Covered Recognition Transaction may be affected by the Federal income tax consequences of any other component transaction of the larger transaction as well as all other component transactions of the larger transaction (for example, taking into account all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine). See section 3.03(3)(e) of this notice (Example 5).

(7) Covered Transaction. The term Covered Transaction means a Covered Recognition Transaction or a Covered Nonrecognition Transaction (as appropriate).

(8) Distributing AFS Group. The term Distributing AFS Group means one or more chains of entities connected through ownership with a Common Parent Corporation that--

(a) composes or compose an AFS Group,

(b) is or are a Party to a Covered Transaction, and

(c) is or are treated on its AFS as the distributor of the stock of Controlled (for example, a spinnor under the Accounting Standards Codification).

(9) Party. The term Party means, with regard to a Covered Transaction--

(a) a Controlled,

(b) a Distributing AFS Group,

(c) a partnership,

(d) a corporate partner transferring to, or receiving property from, a partnership in a Covered Transaction,

(e) a Target,

(f) a Target AFS Group, or

(g) an Acquirer AFS Group.

(10) Section 108(b) Reduction Amount. The term Section 108(b) Reduction Amount means the amount of excluded COD income that results in a reduction of tax attributes under § 108(b) or § 1.1502-28 (that is, the total amount of excluded COD income, minus the "black hole excluded COD income" described in section 2.02(3) of this notice).

(11) Target. The term Target means one corporation, or one or more chains of entities connected through ownership with a Common Parent Corporation, that--

(a) composes or compose a portion of a Target AFS Group (as defined in section 3.02(12) of this notice), and

(b) is or are treated as the Party that is acquired on the AFS of the Target AFS Group (for example, an acquiree under the Accounting Standards Codification).

(12) Target AFS Group. The term Target AFS Group means a corporation, or one or more chains of entities connected through ownership with a Common Parent Corporation, that--

(a) composes or compose an AFS Group, and

(b) is or are treated as--

(i) the Party that is acquired on the AFS of the Target AFS Group (for example, an acquiree under the Accounting Standards Codification), or

(ii) the AFS Group from which a Target is acquired on the AFS of the Target AFS Group.

(13) Test Group. The term Test Group means, as appropriate--

(a) all persons treated as a single employer under § 52(a) (as defined, with certain modifications, by § 1563(a)) or § 52(b) or the Treasury regulations under § 52(b), or

(b) all entities included in a foreign-parented multinational group, as defined in § 59(k)(2)(B).

(14) Three-Taxable-Year Period. The term Three-Taxable-Year Period has the meaning given the term in section 2.01(4)(b)(i) of this notice.

.03 AFSI Consequences of Covered Nonrecognition Transactions. For purposes of calculating AFSI, if there is a Covered Nonrecognition Transaction:

(1) Adjustment of financial accounting gain or loss.

(a) Financial accounting treatment conforms to Federal income tax treatment. Any financial accounting gain or loss resulting from the application of the accounting standards used to prepare the AFS of a Party to the Covered Nonrecognition Transaction is not taken into account solely for purposes of calculating the AFSI of the Party for the one or more taxable years in which the AFS of the Party takes into account the Covered Nonrecognition Transaction.

(b) Scope of rule. The rule set forth in section 3.03(1)(a) of this notice applies solely to the AFSI consequences that result directly from the Covered Nonrecognition Transaction for the Party's taxable year in which the AFS of the Party takes into account that transaction. For general rules regarding the AFSI consequences of Covered Transactions (including Covered Nonrecognition Transactions and Covered Recognition Transactions) with regard to each Party's Three-Taxable-Year Period, see section 3.04 of this notice.

(2) Corresponding adjustments to basis of transferred property on an AFS. With regard to any property transferred to a Party as part of a Covered Nonrecognition Transaction described in section 3.03(1)(a) of this notice, any increase or decrease in the financial accounting basis of that property on the AFS of the Party resulting from that Covered Nonrecognition Transaction is not taken into account solely for purposes of computing the AFSI of the Party receiving the transferred property with regard to any taxable year of that Party.

(3) Examples. The following examples illustrate the rules set forth in sections 3.03(1) and (2) of this notice. Each Party to a Covered Transaction described in these examples uses the Accounting Standards Codification (that is, U.S. GAAP) for purposes of preparing the Party's AFS. In addition, the AFS of each Party takes into account each Covered Transaction described in these examples in the taxable year in which the transaction occurs. Lastly, each Party's taxable year and accounting period is based on the calendar year.

(a) Example 1 – Covered Nonrecognition Transaction Involving Acquirer AFS Group, Target AFS Group, and Target--(i) Facts. Acquirer AFS Group and Target AFS Group, of which Target is a member, are unrelated. In the 2022 taxable year of Acquirer AFS Group and Target AFS Group, Acquirer AFS Group acquires Target solely in exchange for stock through a merger of Target into a member of Acquirer AFS Group that qualifies as a reorganization described in § 368(a)(1)(A) (Target Merger). On the AFS of Target AFS Group and the AFS of Acquirer AFS Group for the 2022 taxable year, the Target Merger results in financial accounting gain and corresponding increases in the financial accounting basis of the assets received by each Party (that is, Acquirer AFS Group and Target AFS Group) in the transaction.

(ii) Analysis. To determine AFSI, neither Target AFS Group nor Acquirer AFS Group take into account the financial accounting gain (that otherwise would have resulted from the application of the accounting standards used to prepare each AFS Group's AFS) to the Target Merger for the 2022 taxable year. See section 3.03(1)(a) and (b) of this notice. This adjustment to financial accounting gain results from the Target Merger's qualification as a Covered Nonrecognition Transaction.

See section 3.03(1)(a) of this notice. Each increase in financial accounting basis of the assets received by Target AFS Group and Acquirer AFS Group in the Target Merger (that otherwise would have resulted from the application of the accounting standards used to prepare each AFS Group's AFS) is not taken into account for AFSI purposes. See section 3.03(2) of this notice.

(b) Example 2 – Disposition of Assets Acquired in Covered Nonrecognition Transaction--(i) Facts. The facts are the same as in section 3.03(3)(a) of this notice (Example 1), except for the following. During Acquirer AFS Group's 2023 taxable year, a portion of the assets that Acquirer AFS Group received from Target AFS Group (Target Assets) in the Target Merger is sold by Acquirer AFS Group (Target Asset Sale). In the absence of the application of section 3.03(2) of this notice, the basis of those Target Assets would have been increased to fair market value on the AFS of Acquirer AFS Group as a result of the Target Merger.

(ii) Analysis. To determine the AFSI of Acquirer AFS Group for the 2023 taxable year, Acquirer AFS Group must treat its financial accounting basis in the Target Assets as equal to the financial accounting basis of those assets held by the transferor member of Target AFS Group immediately prior to the Target Merger (that is, a transferred financial accounting basis). See section 3.03(2) of this notice; cf. § 362(b). Therefore, solely for purposes of determining the AFSI of Acquirer AFS Group for the 2023 taxable year, Acquirer AFS Group must treat the Target Asset Sale as resulting in financial accounting gain equal to the difference between the financial accounting value of the Target Assets on the date of the sale and the transferred financial accounting basis of those assets (as adjusted for events

subsequent to the Target Merger and any other relevant AFSI adjustments, such as those described in section 4.07 of this notice).

(c) Example 3 – Covered Nonrecognition Transaction Involving Distributing AFS Group and Controlled--(i) Facts. On January 1, 2022, the parent corporation of Distributing AFS Group (Distributing) contributes property to a newly formed Controlled in exchange for Controlled stock, Controlled's assumption of certain Distributing liabilities (Controlled Liability Assumption), Controlled cash, and Controlled securities (collectively, the Contribution). Pursuant to a plan of reorganization that includes the Contribution, Distributing distributes Controlled stock to certain shareholders of Distributing throughout the year in exchange for Distributing stock (collectively, the Staggered Split-Off Distribution). The Contribution and Staggered Split-Off Distribution, together, qualify for nonrecognition treatment (i) for Distributing under §§ 368(a)(1)(D) and 355, 357, and 361, and (ii) for Controlled under § 1032(a). Pursuant to that plan of reorganization, Distributing transfers the Controlled cash and Controlled securities to Distributing's creditors (Cash for Debt Exchange and Debt for Debt Exchange, respectively) in transactions that qualify Distributing for nonrecognition treatment under §§ 361(b)(3) and (c)(3), respectively (collectively, the Deleveraging Transactions). On the AFS of Distributing AFS Group and Controlled, each of the transactions described in this section 3.03(3)(c)(i) results in financial accounting gain and corresponding increases in the financial accounting basis of the assets received by Controlled, respectively.

(ii) Analysis. In determining AFSI, Distributing does not take into account any financial accounting gain that otherwise would result from the application of the

accounting standards used to prepare the Distributing AFS Group's AFS to any of the Contribution, Controlled Liability Assumption, Staggered Split-Off Distribution,[2] or Deleveraging Transactions (together, the Controlled Split-Off) for the 2022 taxable year. See section 3.03(1)(a) and (b) of this notice. This adjustment to financial accounting gain results from the qualification of each of those transactions as a Covered Nonrecognition Transaction. See section 3.03(1)(a) of this notice. The analysis in this section 3.03(3)(c) would not be affected if a creditor of Distributing were to recognize any gain for Federal income tax purposes in the Controlled Split-Off.

(d) Example 4 – Covered Recognition Transaction Involving Distributing AFS Group--(i) Facts. The facts are the same as in section 3.03(3)(c) of this notice (Example 3), except for the following. During Distributing AFS Group's 2022 taxable year, Distributing fails to transfer the Controlled securities to Distributing's creditors in a transaction that qualifies Distributing for nonrecognition treatment under §§ 361(c)(3). Accordingly, the Debt for Debt Exchange is a Covered Recognition Transaction for the 2022 taxable year.

(ii) Analysis. In determining AFSI, Distributing does not take into account any financial accounting gain that otherwise would result from the application of the accounting standards used to prepare the Distributing AFS Group's AFS to any of the Contribution, Controlled Liability Assumption, Cash for Debt Exchange, or Staggered Split-Off Distribution for the 2022 taxable year. See section 3.03(1)(a)

[2] A "split-off" generally consists of a non-pro rata distribution by Distributing of stock of a Controlled in which Distributing shareholders surrender some or all of their stock in Distributing in exchange for that Controlled stock. In contrast, a "spin-off" generally consists of a pro rata distribution of Controlled stock by Distributing to its shareholders with respect to their stock in Distributing.

and (b) of this notice. This adjustment to financial accounting gain results from the qualification of each of those transactions as a Covered Nonrecognition Transaction (which are component transactions of the Controlled Split-Off). See section 3.03(1)(a) of this notice. However, Distributing AFS Group must take into account, for the 2022 taxable year, any financial accounting gain that would result from applying the accounting standards used to prepare the Distributing AFS Group's AFS to the Debt for Debt Exchange because that transaction is a Covered Recognition Transaction. See section 3.03(1)(a) and (b) of this notice. Accordingly, for purposes of determining AFSI, the financial accounting basis of the assets of Controlled are increased (on the AFS of Controlled) by an amount corresponding to the financial accounting gain that resulted from the Debt for Debt Exchange (in other words, section 3.03(2) does not apply to the Debt for Debt Exchange). See section 3.03(1)(a) of this notice.

(e) Example 5 – Covered Recognition Transaction under Subchapter K--

(i) Facts. Partner A contributes property to existing Partnership in a transaction purporting to qualify for nonrecognition treatment under § 721 (Contribution). Following the Contribution, Partnership distributes cash to Partner A in a transaction purporting to qualify for nonrecognition treatment under § 731 (Distribution). Section 707(a)(2)(B) and § 1.707-3 apply to the Contribution and Distribution to treat those transactions together as a part sale, part contribution of the property by Partner A to Partnership.

(ii) Analysis. The Contribution by Partner A and the Distribution by Partnership result in the recognition of gain or loss for Federal income tax purposes

due to the application of § 707(a)(2)(B) and § 1.707-3. Qualification of the Contribution and the Distribution (each, a component transaction of a larger transaction) as a Covered Nonrecognition Transaction is determined based on the Federal income tax consequences of all other component transactions of the larger transaction. See section 3.02(5)(b) of this notice. In other words, the application of § 707(a)(2)(B) and § 1.707-3 to both component transactions of the larger transaction, which treats them together as a part taxable exchange under § 1001 and a part nontaxable contribution, results in the Contribution and Distribution being treated as a Covered Recognition Transaction. See section 9.01(1)(b) of this notice for a request for comments regarding Covered Transactions in which, for Federal income tax purposes, gain or loss is recognized in part.

.04 Consequences of All Covered Transactions. For purposes of determining the AFSI of a Party for the Three-Taxable-Year Period:

(1) Covered Transactions Involving Solely an Acquirer AFS Group and a Target AFS Group. If an Acquirer AFS Group acquires a Target AFS Group through a Covered Transaction that creates a Test Group comprised of the Target AFS Group (or the assets thereof) and the Acquirer AFS Group--

(a) the applicable corporation status (if that status existed immediately prior to the Covered Transaction) of the Target AFS Group terminates, and

(b) the AFSI of the Target AFS Group for each year of the Target AFS Group's Three-Taxable-Year Period is combined with the AFSI of the Acquirer AFS Group for each year of the Acquirer AFS Group's Three-Taxable-Year Period.

(2) Covered Transactions Involving Solely an Acquirer AFS Group and a

Target. If an Acquirer AFS Group acquires a Target in a Covered Transaction that creates a Test Group comprised of the Target (or the assets thereof) and the Acquirer AFS Group--

(a) the applicable corporation status (if that status existed immediately prior to the Covered Transaction) of the Target terminates,

(b) the AFSI of the Target for the Three-Taxable-Year Period of the Target is determined based on the Target's allocated portion of the Target AFS Group's total AFSI, determined based on any reasonable allocation method of the Target AFS Group until the issuance of the forthcoming proposed regulations, which will provide a required allocation method (see section 9.01(1)(e) of this notice),

(c) the AFSI of the Target for each year of the Target's Three-Taxable-Year Period is combined with the AFSI of the Acquirer AFS Group for each year of the Acquirer AFS Group's Three-Taxable-Year Period, and

(d) the AFSI of the Target AFS Group for each year of the Target AFS Group's Three-Taxable-Year Period is not reduced by the allocation of AFSI to the Target (as required by section 3.04(2)(b) of this notice), or otherwise affected by the Acquirer AFS Group's acquisition of Target through the Covered Transaction.

(3) Covered Transactions Involving Distributing AFS Group and Controlled. If a Distributing AFS Group distributes the stock of Controlled to the shareholders of the Distributing AFS Group's parent corporation in a Covered Transaction--

(a) the applicable corporation status (if that status existed immediately prior to the Covered Transaction) of Controlled terminates,

(b) the AFSI of Controlled for the Three-Taxable-Year Period of Controlled is

determined based on Controlled's allocated portion of the Distributing AFS Group's total AFSI, determined based on any reasonable allocation method of the Distributing AFS Group until the issuance of the forthcoming proposed regulations, which will provide a required allocation method (see section 9.01(1)(f) of this notice), and

(c) the AFSI of the Distributing AFS Group for each year of the Distributing AFS Group's Three-Taxable-Year Period is not reduced by the allocation of AFSI to Controlled (as required by section 3.04(3)(b) of this notice), or otherwise affected by the Distributing AFS Group's distribution of the stock of Controlled through the Covered Transaction.

(4) Examples. The following examples illustrate the rules set forth in sections 3.04(1) through (3) of this notice. Each Party to a Covered Transaction described in these examples uses the Accounting Standards Codification (that is, U.S. GAAP) for purposes of preparing the Party's AFS. In addition, the AFS of each Party takes into account each Covered Transaction described in these examples in the taxable year in which such transaction occurs. Lastly, each Party's taxable year and accounting period is based on the calendar year.

(a) Example 6 – Covered Nonrecognition Transaction Involving Acquirer AFS Group and Target--(i) Facts. The facts are the same as in section 3.03(3)(a) of this notice (Example 1), except for the following. For taxable years 2020, 2021, and 2022, Target AFS Group has AFSI of $1.3 billion, $1.2 billion, and $1.1 billion, respectively. For those taxable years, Acquirer AFS Group has AFSI of $800 million, $900 million, and $1 billion, respectively. Pursuant to a reasonable allocation

method, Target AFS Group allocates to Target $50 million, $100 million, and $200 million of AFSI for taxable years 2020, 2021, and 2022, respectively. See section 3.04(2)(b) of this notice. As a result of the Target Merger, Acquirer AFS Group and Target compose a Test Group.

(ii) Analysis. As a result of the Target Merger, Acquirer AFS Group (which, as a result, includes Target) is an applicable corporation for Acquirer AFS Group's 2023 taxable year. Specifically, for purposes of applying the general AFSI test to Acquirer AFS Group for Acquirer AFS Group's 2022 taxable year, Target's allocated AFSI is combined with Acquirer AFS Group's AFSI. As a result, Acquirer AFS Group has an average AFSI in excess of $1 billion. Specifically, the Acquirer AFS Group has an average AFSI of $1.017 billion, which equals $3.05 billion (that is, $850 million ($800 million + $50 million) for taxable year 2020, $1 billion ($900 million + $100 million) for taxable year 2021, and $1.2 billion ($1 billion + $200 million) for taxable year 2022) ÷ 3 years. See section 3.04(2)(c) of this notice. Target AFS Group also is an applicable corporation for its 2023 taxable year because its allocation of AFSI to Target, and any other aspect of the Target Merger, does not affect the AFSI of Target AFS Group prior to its 2023 taxable year. See section 3.04(2)(d) of this notice.

(b) Example 7 – Covered Transactions Involving Distributing AFS Group and Controlled--(i) Facts. The facts are the same as in section 3.03(3)(c) of this notice (Example 3), except for the following. For taxable years 2020, 2021, and 2022, Distributing AFS Group has AFSI of $2.1 billion, $2.0 billion, and $1.9 billion, respectively. Pursuant to a reasonable allocation method, Distributing AFS Group

allocates to Controlled $950 million, $1.2 billion, and $1 billion of AFSI for taxable years 2020, 2021, and 2022, respectively. See section 3.04(3)(b) of this notice. In addition to the amount of AFSI allocated to Controlled for 2022, Controlled has standalone AFSI of $300 million in 2022.

(ii) Analysis. As a result of the Controlled Split-Off, Controlled is an applicable corporation for Controlled's 2023 taxable year. Specifically, for purposes of applying the general AFSI test to Controlled for Controlled's 2022 taxable year, Controlled's allocated AFSI results in Controlled having an average AFSI in excess of $1 billion. Specifically, the Controlled AFS Group has an average AFSI of $1.15 billion, which equals $3.45 billion (that is, $950 million for taxable year 2020, $1.2 billion for taxable year 2021, and $1.3 billion ($1 billion + $300 million) for taxable year 2022) ÷ 3 years. See section 3.04(3)(b) of this notice. Distributing AFS Group also is an applicable corporation for its 2023 taxable year because its allocation of AFSI to Controlled, and any other aspect of the Controlled Split-Off, does not affect the AFSI of Distributing AFS Group prior to its 2023 taxable year. See section 3.04(3)(c) of this notice.

.05 Treatment of Tax Consolidated Groups for Purposes of the CAMT. A tax consolidated group is treated as a single entity for purposes of calculating AFSI for determining applicable corporation status and for purposes of calculating AFSI for CAMT liability.

.06 AFSI Consequences of Excluded COD Income. To the extent that a discharge of indebtedness results in excluded COD income to an AFS Group for Federal income tax purposes, but results in gain to the AFS Group on the AFS of the

AFS Group:

(1) Adjustment of financial accounting gain. The financial accounting gain resulting from application of the accounting standards used to prepare the AFS of the AFS Group to the discharge of indebtedness that is equal to the amount of excluded COD income (for Federal income tax purposes) of the AFS Group is not taken into account for purposes of calculating the AFSI of that AFS Group for the taxable year in which the discharge of indebtedness occurs.

(2) Corresponding adjustments to CAMT attributes of AFS Group. If financial accounting gain resulting from a discharge of indebtedness is not taken into account under section 3.06(1) of this notice for purposes of calculating the AFSI of an AFS Group, the AFS Group's CAMT attributes must be reduced to the extent of the Section 108(b) Reduction Amount under the principles of, including taking account the ordering provided by, § 108(b) and § 1017.

(3) Example 8 – Excluded COD of tax consolidated group--(a) Facts. Parent is the common parent of a tax consolidated group (Parent Tax Consolidated Group), which also is an AFS Group (Parent AFS Group). There is no member of Parent AFS Group other than members of Parent Tax Consolidated Group. During its 2022 taxable year, Parent AFS Group emerges from bankruptcy. All members of Parent AFS Group were under the jurisdiction of the bankruptcy court. As a result of the bankruptcy reorganization, $1,000x of Parent AFS Group debt is discharged, the entire amount of which results in excluded COD. However, the Section 108(b) Reduction Amount of Parent AFS Group is $850x. A group of former creditors of Parent AFS Group owns 100 percent of the outstanding stock of Parent. None of the

shareholders of Parent controls Parent for purposes of preparing the shareholders' respective AFS. Therefore, Parent AFS Group is not consolidated into any other AFS Group following Parent AFS Group's emergence from bankruptcy. On Parent AFS Group's AFS, all $1,000x of the excluded COD is taken into account as financial accounting gain.

(b) Analysis. For purposes of determining AFSI for the 2022 taxable year, Parent AFS Group does not take into account any financial accounting gain that otherwise would result from the application of the accounting standards used to prepare the Parent AFS Group's AFS to any of the $1,000x of excluded COD. See section 3.06(1) of this notice. The CAMT attributes of Parent AFS Group must be reduced by an amount equal to the amount of Parent AFS Group's Section 108(b) Reduction Amount (that is, $850x). See section 3.06(2) of this notice. Parent AFS Group must reduce those CAMT attributes under the principles of, including taking into account the ordering provided by, § 108(b) and § 1017. See id.

.07 AFSI Consequences of Emergence from Bankruptcy. To the extent that the emergence from bankruptcy of an AFS Group results in gain or loss to the AFS Group on its AFS:

(1) Adjustment of financial accounting gain or loss. The financial accounting gain or loss resulting from application of the accounting standards used to prepare the AFS of the AFS Group to the emergence from bankruptcy by the AFS Group is not taken into account for purposes of calculating the AFSI of that AFS Group for the taxable year in which the emergence from bankruptcy occurs.

(2) Corresponding adjustments to basis of transferred property on an AFS.

With regard to any property of a Party emerging from bankruptcy in a transaction described in section 3.07(1) of this notice, any increase or decrease in the financial accounting basis of that property on the AFS of the Party resulting from that emergence from bankruptcy (other than as a result of the excluded COD income reduction under the principles of, including taking into account the ordering provided by, § 108(b) and § 1017) is not taken into account for purposes of computing AFSI with regard to any taxable year of that Party (that is, to determine the AFSI of an AFS Group described in this section 3.07(2), financial accounting basis of a Party (that is a member of that AFS Group) emerging from a bankruptcy equals the financial accounting basis of those assets of the Party immediately prior to the Party's emergence from bankruptcy, as adjusted under section 3.06(2) of this notice).

SECTION 4. DEPRECIATION ADJUSTMENTS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 4. The Treasury Department and the IRS are providing this interim guidance to facilitate the application of the depreciation adjustment rules in § 56A(c)(13) prior to the issuance of the forthcoming proposed regulations.

.02 Defined Terms. For purposes of this section 4:

(1) Covered Book COGS Depreciation. The term Covered Book COGS Depreciation means depreciation expense, impairment loss, or impairment loss reversal that is taken into account as cost of goods sold in the net income or loss set forth on the taxpayer's AFS with respect to Section 168 Property (as defined in

section 4.02(5) of this notice).

(2) Covered Book Depreciation Expense. The term Covered Book Depreciation Expense means depreciation expense, impairment loss, or impairment loss reversal other than Covered Book COGS Depreciation that is taken into account in the net income or loss set forth on the taxpayer's AFS with respect to Section 168 Property (as defined in section 4.02(5) of this notice).

(3) Covered Book Expense. The term Covered Book Expense means an amount, other than Covered Book COGS Depreciation and Covered Book Depreciation Expense, that is--

(a) recognized as an expense or loss in the net income or loss set forth on the taxpayer's AFS, and

(b) reflected in the unadjusted depreciable basis, as defined in § 1.168(b)-1(a)(3), of Section 168 Property (as defined in section 4.02(5) of this notice) for Federal income tax purposes.

(4) Deductible Tax Depreciation. The term Deductible Tax Depreciation means Tax Depreciation (as defined in section 4.02(7) of this notice) that is allowed as a deduction in computing taxable income.

(5) Section 168 Property. The term Section 168 Property means property to which § 168 applies, as described in section 4.04 of this notice.

(6) Tax COGS Depreciation. The term Tax COGS Depreciation means Tax Depreciation (as defined in section 4.02(7) of this notice) that is capitalized to inventory under § 263A and recovered as part of cost of goods sold in computing gross income under § 61.

(7) Tax Depreciation. The term Tax Depreciation means depreciation deductions allowed under § 167, with respect to Section 168 Property.

.03 Adjustments for Depreciation (Including Depreciation Capitalized to Inventory). For purposes of § 56A(c)(13), AFSI is--

(1) reduced by Tax COGS Depreciation, but only to the extent of the amount recovered as part of cost of goods sold in computing taxable income for the taxable year,

(2) reduced by Deductible Tax Depreciation, but only to the extent of the amount allowed as a deduction in computing taxable income for the taxable year,

(3) adjusted to disregard Covered Book COGS Depreciation, Covered Book Depreciation Expense, and Covered Book Expense, and

(4) adjusted for other items as provided in guidance published in the Internal Revenue Bulletin (see § 601.601(d) of the Statement of Procedural Rules (26 CFR part 601)).

.04 Property to Which § 168 Applies (Section 168 Property).

(1) In general. For purposes of § 56A(c)(13), property to which § 168 applies consists of the following:

(a) MACRS property, as defined in § 1.168(b)-1(a)(2), that is depreciated under § 168;

(b) Computer software that is qualified property as defined in §§ 1.168(k)-1(b)(1) or 1.168(k)-2(b)(1), as applicable, and depreciated under § 168; and

(c) Other property depreciated under § 168 that is (i) qualified property as defined in § 1.168(k)-2(b)(1) and that is (ii) described in § 1.168(k)-2(b)(2)(i)(E), (F), or

(G).

(2) Section 56A(c)(13) applies only to portion depreciated under §§ 167 and 168. For purposes of § 56A(c)(13), property to which § 168 applies includes only the portion of the cost of property described in section 4.04(1) of this notice that is depreciated under §§ 167 and 168. For example, if a portion of the cost of a property described in section 4.04(1)(c) of this notice is deducted under § 181, and the remainder of the cost of the property is depreciated under §§ 167 and 168, only the portion of the cost of property depreciated under §§ 167 and 168 is considered property to which § 168 applies for purposes of § 56A(c)(13). Further, if a taxpayer does not depreciate any portion of a property under § 168, the property is not property to which § 168 applies for purposes of § 56A(c)(13), and thus, not subject to adjustment under § 56A(c)(13). For example, if the taxpayer elects out of the additional first year depreciation deduction under § 168(k) for property described in section 4.04(1)(b) or (c) of this notice, then AFSI is not adjusted under § 56A(c)(13) with respect to such property because § 168 does not apply to such property.

.05 Repair deductions. Section 56A(c)(13) applies only to Section 168 Property. For example, if a taxpayer deducts an expenditure as a repair for Federal income tax purposes but capitalizes the expenditure as an improvement for AFS purposes, § 56A(c)(13) does not apply because the expenditure does not give rise to Section 168 Property. For purposes of determining the appropriate asset in order to ascertain if there is Section 168 Property, the unit of property determination under § 1.263(a)-3(e) does not apply. Instead, taxpayers should follow § 168 and the regulations under § 168. See § 1.168(i)-8(c)(4).

.06 Property placed in service in taxable years beginning before January 1, 2023. Section 56A(c)(13) applies to Section 168 Property placed in service in any taxable year, including taxable years beginning before January 1, 2023.

.07 AFSI adjustments for dispositions. If a taxpayer disposes of Section 168 Property, the taxpayer must adjust AFSI to redetermine any gain or loss taken into account in the net income or loss set forth on the taxpayer's AFS with respect to such disposition (including a gain or loss of zero) by adjusting the AFS basis of such property to take into account all current and prior § 56A(c)(13) adjustments, including those that would have been made in taxable years prior to the effective date of the CAMT had the CAMT applied in those years.

.08 Example. The following example illustrates the rules set forth in sections 4.06 and 4.07 of this notice.

(1) Facts. Taxpayer is an applicable corporation for the calendar year ending December 31, 2023. On January 1, 2018, Taxpayer purchased and placed in service Property A, a Section 168 Property, at a cost of $1,000x. Property A qualified for, and Taxpayer claimed, the 100-percent additional first year depreciation deduction allowable under § 168(k) for its taxable year ending December 31, 2018. For AFS purposes, Taxpayer depreciates Property A over 40 years on a straight-line method and recognized $25x ($1,000x cost / 40 years) of Covered Book Depreciation Expense in 2018 and each year thereafter until it sold Property A on January 1, 2024 for $900x. For 2024, Taxpayer takes into account $50x of net gain for the sale of Property A in the net income or loss set forth on its AFS ($900x proceeds - $850x of AFS basis ($1,000x cost - $150x accumulated Covered Book

Depreciation Expense as of January 1, 2024)).

(2) Analysis for taxable year 2023. In determining AFSI for the taxable year ending December 31, 2023, Taxpayer does not have any Deductible Tax Depreciation or Tax COGS Depreciation in computing taxable income with respect to Property A, and thus, the adjustment under section 4.03(1) and (2) of this notice would be zero. In addition, Taxpayer would adjust AFSI under section 4.03(3) of this notice to disregard the $25x of Covered Book Depreciation Expense with respect to Property A.

(3) Analysis for taxable year 2024. To determine the AFSI adjustment for the gain or loss from the sale of Property A under section 4.07 of this notice, Taxpayer must adjust the AFS basis to take into account the cumulative § 56A(c)(13) adjustments, starting from the date Property A was placed-in-service. Accordingly, the adjusted basis of Property A for AFSI purposes is zero ($850x AFS basis + $150x accumulated Covered Book Depreciation Expense - $1,000x of accumulated Tax Depreciation). Thus, the redetermined gain on the sale of Property A for AFSI purposes is $900x ($900x proceeds - $0 adjusted AFSI basis).

SECTION 5. SAFE HARBOR METHOD FOR DETERMINING APPLICABLE CORPORATION STATUS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 5. The Treasury Department and the IRS are providing this interim guidance to provide corporations with a safe harbor method for determining whether they are an applicable corporation for the first taxable year beginning after December 31, 2022.

.02 Definition of AFS Consolidation Entries. For purposes of this section 5, the

term AFS Consolidation Entries means the financial accounting journal entries that are made for AFS purposes in order to present the financial results of an AFS Group (as defined in section 2.01(3)(c)(i) of this notice) as though all members of the AFS Group were a single company, including journal entries to eliminate transactions between members of such group.

.03 Simplified method for determining applicable corporation status.

(1) In general. For the first taxable year beginning after December 31, 2022, a corporation may choose to apply the safe harbor method described in section 5.03(2) of this notice (simplified method) in lieu of the rules in §§ 59(k)(1) and (2) for purposes of determining whether it is an applicable corporation under § 59(k)(1).

(2) Simplified method. Under the simplified method, a corporation determines whether it is an applicable corporation by applying the rules in § 59(k)(1) and (2) with the following modifications:

(a) The AFSI test in § 59(k)(1)(B)(i) (including for purposes of § 59(k)(1)(B)(ii)(I)) is applied by substituting "$500,000,000" for "$1,000,000,000."

(b) The AFSI test in § 59(k)(1)(B)(ii)(II) is applied by substituting "$50,000,000" for "$100,000,000."

(c) AFSI is determined –

(i) except as provided in section 5.03(2)(c)(ii) of this notice, without regard to the adjustments set forth in § 56A(c) and (d) other than those set forth in § 56A(c)(2)(A), (c)(2)(B), and (c)(5), except that in applying § 59(k)(1)(B)(ii)(II), the adjustment in § 56A(c)(4) also applies, and

(ii) after taking into account AFS Consolidation Entries except those that

eliminate transactions between persons not treated as a single employer under § 52(a) or (b).

(d) For a corporation that has an AFS that covers a period (AFS year) that differs from its taxable year—

(i) Section 59(k)(1)(B)(i) and (ii)(I) are applied by substituting "3-AFS-year period ending during such taxable year" for "3-taxable-year period ending with such taxable year" in each place those phrases appear, and

(ii) Section 59(k)(1)(E) is applied by substituting "AFS year" for "taxable year" and "3-AFS years" for "3-taxable years" in each place those phrases appear.

(3) Examples. The following examples illustrate the rules set forth in section 5.03(2)(c) and (d) of this notice.

(a) Example 1 – AFS Consolidation Entries example. The following example illustrates the rule set forth in section 5.03(2)(c) of this notice.

(i) Facts. Corporations A, B, and C are U.S. Corporations that are members of an AFS Group (ABC group). A and B (but not C) are treated as a single employer under § 52(a). A, B, and C choose to apply the simplified method described in section 5.03(2) of this notice. During the 2022 taxable year, A provides services to B and C. For purposes of the 2022 AFS for the ABC group, AFS Consolidation Entries are made to eliminate income and expense from the provision of service transactions between A and B, and between A and C.

(ii) Analysis. Pursuant to section 5.03(2)(c) of this notice and for purposes of applying the simplified method described in section 5.03(2) of this notice, the AFSI of A and B for the 2022 taxable year is determined by taking into account the AFS

Consolidation Entries that eliminate the income and expense from the transactions between A and B. However, the AFS Consolidation Entries that eliminate income and expense from the provision of service transactions between A and C are not taken into account for purposes of determining the AFSI of A, B, and C because A and C are not treated as a single employer under § 52(a).

(b) Example 2 – Mismatched tax and AFS year example. The following example illustrates the rule set forth in section 5.03(2)(d) of this notice.

(i) Facts. Corporation uses the calendar year as its taxable year and has a fiscal AFS year that ends on September 30. Corporation has been in existence since before calendar year 2020 and has never had a short taxable year or short AFS year. Corporation chooses to use the simplified method described in section 5.03(2) of this notice.

(ii) Analysis. In determining whether Corporation is an applicable corporation for its taxable year ending December 31, 2023, Corporation applies § 59(k)(1)(B) (as modified by section 5.03(2) of this notice) by using the AFSI (as determined under section 5.03(2)(c) of this notice) for the 3-AFS-year period ending during its taxable year ending December 31, 2022. That is, Corporation uses AFSI from the AFS years that ended September 30, 2020, September 30, 2021, and September 30, 2022.

(4) Effect of not meeting the safe harbor. If a corporation applies the simplified method described in section 5.03(2) of this notice for its first taxable year beginning after December 31, 2022, and determines that its AFSI (as determined under section 5.03(2) of this notice) exceeds the relevant simplified method thresholds set forth in section 5.03(2)(a) and (b) of this notice, for example, because it has AFSI in excess of

$500 million and is not described in § 59(k)(2), then the corporation will be an applicable corporation for such year only if it is determined to be an applicable corporation under § 59(k)(1) (determined without regard to the modifications described in section 5.03(2) of this notice).

SECTION 6. AFSI ADJUSTMENTS WITH RESPECT TO CERTAIN CREDITS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 6. The Treasury Department and the IRS are providing this interim guidance to facilitate the ability of taxpayers to determine AFSI with respect to certain credits described in §§ 48D, 6417, and 6418.

.02 Proceeds from certain credits excluded from AFSI. AFSI is appropriately adjusted to disregard--

(1) any amount treated as a payment against the tax imposed by subtitle A pursuant to an election under §§ 48D(d) or 6417, provided that such amount (or portion thereof) is not otherwise disregarded under § 56A(c)(5),

(2) any amount received from the transfer of an eligible credit, as defined in § 6418(f)(1)(A), that is not includible in the gross income of the taxpayer by application of § 6418(b) or is treated as tax exempt income under § 6418(c)(1)(A), provided that such amount (or portion thereof) is not otherwise disregarded under § 56A(c)(5), and

(3) any amount received pursuant to an election under §§ 48D(d)(2) or 6417(c) that is treated as tax exempt income under §§ 48D(d)(2)(A)(i)(III) or 6417(c)(1)(C), provided that such amount is not otherwise disregarded under § 56A(c)(5).

SECTION 7. APPLICATION OF § 56A(c)(2)(D)(i) FOR PURPOSES OF DETERMINING APPLICABLE CORPORATION STATUS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 7. The Treasury Department and the IRS are providing this interim guidance to facilitate the ability of taxpayers to determine whether they are an applicable corporation under § 59(k)(1).

.02 Adjustment to AFSI in § 56A(c)(2)(D)(i) is inapplicable in all circumstances for purposes of calculating AFSI in determining applicable corporation status. The Treasury Department and the IRS understand there may be uncertainty among taxpayers as to whether the adjustment to AFSI in § 56A(c)(2)(D)(i) applies for purposes of determining whether a corporation that is a partner in a partnership (whether directly or indirectly) is an applicable corporation if such corporation and such partnership are not treated as a single employer under § 52(a) or (b). Section 59(k)(1)(D) provides that solely for purposes of determining whether a corporation is an applicable corporation, the AFSI of such corporation is determined without regard to § 56A(c)(2)(D)(i). Accordingly, the adjustment to AFSI under § 56A(c)(2)(D)(i) is inapplicable in all circumstances in determining applicable corporation status.

SECTION 8. APPLICABILITY DATES

It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in sections 3 through 7 of this notice apply for taxable years beginning after December 31, 2022. Prior to the issuance of the proposed regulations, taxpayers may rely on the guidance provided in sections 3 through 7 of this notice.

SECTION 9. REQUEST FOR COMMENTS

.01 Comments Regarding Guidance Provided in this Notice. The Treasury Department and the IRS request comments on any questions arising from the interim guidance set forth in this notice. Commenters are encouraged to specify the issues on which additional guidance (including additional interim guidance) is needed most quickly, as well as the most important issues on which guidance is needed. In addition to general comments regarding the provisions of this notice, the Treasury Department and the IRS request comments to address the following specific questions:

(1) AFSI and applicable corporation status resulting from certain transactions; tax consolidated groups (section 3 of this notice).

(a) Should the definition of Covered Nonrecognition Transaction be expanded to include additional transactions? If so, to what extent should the AFSI consequences of each additional transaction be consistent with the rules addressing AFSI consequences of Covered Nonrecognition Transactions set forth in section 3.03 of this notice?

(b) How should Covered Transactions in which, for Federal income tax purposes, gain or loss is recognized in part be treated? Also, are there any AFSI consequences of Covered Transactions (in addition to the AFSI consequences addressed under section 3.03 of this notice) that also should be addressed by the forthcoming proposed regulations or additional interim guidance (for example, the receipt of cash or other property in acquisitive reorganizations)? For example, are there any circumstances in which attributes, in addition to basis, should be adjusted under these rules? See section 3.03(2) of this notice.

(c) Should any adjustments to AFS gain or loss be made to Covered Recognition Transactions carried out solely between or among members of a single AFS Group?

(d) In the case of an acquisitive Covered Recognition Transaction between two or more separate AFS Groups, what resulting adjustments to AFS gain or loss should be made to each AFS Group?

(e) How should a Target's allocated portion of the Target AFS Group's total AFSI be calculated for purposes of determining the AFSI of an Acquirer AFS Group that acquires the Target in a Covered Transaction? See section 3.04(2)(b) of this notice.

(f) Is there any reason why a Controlled's allocated portion of the Distributing AFS Group's total AFSI should be calculated differently for purposes of determining the AFSI of the Controlled? See section 3.04(3)(b) of this notice.

(g) With regard to the rules provided in sections 3.06 and 3.07 of this notice that address the AFSI consequences of excluded COD income and an emergence from bankruptcy:

(i) What are the CAMT attributes that should be adjusted?

(ii) What methodology should be used to adjust the CAMT attributes (including the order in which those attributes should be adjusted)?

(iii) Are any transition rules necessary?

(h) Should the treatment of bankruptcy reorganizations for purposes of calculating AFSI depend on whether the bankruptcy reorganization is a recognition event for Federal income tax purposes? If so, what should be the methodology for calculating such AFSI?

(i) Should the rules addressing AFSI consequences of excluded COD income in section 3.06 of this notice be revised (1) to exclude all AFS gain associated with a cancellation of indebtedness when there is excluded COD income for the cancellation of

indebtedness, and (2) to reduce CAMT attributes to the extent of such gain exclusion?

(j) Are there AFS consequences to bankruptcy reorganizations that should be addressed by the forthcoming proposed regulations or additional interim guidance that are not addressed by section 3.06 or 3.07 of this notice?

(2) Depreciation adjustments (section 4 of this notice).

(a) How should a taxpayer with Tax COGS Depreciation make the adjustments described in section 4.03 of this notice to ensure that--

(i) AFSI is reduced by only the amount of Tax COGS Depreciation that is recovered as part of cost of goods sold in computing taxable income for the taxable year, and

(ii) Covered Book COGS Depreciation is appropriately disregarded in determining AFSI for the year in which it is recovered as part of cost of goods sold?

(b) With respect to the issue described in section 9.01(2)(a) of this notice, should the taxpayer be permitted to make appropriate adjustments by applying the method(s) of accounting under § 263A that it uses for regular tax purposes?

.02 Comments Regarding Rules Not Included in this Notice. The Treasury Department and the IRS request comments on the CAMT generally and the issues that should be addressed in future guidance with respect to the CAMT. The Treasury Department and the IRS additionally request comments on the following specific CAMT issues not addressed by this notice:

(1) What, if any, additional guidance is needed regarding the scope of the exception in § 59(k)(1)(D) to the distributive share rule in § 56A(c)(2)(D)(i) applicable for purposes of determining applicable corporation status?

(2) How should the term “distributive share” of a partnership’s AFSI in § 56A(c)(2)(D)(i) be interpreted? Should the term be based on financial accounting principles or tax principles or both? How should a corporate partner’s distributive share be calculated for purposes of the CAMT?

(3) What, if any, other adjustments to AFSI should be made to carry out the principles of part II of subchapter K of chapter 1 of the Code? Should any exceptions apply to the Covered Nonrecognition Transaction rule for partnership transactions? If so, what are those exceptions?

(4) What transactions should be treated as a “change in ownership” (within the meaning of § 59(k)(1)(C)(i)(I))?

(5) What facts and circumstances should be considered relevant for determining whether a taxpayer remains an applicable corporation after a change in ownership?

(6) What duration (if any) should be required under § 59(k)(1)(C)(i)(II) before an applicable corporation should be treated as no longer an applicable corporation?

(7) In addition to a potential duration described in section 9.02(6) of this notice, what additional facts and circumstances should be considered relevant in determining whether an applicable corporation should continue to be treated as an applicable corporation?

(8) Are there situations in which AFSI is duplicated or omitted as a result of the application of § 52(a) and (b) under § 59(k)(1)(D)? If so, what are those situations and what guidance is needed to prevent the duplication or omission of AFSI in determining whether a corporation is an applicable corporation under § 59(k)(1)?

(9) What entities should be treated as predecessors of a taxpayer for purposes

of § 59(k)(1)(E)?

(10) To what extent (if any) are predecessor concepts applicable to other areas of the CAMT (in addition to § 59(k)(1)(E)(iii))?

(11) What rules would be appropriate under new § 59(k)(2)(D)(i) regarding foreign-parented multinational groups?

(12) In the case of a financial deconsolidation of a member of an AFS Group, what adjustments to AFSI would be appropriate?

(13) Should principles provided in §1.1502-21(c), or §§ 382 and 383 and §1.1502-15, apply to limit the availability of CAMT attributes for purposes of calculating the tentative minimum tax? If so, to what extent?

(14) How should CAMT liability, financial statement net operating losses (as defined in § 56A(d)), and CAMT credits (under § 53) be allocated and used among members of a tax consolidated group?

(15) How should the CAMT attributes described in section 9.02(13) of this notice be allocated to departing members of a tax consolidated group?

(16) To what extent (if any) should items included in OCI in a taxpayer's AFS be included in AFSI?

(17) The Treasury Department and the IRS understand that, for certain types of reinsurance contracts (those with embedded derivatives), there may be a mismatch between the treatment of investment assets and related liabilities for AFSI purposes. How and to what extent should adjustments be made to AFSI to address any such mismatch?

(18) To what extent should guidance provide adjustments to AFSI to disregard

mark to market unrealized gains and losses that are otherwise included in AFSI? Should this depend on the extent to which the taxpayer marks to market the item for regular tax purposes?

(19) To what extent should guidance provide adjustments to include in AFSI mark to market unrealized gains and losses that are not otherwise included in AFSI? Should this depend on the extent to which the taxpayer marks to market the item for regular tax purposes?

(20) Should the rules under § 451(b)(5) be modified for purposes of determining the AFSI of a corporation included in an AFS Group? See § 56A(c)(2)(A).

.03 Procedures for Submitting Comments.

(1) Deadline. Written comments should be submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]**. Consideration will also be given to any written comment submitted after [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION**], though such comments may not be considered in the development of the forthcoming proposed regulations if such consideration would delay the issuance of the forthcoming proposed regulations.

(2) Form and manner. The subject line for the comments should include a reference to Notice 2023-7. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0046 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice

2022-46), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) Publication of comments. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on regulations.gov.

SECTION 10. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are John M. Aramburu and James Yu of the Office of the Associate Chief Counsel (Income Tax & Accounting); William W. Burhop, Jeremy Aron-Dine, and John B. Lovelace of the Office of the Associate Chief Counsel (Corporate); and Yosef M. Koppel of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding section 3 of this notice, please contact Mr. Aron-Dine or Mr. Lovelace at (202) 317-6848, or Mr. Burhop at (202) 317-5363; or Mr. Koppel at (202) 317-6850 (not toll-free numbers). For further information regarding new § 59(k)(2) (regarding foreign-parented multinational groups), please contact Taylor M. Kiessig of the Office of Associate Chief Counsel (International) at (202) 317-3800 (not a toll-free number). For further information regarding the remaining sections of this notice, please contact Mr. Aramburu at (202) 317-7006 or Mr. Yu at (202) 317-4718 (not toll-free numbers).