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June 7, 2018

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Principal Deputy Chief Counsel and
Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Proposed Guidance Regarding the Treatment of Income from Banking Under Section 199A

Dear Messrs. Kautter and Paul:

We appreciate the opportunity to follow up on our discussion with your attorneys of May 22, 2018, regarding the treatment of banking income under section 199A for banks operating as pass-through entities ("*Pass-Through Banks*").[1] In this letter, we first, in parts I and II, support the contention that traditional, main street banking is a qualified trade or business producing deductible income under section 199A on the bases of statutory construction and policy considerations. Second, in part III, we examine the carve outs for "financial services," "brokerage services," and "investing and investment management, trading and dealing," and discuss the potential overlap of those businesses with some banking activities. Third, in part IV, we discuss the need for guidance on the meaning of traditional banking that resolves the uncertainty caused by the potential overlap. Finally, in part V, we propose guidance based on existing federal tax law lists of activities constituting traditional banking, which would eliminate the potential overlap.

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[1] All section references are to the Internal Revenue Code of 1986, as amended (the "*Code*"), or the Treasury regulations thereunder as indicated, unless otherwise specified.

I. Traditional Banking Is a Qualified Trade or Business Under Section 199A

Section 199A allows certain pass-through taxpayers a deduction of up to 20 percent of "the combined qualified business income amount of the taxpayer," subject to certain limitations. Section 199A(a)(1). A taxpayer's qualified business income amount equals "the sum of the amount determined under [section 199A(b)(2)] for each qualified trade or business carried on by the taxpayer." Section 199A(b)(1)(A). The amount described in section 199A(b)(2) is based in significant part on the taxpayer's "*qualified business income* with respect to the *qualified trade or business*." (Emphasis added); *see also* section 199A(c)(1) (defining "qualified business income" by reference to the net "amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business"). Determining whether and to what extent a business conducted by a Pass-Through Bank is a qualified trade or business is, therefore, essential to the application of section 199A.

A "qualified trade or business" is, for purposes relevant to a Pass-Through Bank, defined as "any trade or business" other than a "specified service trade or business." A "specified service trade or business" is defined as any trade or business:

> (A) which is described in section 1202(e)(3)(A) (applied without regards to the words "engineering, architecture,") or which would be so described if the term "employees or owners" were substituted for "employees" therein, or
>
> (B) which involves the performance of services that consist of investing and investment management, trading or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)).

Section 199A(d)(2). Section 1202(e)(3)(A), as modified, describes the following specified service trades or businesses:

> Any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees [or owners].

Section 199A(d)(1) ("engineering, architecture" deleted; language in brackets added.)

As quoted above, section 199A(d)(2)(A) cross references the activities listed in section 1202(e)(3)(A) in defining specified service trades or businesses, but does not cross reference section 1202(e)(3)(B). This is critical for Pass-Through Banks because section 1202(e)(3)(B) describes the following: a "banking, insurance, financing, leasing, investing, or similar business." Thus, giving effect to the specific cross reference in section 199A(d)(2), the businesses described in section 1202(e)(3)(B), including a banking, financing or similar business,

are not "specified service trades or businesses" excluded by section 199A(d)(2).[2] Moreover, the language of sections 199A(d)(2) and 1202(e)(3)(A), unlike that of section 1202(e)(3)(B), clearly indicates that the designated, specified trades or businesses involve the "performance of services." Banking is neither a specified trade or business nor a service trade or business for purposes of section 199A, and is not, therefore, a specified service trade or business. This conclusion has been corroborated by Congressional staff, who have indicated that the exclusion of banking, financing and similar businesses from the list of specified service trades or businesses was intentional.

"Banking" is not defined in section 199A or section 1202. Nevertheless, the meaning of "banking" may be discerned from practice and usage in other statutes. In this regard, the meaning of traditional, main street banking can be discerned from the pre-1999 separation of commercial banking and investment banking imposed by the Glass-Steagall provisions of the Banking Act of 1933[3]. Under that separation, very generally, commercial banks were barred from dealing in certain securities for customers, investing in certain securities for their own accounts, underwriting or distributing certain securities, and affiliating with companies that pursued such activities. In contrast, traditional banking focused on those activities that remained available to commercial banks under Glass-Steagall, which can be grouped into three major categories: managing deposits, making loans, and providing safekeeping, custody and trust services. In addition, traditional banking involves the necessary incidental and ancillary activities and services relating to those activities. Such activities constitute the core of traditional, main street banking business today.

Most important for this discussion, traditional banking is not (and cannot) be limited to deposit taking and making loans. Indeed, banking in the United States as practiced around the time of the Civil War centered around safekeeping, and safekeeping, custody and trust services continue to be important today. These activities are at the core of traditional, main street banking, and any definition of banking that excludes these activities would fail to capture a significant and meaningful portion of revenues of main street banks.

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[2] While section 1202(e)(3)(B) also refers to "investing," the "performance of services that consist of investing" is a specified service trade or business under section 199A(d)(2)(B), and is thus excluded from this list.

[3] After the repeal in 1999 of certain Glass-Steagall limitations imposed under the Banking Act of 1933, banks have been permitted to engage in certain activities previously undertaken only by investment banks. Including these post-Glass-Steagall repeal activities within "banking" for purposes of section 1202(e)(3)(B) may result in some overlap, as discussed below, with the activities described in sections 1202(e)(3)(A) and 199A(d)(2)(B). If, on the other hand, banking is limited to those activities allowed to banks pre-Glass-Steagall repeal, the overlap is effectively eliminated.

The activities constituting a "banking, financing, or similar business" are well established for federal income tax purposes and lists of such activities can be found in existing Treasury regulations, including regulations implementing sections 864(c) and 904. These lists of activities may readily be pared back to reflect banking before the 1999 Glass-Steagall repeal and provide a useful definition of traditional banking for purposes of section 199A. The proposed list of traditional banking activities is reflected in Attachment 1, along with some explanatory notes as needed to understand certain of the items on the list.[4] Attachment 2 provides a comparison of the proposed list to the list in Treasury regulation section 1.904-4(e)(2)(i) showing all additions and deletions. Guidance providing such a list of banking activities eligible for the section 199A deduction would facilitate traditional, main street banking in an administrable way, and avoid any inappropriate overlap with the carve outs for specified service trades or businesses provided in sections 199A(d)(2) and 1202(e)(3)(A), as discussed below.

II. Relevant Policy and Statutory Construction Considerations

Before turning to the definitions of financial services, brokerage services and investing and investment management, we want to highlight certain policy considerations that inform this analysis. First, Congress, as clearly evidenced by its construction of section 199A and as confirmed in discussions with relevant Congressional committee staff, plainly intended to allow income from traditional banking activities to qualify for the deduction under section 199A. The cross-reference that excludes financial services, brokerage services and investing and investment management from being qualified trades or businesses should not be read to exclude traditional banking. In other words, all income from traditional banking activities should be qualified business income unless it is derived from a separate activity that clearly is a specified service trade or business.

Second, Congress wants a competitive banking industry; and, as shown in the recently passed Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. No. 115-174), one that is not unduly encumbered by onerous regulation. This has two implications here: (A) If, as we recommend, Treasury pursues a trade or business based test for section 199A rather than an entity level test, it should provide meaningful guidance on qualified versus other income producing activities to minimize uncertainty, as well as the accounting burden and cost of compliance; and, (B) To the extent that banks that are C-corporations now have a greatly reduced tax rate of 21 percent, Treasury should make sure that its guidance permits Pass-Through Banks

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[4] The Glass-Steagall provisions did not in fact erect a complete wall between traditional banking activities and investment banking activities. For example, even under Glass-Steagall, banks could underwrite certain types of municipal securities. Nonetheless, for purposes of the proposed list of traditional banking activities in Attachment 1, we have treated Glass-Steagall as having erected a complete wall and excluded all investment banking activities.

the broadest reasonable use of the deduction under section 199A to minimize the competitive dislocation caused by the reduction in C-corporation tax rates.

Third, we understand from conversations with Congressional staff and Treasury representatives that the goal of section 199A is to help traditional, main street banks and not "Wall Street" banks or hedge funds. While this policy goal counsels for plainly excluding investment banking and investment management activities (which we do in the proposal described below), it equally counsels for making sure that the Treasury's definition of banking is not so narrowly drawn as to deny relief to traditional, main street banks with respect to income from their traditional banking activities.

III. Meaning of Financial Services, Brokerage Services, and Investing and Investment Management, Trading and Dealing

A. Investing and Investment Management, Trading and Dealing

Section 199A provides for two categories of specified service trades or businesses: those listed in section 1202(e)(3)(A) and those listed in section 199A(d)(2)(B). Looking to the latter category first, section 199(d)(2)(B) describes as a specified service trade or business the performance of services that consist of investing and investment management, trading and dealing in certain securities, partnership interests and commodities. The meanings of "investing," "trading" and "dealing" are well established for federal tax purposes. In general, individuals or entities that buy and sell securities or commodities fall into one of three distinct categories: investors, traders, or dealers. *See King v. Commissioner*, 89 T.C. 445, 458-59 (1987). Investors buy and sell assets and expect income from dividends, interest, or capital appreciation over an extended period of time. *See Higgins v. United States*, 312 U.S. 212 (1941). Both traders and dealers engage in frequent purchases and sales of securities, commodities or similar property, but a dealer purchases and sells to customers for the purpose of earning the spread between the buy price and the sell price, while a trader does not have customers and buys and sells with a view towards earning gains and losses from short-term swings in the price of property. *Cf.* Rev. Rul. 97-39, 1997-2 C.B. 62 ("A taxpayer whose sole business consists of trading in securities is not a dealer in securities within the meaning of section 475(c) because that taxpayer does not purchase from, sell to, or otherwise enter into transactions with customers in the ordinary course of a trade or business.").

The meaning of "investment management" is less well defined for federal tax purposes, but presumably would include offering to manage the investments of customers on a discretionary basis. These activities amount to a specified service trade or business only if performed as a service, which requires a customer. *Cf. Bendetovitch v. Commissioner*, T.C. Memo. 1993-443 ("When a taxpayer claims to be in a trade or business of selling services, at a minimum, he or she must establish that there are clients or at least a reasonable prospect of getting clients in the future"; where taxpayer claimed to be engaged in investment management

activity but could not point to any client base, taxpayer could not deduct expenses incurred under section 162(a)).

The principal activities constituting traditional banking, as described above, do not involve investing or investment management, trading or dealing for its own account or for customers. By defining traditional banking consistent with the activities listed in Attachment 1, the overlap with the trades or businesses described in section 199A(d)(2)(B) can be eliminated.

B. Financial Services

The meaning of "financial services," which is listed as a specified service trade or business in section 1202(e)(3)(A), is not defined for federal tax purposes. As a starting point, the Code sometimes gives financial services activities a broad meaning under which the activities that constitute banking are a subset, *see, e.g.,* section 904(d)(2)(D)(ii) (financial services income is defined to include among other things, income from a banking, financing or similar business as well as insurance income). Such a reading is not appropriate in this case, however, as it would render meaningless the phrase "banking" (and perhaps insurance and leasing). As noted, section 1202(e)(3)(A) refers among other things to "financial services," and section 1202(e)(3)(B) to "banking." To read "financial services" as encompassing "banking" would render the latter term superfluous in the statute, and should be avoided. *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955); *Rand v. Commissioner*, 141 T.C. 376, 390 (2013) ("Under the surplusage canon we are to give effect to every provision Congress has enacted.").

Another approach to defining "financial services" might be by reference to the last clause in section 1202(e)(3)(A), which describes businesses the principal asset of which is the skill or reputation of its employees or owners. This is clearly the case for services provided by law firms and accounting firms. Defined in such manner, prohibited financial services would consist of those financial activities undertaken by a person or company trading on their reputation or skill in the industry. Banking, in contrast, is a highly capitalized activity, where the principal asset is financial stability unlike the services listed in section 1202(e)(3)(A).

In all events, a narrower interpretation of financial services is compelled by section 199A itself. As noted, section 199A(d)(2)(A) incorporates "financial services" as a specified trade or business by cross-reference to section 1202(e)(3)(A); but, as discussed above, section 199A does not cross-reference section 1202(e)(3)(B), which includes the term "banking." Within this statutory framework, the narrow cross reference in section 199A squarely implies a narrower reading of financial services that leaves banking as a qualified trade or business. This construction has been confirmed in conversations with Congressional staff. And any conflict between the meaning of "financial services" and "banking" can and should be avoided by defining the activities constituting eligible banking activity as those activities making up traditional, main street banking discussed above.

C. Brokerage Services

As to the activities described in section 1202(e)(3)(A), brokerage services may be a component of the business of main street banks to a limited degree. While there is no definition of brokerage services in section 199A or section 1202, the term is generally understood to mean buying and selling securities or commodities for others. *See, e.g.,* section 3(a)(4)(A) of the Securities Act of 1934 (the "*1934 Act*"); *cf.* Treas. Reg. § 1.448-1T(e)(4)(iv)(B), Ex. 5 (a broker provides economic analyses and forecasts, makes recommendations, and executes trades for customers).

Main street banks may undertake certain similar activities for their trust and custody customers. Such activities conducted as a part of these core banking services need not, and should not, be treated as brokerage services. This approach is consistent with the approach taken under the banking and securities laws. Section 3(a)(4)(A) of the 1934 Act requires registration and regulation of brokers (as defined above); however, a bank that executes such transactions in connection with its banking activities, including specified custody and trust services, and not as a principal business, is carved out of the registration requirement. *See* section 3(a)(4)(B) of the 1934 Act paragraphs (ii) (certain activities permitted in connection with trust and fiduciary services) and (viii) (certain activities permitted in connection with safe keeping and custody services) and Rules 721-22 (further specifying trust and fiduciary activities entitled to the exception afforded by Section 3(a)(4)(B)(ii) of the 1934 Act and Rule 760 (further specifying custody activities entitled to the exception afforded by Section 3(a)(4)(B)(viii) of the 1934 Act) of Regulation R under the 1934 Act (17 CFR Part 247).

The 1934 Act and Regulation R thereunder expressly limits the scope of these activities by banks to assure that the transactions are executed only in connection with specified banking activities. For example, to qualify for the exception from registration in connection with trust activities, the bank may "not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust services" and it must be chiefly compensated in a manner consistent with providing trust services. Section 3(a)(4)(B)(ii)(I) and (II) of the 1934 Act. In other words, excluding effecting transactions in securities ancillary to the custody or trust business from the meaning of brokerage services does not allow banks free reign to provide brokerage service.

IV. Guidance Needed on the Activities that Constitute Traditional Banking

As discussed in the previous sections of this letter, Congress intended for banking to be treated as a qualified trade or business for purposes of section 199A. This is clear from the structure of section 199A, as well as from comments received from Congressional staff. The deduction for banking income under section 199A is vitally important to the competiveness of thousands of Pass-Through Banks that operate throughout the United States and provide a wide-range of traditional banking services to the communities they serve.

Guidance providing clarity around eligible banking activities is needed. And any guidance that fails to provide such clarity places an unnecessary, and unintended, damper on the competitiveness of these banks, impairs the intended intent of Congress in adopting section 199A (as confirmed in discussions with Congressional staff), and invites disagreement and controversy. Clear guidance should define the activities that constitute traditional banking, consistent with the approach taken in sections 864(c), 904, and other similar provisions. *See* Treas. Reg. §1.864-4(c)(5)(i), Treas. Reg. §1.904-4(e)(2)(i).

In contrast, guidance that merely divides businesses into qualified trades or businesses and specified service trades or business by reference to statutory terms without further definition would not provide needed clarity. Any such guidance -- for example, that retains a general carve out for income from "financial services" -- would leave at risk much of traditional, main street banking.

In addition to the list of activities constituting traditional, main street banking, guidance should include a provision allowing for activities closely related to, and emanating from, traditional banking business activities. Such activities could include for example: ministerial activities relating to a banking business, such as record keeping and facilitating asset transfers; supporting data processing and data management services; and cash sweep services to provide overnight yields to depositors and custody clients. These sorts of activities are important adjuncts to traditional banking activities, and are essential to providing such banking services in the current market in which Pass-Through Banks compete. The need for such related services is well understood in federal tax law. *See* section 954(h)(4)(F) (allowed activities include "rendering services . . . in connection with" listed activities); Treas. Reg. §1.902-4(e)(2)(i)(Y) (including in permitted activities "similar" activities if disclosed) and (e)(4)(i)(A) (allowing for incidental activities that are "integrally related" to listed activities).[5]

Similarly the guidance should allow for evolution of the business of banking. This need is also well established in federal banking law. Federal tax law has also recognized that the

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[5] For example, national banks are able to engage only in activities that are part of the "business of banking" or are incidental thereto, or that are otherwise permitted under applicable law. Permissible activities have evolved as courts and regulators have interpreted bank powers in light of commercial developments and advancements in technology, which they have leeway to do. In this connection, judicial decisions and regulatory interpretations addressing whether a new activity is within the scope of the "business of banking", and therefore permissible for national banks, consider whether the activity is "functionally equivalent to or a logical outgrowth of" a recognized banking activity. *See, e.g., Merchants' Bank v. State Bank*, 77 U.S. 604 (1871); *M & M Leasing Corp. v. Seattle First National Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977); *American Insurance Association v. Clarke*, 865 F.2d 278, 282 (2d Cir. 1988). Similarly, cases have established that an "incidental" power for a national bank is one that is "convenient" or "useful" to the "business of banking," as well as a power incidental to the express powers specifically enumerated in the National Bank Act. *See NationsBank of N. C., N. A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258 n. 2. (1995).

activities conducted by a banking, financing, or similar business vary over time to reflect new ways of doing business and the evolving needs of customers. Thus, Treasury regulation section 1.904-4(e)(2)(Y) provides a final category of acceptable activities: "Any similar item of income that is disclosed [to the IRS] or that is designated as a similar item of income in guidance published by the Internal Revenue Service." As noted by the Treasury in promulgating the regulation:

> Numerous comments were received with respect to what constitutes income from the active conduct of a banking, insurance, financing or similar business (active financing income). Paragraph (e)(2) reflects some of the suggestions for additions to the list of includible income. The list has been changed to . . . allow taxpayers to include items of income similar to those enumerated if such items are disclosed . . . . *This change is made in recognition of the fact that financial institutions constantly market new products, income from which may appropriately be categorized as active financing income.*

T.D. 8214 (1988) (emphasis added). By limiting eligible activities to those disclosed on the return, or provided for in guidance, the income eligible for deduction as qualifying business income should be limited to traditional banking and closely related income.

We note that attempts to bolt onto a bank a specified service trade or business, such as the performance of services that consist of investing and investment management, trading or dealing would very likely be impractical given the bank regulatory requirements. Such regulatory requirements strictly limit the activities in which a company affiliated with a bank can engage; and the scope and complexity of bank regulatory requirements – including capital, liquidity, reporting and examination requirements – make it impractical for most non-bank organizations to acquire and own banks, even if their activities would not otherwise disqualify them. In any event, any "bolt-on" business or a "minnow-swallowing-the-whale" concerns could be eliminated by either characterizing the whole business by reference to its predominant characteristics, *see, e.g.*, *Hub City Foods, Inc. v. Commissioner*, 884 F.2d 320 (7th Cir. 1989) (characterizing taxpayer's aggregated activities on the basis of "primary" business); *Scheidt v. Commissioner*, T.C. Memo. 1992-9 (Jan. 6, 1992) (characterizing taxpayer's aggregated activities on the basis of the attributes of the underlying activities), or providing that separate and distinct businesses be classified on the basis of their separate activities. *See, e.g.,* Treas. Reg. §1.183-1(d)(1) (providing that a separate and distinct determination is based on a facts and circumstances test focusing on "the degree of organizational and economic interrelationship of various undertakings, the business purpose which is (or might be) served by carrying on the various undertakings separately or together in a trade or business or in an investment setting, and the similarity of various undertakings").

V. Proposed Guidance

Based on the discussion above, we request guidance providing that the activities of traditional, main street banking constitute a qualified trade or business for purposes of section 199A, and that traditional banking consists of the listed activities described in Attachment 1. The activities proposed to be listed generally are a subset of the activities identified in section 1.904-4(e)(2) that constitute a "banking, financing or similar business" for purposes of section 904, and thus reflect a considered list Treasury has published for an analogous provision. In light of the carve outs in 1202(e)(3)(A) and 199A(d)(2)(B) for certain specified service trades or businesses, we have limited the list only to those activities that constitute traditional, main street banking. In this regard, we have included on the list deposit-taking and a small number of additional services that virtually all, if not all, traditional, main street banks provide such as money order and wire-transfer services. Aside from these few additional traditional banking activities, the principal addition relates to providing for incidental and ancillary services in connection with other activities on the list; and, the principal deletions are those items that would not be viewed as traditional banking activities, such as investment management and underwriting.[6]

* * * *

We appreciate the opportunity to submit this letter for your consideration and we would be happy to develop more fully any of the analysis and discussion presented herein or to further consider the application of the analysis to particular scenarios of concern to you.

Very truly yours,

Edgar D. McClellan
Partner
Covington & Burling LLP

Daniel W. Luchsinger
Partner
Covington & Burling LLP

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[6] Our focus is on banking, and thus we have deleted references to insurance business. By deleting these references, we intend no implication as to whether they are complete and accurate, and should also be included.

Attachments (2)

cc:
Thomas C. West
Tax Legislative Counsel
Department of the Treasury

Krishna P. Vallabhaneni
Deputy Tax Legislative Counsel
Department of the Treasury

Karl T. Walli
Senior Counsel (Financial Products)
Department of the Treasury

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Office of Associate Chief Counsel (PSI)
IRS Office of Chief Counsel
Internal Revenue Service

Proposed Services and Activities that Are Common in a Traditional Banking Business

The following income-producing services and activities constitute a traditional banking business[1] that is a qualifying trade or business within the meaning of section 199A:

(A) Income from holding and investing deposits of money and income earned investing other bank funds, including funds received for the purchase of traveler's checks or face amount certificates.
(B) Income from making personal, mortgage, industrial, or other loans.
(C) Income from purchasing, selling, discounting, or negotiating on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness.[2]
(D) Income from issuing letters of credit and negotiating drafts drawn thereunder.
(E) Income from providing trust services.
(F) Income from arranging foreign exchange transactions, or engaging in foreign exchange transactions.[3]
(G) Service fee income from correspondent banking.[4]
(H) Income from interest rate and currency swaps.[5]
(I) Income from providing fiduciary services.
(J) Bank-to-bank participation income.[6]
(K) Income from providing charge and credit card services or for factoring receivables obtained in the course of providing such services.
(L) Income from financing purchases from third parties.
(M) Income from providing traveler's check, money order and wire transfer services.
(N) Income from servicing mortgages or other assets.
(O) Income from a finance lease. For this purpose, a finance lease is any lease that is a direct financing lease or a leveraged lease for accounting purposes and is also a lease for tax purposes.
(P) Income from providing custodial services.
(Q) Income from any similar, incidental or ancillary service or activity that is disclosed on the taxpayer's federal tax return or that is designated as a similar, incidental, or ancillary item of income in guidance published by the Internal Revenue Service.

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[1] Traditional, main street banking activities can be discerned from the pre-1999 separation of commercial banking and investment banking imposed by the Glass-Steagall provisions of the Banking Act of 1933.
[2] These activities describe traditional forms of effecting commercial financing, including as reflected in section 24 (Seventh) of the National Bank Act, 12 U.S.C. §24 (Seventh).
[3] Main street banks often engage in these activities. Many small, local businesses export or import products and need to convert cash flows to US$. They may engage in spot transactions, or they may enter into forward contracts, which protect them against movements in exchange rates during their billing, receivables and/or payment cycles.
[4] Correspondent banking involves providing banking services on behalf of another bank, such as for example providing services to customers of Bank A in a place where Bank A does not operate.
[5] Such activities may be undertaken, for example, to protect against interest rate or currency risk incurred by a bank or by a bank's customers.
[6] These activities include making loans as part of a group of banks and arranging such financing as a lead bank in a participation arrangement.

Comparison of Proposed Activities to Those Listed Under Section 904

(A) Income ~~that is of a kind that would be insurance income as defined in section 953(a) (including related party insurance income as defined in section 953(c)(2)) and determined without regard to those provisions of section 953(a)(1)(A) that limit insurance income to income from countries other than the country in which the corporation was created or organized.~~

~~(B) Income from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary to the proper conduct of the insurance business, income from providing services as an insurance underwriter, income from insurance brokerage or agency services, and income from loss adjuster and surveyor services.~~

~~(C) Income from investing funds in circumstances in which the taxpayer holds itself out as providing a financial service by the acceptance or the investment of such funds, including income~~ from holding and investing deposits of money and income earned investing other bank funds, including funds received for the purchase of traveler's checks or face amount certificates.

~~(D)~~(B) Income from making personal, mortgage, industrial, or other loans.

~~(E)~~(C) Income from purchasing, selling, discounting, or negotiating on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness.

~~(F)~~(D) Income from issuing letters of credit and negotiating drafts drawn thereunder.

~~(G)~~(E) Income from providing trust services.

~~(H)~~(F) Income from arranging foreign exchange transactions, or engaging in foreign exchange transactions.

~~(I) Income from purchasing stock, debt obligations, or other securities from an issuer or holder with a view to the public distribution thereof or offering or selling stock, debt obligations, or other securities for an issuer or holder in connection with the public distribution thereof, or participating in any such undertaking.~~

(G) Service fee income from ~~investment and~~ correspondent banking.

~~(J) Income earned by broker-dealers in the ordinary course of business (such as commissions) from the purchase or sale of stock, debt obligations, commodities futures, or other securities or financial instruments and dividend and interest income earned by broker dealers on stock, debt obligations, or other financial instruments that are held for sale.~~

~~(K) Service fee income from investment and correspondent banking.~~

~~(L)~~(H) Income from interest rate and currency swaps.

~~(M)~~(I) Income from providing fiduciary services.

~~(N) Income from services with respect to the management of funds.(O~~

(J) Bank-to-bank participation income.

~~(P)~~(K) Income from providing charge and credit card services or for factoring receivables obtained in the course of providing such services.

~~(Q)~~(L) Income from financing purchases from third parties.

~~(R) Income from gains on the disposition of tangible or intangible personal property or real property that was used in the active financing business (as defined in paragraph (e)(3)(i) of this section) but only to the extent that the property was held to generate or generated active financing income prior to its disposition.~~

(M) Income from providing traveler's check, **money order and wire transfer** services.

~~(S) Income from hedging gain with respect to other active financing income.~~

~~(T) Income from providing traveler's check services.~~

~~(U~~(N) Income from servicing mortgages **or other assets**.

~~(V~~(O) Income from a finance lease. For this purpose, a finance lease is any lease that is a direct financing lease or a leveraged lease for accounting purposes and is also a lease for tax purposes.

~~(W) High withholding tax interest that would otherwise be described as active financing income.(X~~

(P) Income from providing ~~investment advisory services,~~ custodial services~~, agency paying services, collection agency services, and stock transfer agency services~~.

~~(Y) Any~~(Q) Income from any similar ~~item of income~~, incidental or ancillary service or activity that is disclosed ~~in the manner provided in the instructions to the Form 1118 or 1116~~ on the taxpayer's federal tax return or that is designated as a similar, incidental, or ancillary item of income in guidance published by the Internal Revenue Service.