(b) * * *

(4) A notice of disaggregation is filed pursuant to § 151.7(h), in which case the notice shall be effective upon filing.

* * * * *

5. In § 151.12, revise paragraph (a)(5) and add paragraph (a)(6) to read as follows:

§ 151.12 Delegation of authority to the Director of the Division of Market Oversight.

(a) * * *

(5) In § 151.7(j)(1)(iii) to call for additional information from a trader claiming the exemption in § 151.7(j)(1).

(6) In § 150.10 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

* * * * *

Issued in Washington, DC, on May 17, 2012 by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1—Statement of Commissioner Jill E. Sommers

I support the Commission's proposed rules that, among other things, expand the exemptions relating to information sharing restrictions, expand the circumstances under which market participants will not be required to aggregate positions, and reduce the reporting burdens on higher tier entities. I am pleased that we recognize that the final position limits rules issued on November 18, 2011 set forth an unworkable and overly restrictive approach to these issues.

Essentially, as they relate to ''owned entities,'' the proposed rules contain three ''tiers'' for purposes of aggregation. First, if the ownership interest is less than 10 percent, one need not aggregate positions with those of the owned entity. Second, if the ownership interest is between 10 percent and 50 percent, one must aggregate positions with those of the owned entity unless it can be shown that there is a lack of knowledge of, and control over, the trading of the owned entity. Third, if the ownership interest exceeds 50 percent, one must always aggregate positions with those of the owned entity, even if there is a lack of knowledge of, and control over, the trading of the owned entity.

I question whether a bright-line approach is the correct approach, and if it is, whether the line should be drawn at 50 percent. In the absence of knowledge of, and control over, trading of an owned entity, is there a real difference between owning 49 percent and owning 50 percent? I don't think there is. In justifying 50 percent as the correct place to draw the line, the preamble to the proposed rules states, ''such a bright-line rule would provide clarity to market participants and a useful tool for the Commission to simplify aggregation.'' Providing clarity and certainty to market participants is important. However, if providing clarity and certainty results in a one-size-fits-all answer that fails to take into account the varying needs of a very diverse group of market participants, the clarity and certainty are of little use. Moreover, while it is important to establish an aggregation approach that the Commission can effectively administer, I hesitate to put too much weight on ''simplifying'' the approach if the simplified approach is needlessly restrictive.

In my dissent to the final position limits rules, I expressed concern that with regard to the 19 new reference contracts, the Commission was taking on ''front-line oversight of the granting and monitoring of bona-fide hedging exemptions for the transactions of massive, global corporate conglomerates that on a daily basis produce, process, handle, store, transport, and use physical commodities in their extremely complex logistical operations.'' My concerns apply equally to the issue of aggregation. We have limited experience as it relates to these new reference contracts, and no experience aggregating swaps into the overall calculations. In the face of such limited experience, our apparent certainty on where to draw lines is troubling.

[FR Doc. 2012–12526 Filed 5–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141075–09]

RIN 1545–BJ15

Property Transferred in Connection With the Performance of Services Under Section 83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to property transferred in connection with the performance of services under section 83 of the Internal Revenue Code (Code). These proposed regulations affect certain taxpayers who received property transferred in connection with the performance of services.

DATES: Written or electronic comments must be received by August 28, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–141075–09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–141075–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–141075–09).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Thomas Scholz or Dara Alderman at (202) 622–6030 (not a toll-free number); concerning submissions of comments, and/or to request a hearing, Oluwafunmilayo (Fumni) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 83(a) of the Internal Revenue Code (Code) provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of (1) the fair market value of the property (determined without regard to lapse restrictions) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over (2) the amount (if any) paid for such property, is included in the gross income of the service provider in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture. Section 83(c)(1) provides that the rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

Section 1.83–3(c)(1) provides that, for purposes of section 83 and the regulations, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. Section 1.83–3(c)(1) further provides that a substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or the occurrence of a condition related to a purpose of the transfer, and the possibility of forfeiture is substantial if such condition is not satisfied. Illustrations provided in § 1.83–3(c)(2) of the regulations demonstrate when a substantial risk of forfeiture will be considered to exist.

In addition to providing that a person's rights in property are subject to a substantial risk of forfeiture if conditioned upon the future performance of substantial services by any individual, the legislative history indicates that the drafters intended that ''in other cases the question of whether there is a substantial risk of forfeiture depends upon the facts and circumstances.'' H.R. Rep. No. 91–413 (Pt. 1), 91st Cong., 1st Sess. 62, 88 (1969–3 Cum. Bull. 200, 255); S. Rep. No. 91–552, 91st Cong., 1st Sess. 119, 121 (1969–3 Cum. Bull. 423, 501). The current regulations adopt this approach by finding that a substantial risk of forfeiture may also arise if the rights to the property are subject to a condition related to the purpose of the transfer. Some confusion has arisen as to whether other conditions may also give rise to a substantial risk of forfeiture. *See Robinson* v. *Commissioner,* 805 F.2d 38 (1st Cir. 1986). The proposed regulations clarify that a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer.

Similarly, confusion has arisen as to whether, in determining whether a substantial risk of forfeiture exists, the likelihood that a condition related to the purpose of the transfer will occur must be considered. *Id.* A conclusion that such likelihood need not be considered would lead to anomalies not intended by the statute. For example, assume that stock transferred by an employer to an employee was made nontransferable and also subject to a condition that the stock be forfeited if the gross receipts of the employer fell by 90% over the next three years. Assume further that the employer is a longstanding seller of a product and that there is no indication that either there will be a fall in demand for the product or an inability of the employer to sell the product, so that it is extremely unlikely that the forfeiture condition will occur. Although, arguably, the condition is a condition related to the purpose of the transfer because it would, to some degree, incentivize the employee to prevent such a fall in gross receipts, the Treasury Department and the IRS do not believe that such a condition was intended to defer the taxation of the stock transfer. Accordingly, the proposed regulations would clarify that, in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered.

Finally, the proposed regulations would clarify that, except as specifically provided in section 83(c)(3) and § 1.83–3(j) and (k), transfer restrictions do not create a substantial risk of forfeiture, including transfer restrictions which carry the potential for forfeiture or disgorgement of some or all of the property, or other penalties, if the restriction is violated. This position is supported by the legislative history of section 83. The Senate Report, under the heading ''General reasons for change,'' provides as follows:

> The present tax treatment of restricted stock plans is significantly more generous than the treatment specifically provided in the law for other types of similarly funded deferred compensation arrangements. An example of this disparity can be seen by comparing the situation where stock is placed in a nonexempt employees' trust rather than given directly to the employee subject to restrictions. If an employer transfers stock to a trust for an employee and the trust provides that the employee will receive the stock at the end of 5 years if he is alive at that time, the employee is treated as receiving and is taxed on the value of the stock at the time of the transfer. However, if the employer, instead of contributing the stock to the trust, gives the stock directly to the employee subject to the restriction that it cannot be sold for 5 years, then the employee's tax is deferred until the end of the 5-year period. In the latter situation, the employee actually possesses the stock, can vote it, and receives the dividends, yet his tax is deferred. In the case of the trust, he may have none of these benefits, yet he is taxed at the time the stock is transferred to the trust.

S. Rep. No. 91–552, 1969–3 CB 423, 500. See also H. Rep. No. 91–413, 1969–3 CB 200, 254.

The legislative history shows that Congress intended for section 83 to be interpreted in such a way that precluded the use of transfer restrictions as a means of deferring the taxable event. If interpreted otherwise, section 83 would not alter the tax treatment of the particular transaction that Congress described as the reason for the statutory change.

Moreover, Congress later added section 83(c)(3) concerning sales that may give rise to suit under section 16(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''). See Public Law 97–34, sec. 252, 1981–2 CB 256, 303. Section 83(c)(3) provides that so long as the sale of property at a profit could subject a person to suit under section 16(b) of the Exchange Act, such person's rights in such property are (A) subject to a substantial risk of forfeiture, and (B) not transferable. Section 1.83–3(j) of the regulations further provides that, for purposes of section 83 and the regulations, if the sale of property at a profit within six months after the purchase of the property could subject a person to suit under section 16(b) of the Exchange Act, the person's rights in the property are treated as subject to a substantial risk of forfeiture and as not transferable until the earlier of (i) the expiration of such six-month period, or (ii) the first day on which the sale of such property at a profit will not subject the person to suit under section 16(b) of the Exchange Act.

Consistent with section 83(c)(3) and § 1.83–3(j), Revenue Ruling 2005–48 (2005–2 CB 259) provides that the only provision of the securities law that would delay taxation under section 83 is section 16(b) of the Exchange Act. The ruling further provides that other transfer restrictions (such as restrictions imposed by lock-up agreements or restrictions relating to insider trading under Rule 10b–5 of the Exchange Act) do not cause rights in property taxable under section 83 to be substantially nonvested. Revenue Ruling 2005–48 notes that the Treasury Department and the IRS intend to amend the section 83 regulations to explicitly set forth the holdings in the ruling.

Explanation of Provisions

The proposed regulations would amend the second sentence of § 1.83–3(c)(1) of the existing regulations to add the word ''only'' to the phrase ''[a] substantial risk of forfeiture exists [only] where * * *'' The purpose of this addition is to clarify that a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer.

The proposed regulations would amend the second sentence of § 1.83–3(c)(1) of the existing regulations to delete the clause ''if such condition is not satisfied.'' The purpose of the deletion is to clarify that, in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered.

The proposed regulations would amend § 1.83–3(c)(1) of the existing regulations to add a sentence stating that a transfer restriction, including a transfer restriction which carries the potential for forfeiture or disgorgement of some or all of the property or other penalties if the restriction is violated, does not create a substantial risk of forfeiture. The purpose of this addition is to incorporate the holding in Rev. Rul. 2005–48.

Furthermore, consistent with Rev. Rul. 2005–48, the proposed regulations would amend § 1.83–3(j)(2) to include an example illustrating the application of section 16(b) of the Exchange Act to an option. The regulations are not intended to provide guidance on the application of section 16(b) of the Exchange Act. Rather, for purposes of the examples it is assumed that the period of liability is determined in accordance with the applicable law, including any applicable court decisions. *See, for example, Stella* v. *Graham-Paige Motors,* 132 *Fed.* Supp. 100, 103 (S.D.N.Y. 1955), *rev'd other grounds,* 232 F.2d 299 (2d Cir.), *cert. denied,* 352 U.S. 831 (1956). The proposed regulations also would add two additional examples to § 1.83–3(c)(4) illustrating that a substantial risk of forfeiture is not created solely as a result of potential liability under Rule 10b–5 of the Exchange Act or a lock-up agreement. Rev. Rul. 2005–48 will be obsoleted when the proposed regulations are published as final regulations. See § 601.601(d)(2).

Proposed Effective Date

These regulations under section 83 are proposed to apply as of January 1, 2013, and will apply to property transferred on or after that date. Taxpayers may rely on the proposed regulations for property transferred after publication of these proposed regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Thomas Scholz and Dara Alderman, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.83–3 is amended by:

1. Revising paragraph (c)(1).
2. Adding *Example 6* and *Example 7* to paragraph (c)(4).
3. Adding *Example 4* to paragraph (j)(2).
4. Removing paragraph (j)(3).
5. Redesignating paragraph (k)(1) as paragraph (k).
6. Removing paragraph (k)(2).
7. Adding paragraph (l).

The additions and revisions read as follows:

§ 1.83–3 Meaning and use of certain terms.

* * * * *

(c) *Substantial risk of forfeiture*—(1) *In general.* For purposes of section 83 and the regulations, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. A substantial risk of forfeiture exists only where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or upon the occurrence of a condition related to a purpose of the transfer if the possibility of forfeiture is substantial. Property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of such property to the employee upon the return of such property. The risk that the value of property will decline during a certain period of time does not constitute a substantial risk of forfeiture. A nonlapse restriction, standing by itself, will not result in a substantial risk of forfeiture. Except as set forth in paragraphs (j) and (k) of this section, restrictions on the transfer of property, whether contractual or by operation of applicable law, will not result in a substantial risk of forfeiture. For this purpose, transfer restrictions that will not result in a substantial risk of forfeiture include, but are not limited to, restrictions that if violated, whether by transfer or attempted transfer of the property, would result in the forfeiture of some or all of the property, or liability by the employee for any damages, penalties, fees or other amount.

* * * * *

(4) * * *

Example 6. On January 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. On May 1, 2013, Y sells its common stock in an initial public offering. Pursuant to an underwriting agreement entered into in connection with the initial public offering, Q agrees not to sell, otherwise dispose of, or hedge any Y common stock from May 1 through November 1 of 2013 (''the lock-up period''). Q exercises the option and Y shares are transferred to Q on August 15, 2013, during the lock-up period. The underwriting agreement does not impose a substantial risk of forfeiture on the Y shares acquired by Q because the provisions of the agreement do not condition Q's rights in the shares upon anyone's future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, neither section 83(c)(3) nor the imposition of the lock-up period by the underwriting agreement preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

Example 7. Assume the same facts as in *Example 6,* except that on May 1, 2013, Y also adopts an insider trading compliance program, under which, as applied to 2013, insiders (such as Q) may trade Y shares only between November 5 and November 30 of that year (''the trading window''). Under the program, if Q trades Y shares outside the trading window without Y's permission, Y has the right to terminate Q's employment. However, the exercise of the nonstatutory options outside the trading window for the Y shares is not prohibited under the insider trading compliance program. As of August 15, 2013 (the date Q fully exercises the option), Q is in possession of material nonpublic information concerning Y that would subject him to liability under Rule

10b–5 under the Securities Exchange Act of 1934 if Q sold the Y shares while in possession of such information. Neither the insider trading compliance program nor the potential liability under Rule 10b–5 impose a substantial risk of forfeiture on the Y shares acquired by Q, because the provisions of the program and Rule 10b–5 do not condition Q's rights in the shares upon anyone's future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, none of section 83(c)(3), the imposition of the trading window by the insider trading compliance program and the potential liability under Rule 10b–5 preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

* * * * *

(j) * * *

(2) * * *

Example 4. On January 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Y stock is traded on an established securities market. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. The grant of the option is not a transaction exempt from section 16(b) of the Securities Exchange Act of 1934. On August 15, 2013, Y stock is trading at more than $10 per share. On that date, Q fully exercises the option, paying the exercise price in cash, and receives 100 Y shares. Q's rights in the shares received as a result of the exercise are not conditioned upon the future performance of substantial services. Because no exemption from section 16(b) was available for the January 3, 2013 grant of the option, the section 16(b) liability period expires on July 1, 2013. Accordingly, the section 16(b) liability period expires *before* the date that Q exercises the option and the Y common stock is transferred to Q. Thus, the shares acquired by Q pursuant to the exercise of the option are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). As a result, section 83(c)(3) does not preclude taxation under section 83 when the shares acquired pursuant to the August 15, 2013 exercise of the option are transferred to Q. If, instead, Q exercises the nonstatutory option on May 30, 2013 when Y stock is trading at more than $10 per share, the shares acquired are subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b) through July 1, 2013.

* * * * *

(l) *Effective/applicability date.* Paragraphs (j) and (k) of this section apply to property transferred after December 31, 1981. Paragraph (c)(1), *Example 6* and *7* of paragraph (c)(4), and *Example 4* of paragraph (j)(2) of this section apply to property transferred on or after January 1, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–12855 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142561–07]

RIN 1545–BH31

Regulations Revising Rules Regarding Agency for a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations regarding the agent for an affiliated group that files a consolidated return (consolidated group). The proposed regulations provide guidance concerning the identity and authority of the agent for the consolidated group (agent for the group). These proposed regulations affect all consolidated groups. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and a request for a public hearing must be received by August 28, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142561–07), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–142561–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–142561–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Gerald B. Fleming at (202) 622–7770 or Richard M. Heinecke at (202) 622–7930; concerning submissions of comments or a request for a public hearing, Funmi Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review and approval under OMB approval number 1545–1699 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 30, 2012.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in the proposed regulations are in § 1.1502–77(c)(3), (c)(4), (c)(5), and (f)(3).

The proposed regulations provide that an entity that is the agent for the group, upon becoming the default successor, is required to notify the Commissioner in writing (under procedures prescribed by the Commissioner), in accordance with § 1.1502–77(c)(3), that it is the default successor.

The proposed regulations under § 1.1502–77(c)(4) further provide that, when the agent for the group designates an agent for the group under circumstances in which the agent for the group's existence terminates without a default successor, the agent for the group must notify the Commissioner in writing (under procedures prescribed by the Commissioner) of the designation and provide an agreement executed by the designated entity acknowledging