

Freek Braken
Coordinating Tax Policy Advisor
Directorate for Direct Taxes and Allowances
Ministry of Finance

By email

14 October 2026

Dear Freek,

Consultation - additional measures against dividend stripping

Thank you for arranging the call on 29 September.

We appreciated the opportunity to discuss our representations on the consultation on additional measures against dividend stripping, and in particular why market participants need certainty as to the net tax/dividend outcome at the start of a transaction to price and quote accurately. If the tax outcome is unclear until after the fact, it can impede routine trading and risk-management activity and may reduce liquidity and market efficiency in Dutch equities. Clear drafting and timely guidance are also essential because changes in how Dutch withholding tax applies to hedges and listed shares used in derivatives can have impacts under commercial provisions documented under market-standard contractual frameworks (including ISDA documentation) for both new and existing transactions. Uncertainty may lead to operational disruption, increased disputes, and (depending on the facts) contractual adjustment or early termination scenarios. If any additional measures are introduced, they should be practical and scalable, supported by clear definitions and objective tests/safe harbours, together with workable documentation standards. This is important to avoid inconsistent outcomes across audits/taxpayers and reduce the risk of disputes and litigation.

As discussed, we attach as Appendix 1 the wording from the German tax legislation which excludes non-German resident taxpayers who are subject to the standard double tax treaty withholding tax rate for portfolio dividends (i.e. <10% shareholding). In Germany's case, most double tax treaties reduce the domestic withholding tax rate of 26.375% to 15% for portfolio dividends. Such reclaims are exempt from the minimum holding period and continuous risk requirements. This restricts the impact of the German anti-avoidance rules to:

- German taxpayers; and
- non-German parties which are entitled to special reductions in German dividend withholding tax, such as affiliated entities with substantial shareholdings and pension funds.

We would welcome a similar exception from any measures which are introduced in the Netherlands for non-Dutch parties which receive the 'standard' dividend withholding tax rate for portfolio holdings, whether that is 10% or 15%, under a relevant double tax treaty.

As discussed, we welcome the proposed the "regular business activities" exemption but the drafting needs to be amended to explicitly cover all trading and hedging conducted in the ordinary course of the business of a

regulated financial institution. This will ensure that the proposed additional measures do not impact standard trading practices that are recognised as market-making by regulators and undertaken for non-tax reasons.

We attach as Appendix 2 a summary prepared by ISLA of the market impact on liquidity following the introduction of withholding tax rules in Austria.

We also request that, for the purposes of any measure to be introduced, the law (or published guidance) should make clear that when assessing any holding period a temporary disposal (if conducted as a securities loan or for posting of collateral/margin) of listed Dutch equities does not constitute a disposal. This would enable long-term investors in listed Dutch equities to generate additional income from lending out securities year-round, or using them as security/collateral, without worrying that the equities need to be recalled months in advance of any dividend record date to meet a day count.

If any of the proposed additional measures are enacted this year, we would recommend the start date should not be before 1 January 2028. This timeframe would enable our members to implement the necessary systems changes, conduct client outreach, and update their policies and procedures to reflect the new requirements changes. We would also recommend that detailed guidance on any new measures be issued in draft for public consultation well ahead of the implementation date. As noted in our letter, it would be helpful to confirm, for example, that bona fide market participants in the transaction chain (including intermediaries facilitating hedging/collateral flows) should not face any form of secondary liability simply because they are involved in ordinary market infrastructure, particularly where they lack visibility over the full sequence of linked trades

We would be happy to provide further information on the above points or schedule a further call or a meeting to discuss.

Yours sincerely,

On behalf of AFME:

Ian Sandles, Director, Tax and Accounting
Carolina Cazzarolli, Manager, Advocacy
Mark Huyan, Industry co-chair of the AFME Tax Committee
Annabel Lawrence, Industry co-chair of the AFME Tax Committee

On behalf of ISDA:

Antonio Corbi, Head of Accounting and Tax services
Sinthubiravi Sivakumaran, Industry chair of the ISDA European Tax Working Group

On behalf of ISLA:

Farrah Mahmood, Director of Regulatory Affairs
Vladislav Urumov, Industry co-chair of the ISLA Tax Committee
George Rapalje, Industry co-chair of the ISLA Tax Committee

APPENDIX 1

Einkommensteuergesetz (EStG)

§ 50j Versagung der Entlastung von Kapitalertragsteuern in bestimmten Fällen

(1) Ein Gläubiger von Kapitalerträgen im Sinne des § 43 Absatz 1 Satz 1 Nummer 1a, die nach einem Abkommen zur Vermeidung der Doppelbesteuerung nicht oder nur nach einem Steuersatz unterhalb des Steuersatzes des § 43a Absatz 1 Satz 1 Nummer 1 besteuert werden, hat ungeachtet dieses Abkommens nur dann Anspruch auf völlige oder teilweise Entlastung nach § 50c Absatz 3, wenn er

1. während der Mindesthaltedauer nach Absatz 2 hinsichtlich der diesen Kapitalerträgen zugrunde liegenden Anteile oder Genussscheine ununterbrochen wirtschaftlicher Eigentümer ist,
2. während der Mindesthaltedauer nach Absatz 2 ununterbrochen das Mindestwertänderungsrisiko nach Absatz 3 trägt und
3. nicht verpflichtet ist, die Kapitalerträge im Sinne des § 43 Absatz 1 Satz 1 Nummer 1a ganz oder überwiegend, unmittelbar oder mittelbar anderen Personen zu vergüten.

Satz 1 gilt entsprechend für Anteile oder Genussscheine, die zu inländischen Kapitalerträgen im Sinne des § 43 Absatz 3 Satz 1 führen und einer Wertpapiersammelbank im Ausland zur Verwahrung anvertraut sind.

(2) Die Mindesthaltedauer umfasst 45 Tage und muss innerhalb eines Zeitraums von 45 Tagen vor und 45 Tagen nach der Fälligkeit der Kapitalerträge erreicht werden. 2Bei Anschaffungen und Veräußerungen ist zu unterstellen, dass die zuerst angeschafften Anteile oder Genussscheine zuerst veräußert wurden.

(3) Der Gläubiger der Kapitalerträge muss unter Berücksichtigung von gegenläufigen Ansprüchen und Ansprüchen nahe stehender Personen das Risiko aus einem sinkenden Wert der Anteile oder Genussscheine im Umfang von mindestens 70 Prozent tragen (Mindestwertänderungsrisiko). 2Kein hinreichendes Mindestwertänderungsrisiko liegt insbesondere dann vor, wenn der Gläubiger der Kapitalerträge oder eine ihm nahe stehende Person Kurssicherungsgeschäfte abgeschlossen hat, die das Wertänderungsrisiko der Anteile oder Genussscheine unmittelbar oder mittelbar um mehr als 30 Prozent mindern.

(4) Die Absätze 1 bis 3 sind nur anzuwenden, wenn

1. die Steuer auf die dem Antrag zu Grunde liegenden Kapitalerträge nach einem Abkommen zur Vermeidung der Doppelbesteuerung 15 Prozent des Bruttobetrags der Kapitalerträge im Sinne des § 43 Absatz 1 Satz 1 Nummer 1a und des Absatzes 1 Satz 2 unterschreitet und
2. es sich nicht um Kapitalerträge handelt, die einer beschränkt steuerpflichtigen Kapitalgesellschaft, die am Nennkapital einer unbeschränkt steuerpflichtigen Kapitalgesellschaft im Sinne des § 1 Absatz 1 Nummer 1 des Körperschaftsteuergesetzes zu mindestens einem Zehntel unmittelbar beteiligt ist und im Staat ihrer Ansässigkeit den Steuern vom Einkommen oder Gewinn unterliegt, ohne davon befreit zu sein, von der unbeschränkt steuerpflichtigen Kapitalgesellschaft zufließen.

Die Absätze 1 bis 3 sind nicht anzuwenden, wenn der Gläubiger der Kapitalerträge im Sinne des § 43 Absatz 1 Satz 1 Nummer 1a und des Absatzes 1 Satz 2 bei Zufluss seit mindestens einem Jahr ununterbrochen wirtschaftlicher Eigentümer der Aktien oder Genussscheine ist; Absatz 2 Satz 2 gilt entsprechend.

(5) Bestimmungen eines Abkommens zur Vermeidung der Doppelbesteuerung, § 42 der Abgabenordnung und andere steuerliche Vorschriften bleiben unberührt, soweit sie jeweils die Entlastung in einem weitergehenden Umfang einschränken.

Translation of the wording highlighted above:

1. the tax on the investment income underlying the application is—pursuant to a double taxation agreement—less than 15 percent of the gross amount of the investment income within the meaning of Section 43 (1) sentence 1 number 1a and (1) sentence 2, and

APPENDIX 2

Information of the Austrian BMF published in 2014

In 2014, the BMF published an Information (the “**BMF Information 2014**”¹) that set out the requirements to obtain a refund of Austrian withholding tax on dividends. The BMF stated that as a general rule a dividend is only attributable to the beneficial owner of the shares of the distributing company on the date when the dividend resolution (profit distribution resolution) is adopted (which is the day on which the AGM takes place). In the case of shares that can be held on a depository account, the beneficial owner of the shares shall, according to this BMF Information, be the person who actually holds the shares in their securities account.

The BMF Information 2014 went on to expressly recognise established market practice, that shares are traded with the entitlement to a dividend i.e., cum dividend up until the Ex- date, irrespective of the settlement of the shares. The BMF noted that in contrast to the general rule above, the attribution of the dividend payment **for tax purposes** required settlement into the taxpayer’s account on the last day of cum dividend i.e., the **Ex-1 date**. The BMF Information 2014 stated, *‘If this condition is satisfied, for practical purposes and based on established stock exchange practice no concerns arise even if the shares were purchased after the dividend resolution date.’* This view was upheld and has been applied by the Austrian Tax Office for the past 8 years without exception.

As a result of the BMF Information 2014, if a Borrower borrowed Austrian shares, Agent Lenders (where instructed to do so) arranged for the return of that stock prior to the Ex-1 date in order to ensure the Lender would be entitled to a withholding tax refund if applicable. Alternatively, or in the absence of such instruction, Agent Lenders imposed a restriction on the return of that stock from Borrowers around the key dividend dates and the Borrower would instead agree to pay a manufactured dividend to the Lender at a level which compensated the Lender from the loss of the right to claim a withholding tax refund.²

The premise of securities lending is that a Lender should not be put in a worse off position by lending out their shares. Agent Lenders, who have a fiduciary duty to their underlying clients could not risk the return of cum dividend shares that settled after the Ex-1 date, as the underlying Lender would be put in a detrimental position, as it therefore would not be entitled to claim a refund of withholding tax on such shares, in accordance with the BMF Information 2014.

BMF Information 2022

In July 2022, the Austrian Supreme Administrative Court published a decision³ based on a specific set of facts that confirmed that the person who is the beneficial owner at the time of the resolution of a dividend (i.e., AGM date), is entitled to a refund of withholding tax.

The case concerned a claim by a United Arab Emirates resident corporation which had purchased Austrian shares cum dividend with the shares settling after Ex-1 date and record date. The appellant received a dividend compensation payment and argued that as the cum dividend owner, it was entitled to the

¹ https://www.bmf.gv.at/dam/jcr:0019fad0-c525-49ac-a7c4-227b91eabdf9/Relief_Austrian_Withholding_Tax_on_Dividends_2.pdf

² Typically, Borrowers would return the stock prior to the Ex-1 date rather than choose to pay an increased level of manufactured dividend to compensate the Lender if it held over record date.

³ https://www.vwgh.gv.at/medien/mitteilungen/Ro_2022130002.pdf?8myk6q

withholding tax refund. The Federal Fiscal Court denied the appellant's claim and upheld the practice of the requirement of the BMF's Information 2014 with regards to who was entitled to the withholding tax refund, i.e., the holder of the shares settled on the Ex-1 date.

However, the Supreme Court overturned this and confirmed that the decisive factor to determine the beneficial owner of the shares is on the AGM date. If shares are sold after the AGM date, with an already accrued dividend claim (cum dividend), there is no eligible claim for the withholding tax by the purchaser because the dividends are not attributed as income due to lack of beneficial ownership for tax purposes.

As a result of the Supreme Court decision, the BMF published a final Information in November 2022 (the "**BMF Information 2022**"). The BMF Information 2022 states the following salient points:

- The BMF Information 2014 is repealed and replaced by the BMF Information 2022.
- Pursuant to the Supreme Court Judgement, the dividend is attributable to the person who is the beneficial owner of the shares on the AGM date.
- According to the BMF Information 2022 the acquired shares must have already been settled in the purchaser's securities account before the day of the AGM; the securities account balance at the end of the day on the AGM-1 is therefore relevant. Consequently, if the acquired shares were not deposited in the purchaser's securities account at the end of the AGM-1 date at the latest, it must be assumed that the seller of the shares is the beneficial owner.
- The BMF Information 2022 shall also to apply to all dividend payments already made prior to the publication of the Supreme Administrative Court's decision (retrospective application).⁴ Under certain conditions, the retrospective application shall also affect refund procedures that have already been completed (i.e., where an assessment notice has already been issued) as follows:
 - If, in the past, withholding tax was refunded based on the securities account balance at the end of day on the Ex-1 date, respective assessment notices can be revoked and re-issued within a one-year period from the date of notification of the assessment notice, in light of the Supreme Court judgement in accordance with legislation.
 - An amendment in a legally closed reclaim procedure (i.e., assessment notices issued outside the one-year period) can only be made if certain requirements for reopening the procedure are met. A reopening is only permitted if the Austrian Tax Authority had no knowledge at the time of issuing the assessment notice, as to whether the applicant was the beneficial owner of the shares on the AGM-date and, therefore, the beneficial owner entitled to the refunded withholding tax.
- The Austrian Tax Authority will consider, in addition to the amount of the refund, the risk of a double refund as well as whether, in the specific circumstances, the applicant's trust in the past Austrian administrative practice is worth protecting.

Impact on Securities Lending

As a result of the BMF Information 2022, major Agent Lenders have recalled Austrian securities on loan and/or have prevented the lending of any new Austrian shares.⁵

This is reflected in the data provided by [S&P Market Intelligence](#), showing a significant reduction in the total lendable supply of Austrian securities towards the end of 2022 following the announcement of the BMF Information 2022.:

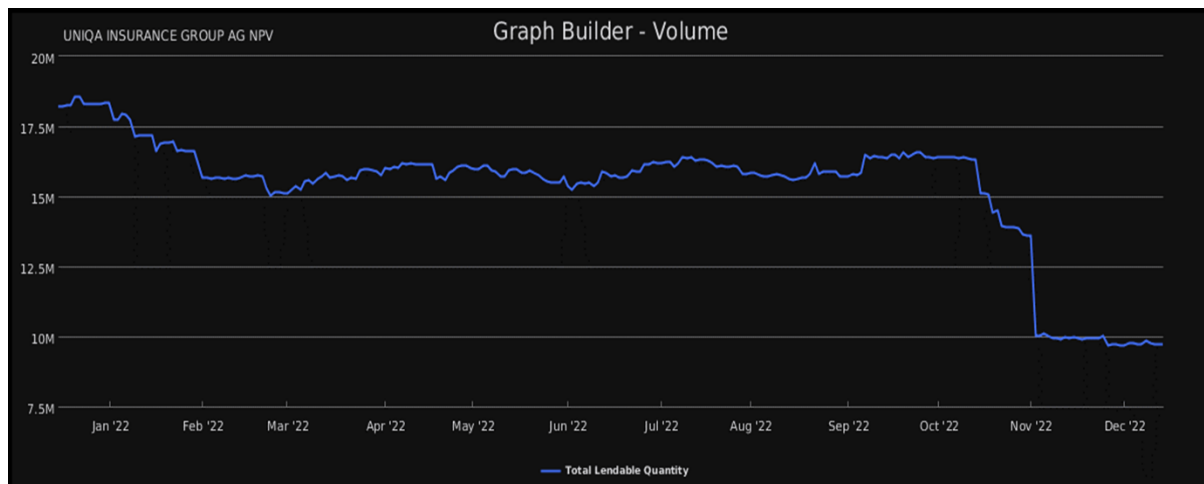
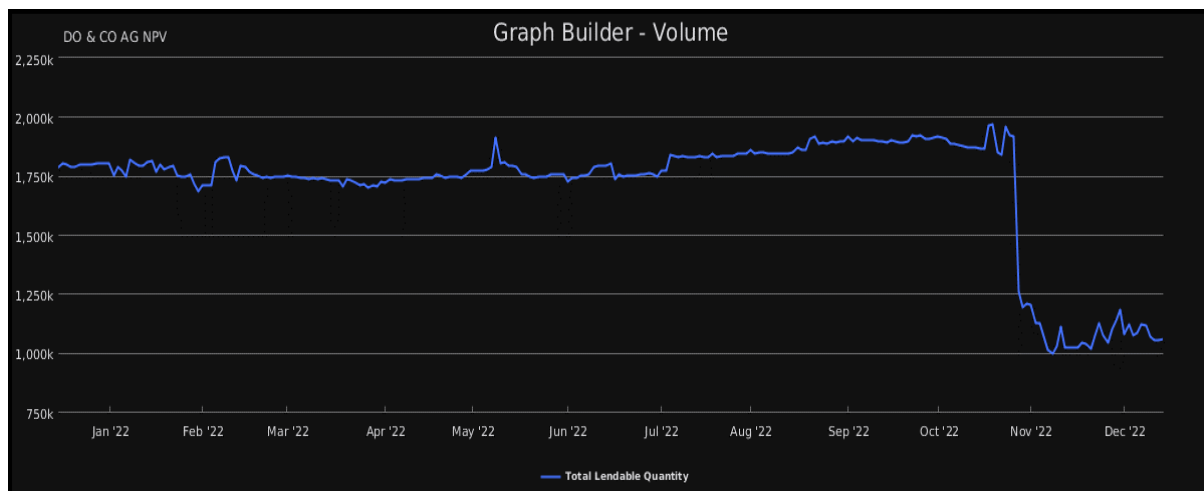
⁴ The statute of limitations limits this to a 5 year look back period.

⁵ Such Agent Lenders are still continuing to lend Austrian shares from statutory rate lenders.

- 31st December 2021 Lendable Value - **\$19,958,817,041** vs,
- 31st December 2022 Lendable Value - **\$10,521,602,078**

The above figures show a 47% decrease in the lendable supply of Austrian securities.

In detail from data provided by [DataLend](#), a more significant reduction in supply is shown in the following two securities, as an example, to show the drop around the time the BMF Information 2022 was published: DO & CO AG and UNIQA Insurance group AG.



It can be expected that demand will increase significantly during the second quarter of 2023 when trading activities usually peak across most EU markets and as a result, the lack of supply will be further exacerbated.

As a result of the reduction of supply in these specific names as an example, the subsequent securities lending fees have increased significantly and have created a notable shortage in these securities.

Why Lenders have stopped lending

Several Agent Lenders have stated that the reason for pulling out of the Austrian securities lending market is twofold:

Agent Lenders operational systems are unable to effectively track the AGM date in Austria for tax purposes, as current systems monitor the record date as per market practice globally. Moreover, the AGM date for Austrian issuers varies greatly depending on the issuer and can be several days prior to dividend record date, as shown in the following tables⁶:

Ticker	2021					TYPE
	AGM	EGM	EX	RD	Day Gap (AGM - Rd)	
EBS AV	19-May	-	25-May	26-May	7	Regular
	-	25-Nov	30-Nov	01-Dec	6	Special
OMV AV	02-Jun	-	09-Jun	10-Jun	8	Regular
VER AV	20-Apr	-	27-Apr	28-Apr	8	Regular
BG AV	-	03-Mar	10-Mar	11-Mar	8	ROC
	27-Aug	-	06-Oct	07-Oct	41	ROC
ANDR AV	24-Mar	-	26-Mar	29-Mar	5	Regular
VOE AV	07-Jul	-	15-Jul	16-Jul	9	Regular
WIE AV	04-May	-	06-May	07-May	3	Regular
RBI AV	22-Apr	-	28-Apr	29-Apr	7	Regular
	-	10-Nov	15-Nov	16-Nov	6	Special
MMK AV	11-Feb	-	05-May	06-May	84	Regular
CAI AV	06-May	-	19-May	20-May	14	Regular
	30-Nov	-	10-Dec	13-Dec	13	Special
POST AV	21-Apr	-	27-Apr	28-Apr	7	Regular
ATS AV	09-Jul	-	27-Jul	28-Jul	19	Regular
	-	-	-	-	-	-
EVN AV	21-Jan	-	27-Jan	28-Jan	7	Regular
	-	-	-	-	-	-
VIG AV	21-May	-	25-May	26-May	5	Regular
UQA AV	31-May	-	10-Jun	11-Jun	11	Regular
SBO AV	29-Apr	-	cxled	cxled	-	-
LNZ AV	14-Apr	-	cxled	cxled	-	-
DOC AV	15-Jul	-	cxled	cxled	-	-
IIA AV	19-Oct	-	21-Oct	22-Oct	3	ROC
SPI AV	14-Oct	-	25-Oct	27-Oct	13	Regular

⁶ Source: Bloomberg

Ticker	2022				Day Gap (AGM - Rd)	TYPE
	AGM	EGM	EX	RD		
EBS AV	18-May	-	23-May	24-May	6	Regular
	-	-	-	-	-	-
OMV AV	03-Jun	-	10-Jun	13-Jun	10	Regular
VER AV	25-Apr	-	02-May	03-May	8	Regular
BG AV	28-Mar	-	01-Apr	04-Apr	7	ROC
	-	-	-	-	-	-
ANDR AV	07-Apr	-	11-Apr	12-Apr	5	Regular
VOE AV	06-Jul	-	14-Jul	15-Jul	9	Regular
WIE AV	03-May	-	05-May	06-May	3	Regular
RBI AV	31-Mar	-	cxled	cxled	-	-
	-	-	-	-	-	-
MMK AV	27-Apr	-	03-May	04-May	7	Regular
CAI AV	-	-	11-Mar	14-Mar	-	Special
	05-May	-	cxled	cxled	-	-
POST AV	21-Apr	-	03-May	04-May	13	Regular
ATS AV	07-Jul	-	26-Jul	27-Jul	20	Regular
	-	-	26-Jul	27-Jul	-	Special
EVN AV	03-Feb	-	09-Feb	10-Feb	7	Regular
	-	-	-	-	-	-
VIG AV	20-May	-	23-May	24-May	4	Regular
UQA AV	23-May	-	02-Jun	03-Jun	11	Regular
SBO AV	28-Apr	-	17-May	18-May	20	Regular
LNZ AV	26-Apr	-	28-Apr	29-Apr	3	Regular
DOC AV	14-Jul	-	cxled	cxled	-	-
IIA AV	12-Jul	-	cxled	cxled	-	-
SPI AV	01-Jun	-	08-Jun	09-Jun	8	Regular

Generally, operational systems of Agent Lenders, as well as Broker Dealers and Custodians are set up to mainly track record dates for tax purposes across the majority of global markets, many with multiple exchange listings. The record date is a seminal date that issuers universally utilise to determine who exactly a company's shareholders are, as of that date, since shareholders of an actively traded stock are continually changing.

The record date is set by the board of directors of a company and refers to the date by which investors must be on the company's books and records in order to receive a stock's dividend. Globally, many issuers have multiple dividends each year and for the majority of jurisdictions, the date of determination of the recipient and thus the beneficial owner of the dividend, is not set legally by any reference to the holding on the AGM. Capital markets function on a record date basis and market participants systems will generally reflect how

the market operates. The AGM simply sets the amount of the dividend to be paid to shareholders and determines the dates of record for shareholders who will be entitled to it.⁷

Many Agent Lenders do not have systems in place to accurately track the AGM date in Austria for tax purposes because it is a wide-ranging variable date and has not served as a relevant date under comparable well-established, long-standing market practice. As Borrowers can return cum dividend shares any time prior to record date, the risk for the underlying Lender is that if they do not hold the shares in their custody account at the end of AGM-1 at the latest, the Lender will not be entitled to claim a withholding tax refund on shares that are returned to them cum dividend. As a result, the Lender may be prejudiced by lending out their stock and Agent Lenders will potentially be in breach of their fiduciary duties.

Moreover, Agent Lenders are not willing to impose similar restrictions pursuant to the BMF Information 2014⁸ in this instance, as the AGM date is a variable date and can be a wide-ranging number of days prior to the record date (unlike the Ex-1 date, which, in T+2 markets, is always two days prior to record date). Agent Lenders have stated that given the (relative) small size of the Austrian market compared to other major developed markets and the relatively low yields generated from securities lending in this jurisdiction compared to others, investing in new systems to track and connect the floating AGM dates would be wholly inefficient from a cost and risk perspective. Disproportionate costs would need to be incurred to build out systems that are at odds with global and European T+2 markets and fundamentally depart from how capital markets function in other jurisdictions. As a result, several Agent Lenders have stopped lending in Austria.

Another equally important reason why Agent Lenders have decided to discontinue lending in Austria is due to the retrospective application of the BMF Information 2022. A number of large institutional investors had entered into securities lending programs in good faith, with Agent Lenders operating under well-established practices at the time, in accordance with the BMF Information 2014. Investors who had prudently instructed that cum dividend stock on loan was returned prior to the Ex-1 date, are now having their withholding tax reclaims challenged when they had a legitimate expectation at the time that they would be entitled to a withholding tax refund, based on the BMF Information 2014.

The securities lending market is facilitated through lenders and borrowers having a clear understanding of their rights and obligations under the arrangement. Therefore, Agent Lenders and Beneficial Owners could, in order to remove additional risks, restrict or even discontinue their activities in a market which is uncertain and does not adhere to well-established principles of ECJ case law (*Vertrauensschutz*) that allows taxpayers to rely on an interpretation of relevant legal provisions, if the conduct of the administrative authorities gave rise to a reasonable expectation in the mind of a reasonably prudent taxpayer, and if such expectation was legitimate.

In the absence of clear and equitable rules, the risk of lending securities has become too great and is disproportionate to the yields generated in Austria and may result in full withdrawal of lending from the wholesale market, particularly around more active trading periods, which further could have a significant impact on the equity markets in Austria as a whole.

⁷ Agent Lenders and Broker Dealers may track the AGM date for ESG proxy voting purposes, however as noted above, it is not a key date that the market functions around and, in most cases, tracking the AGM date seamlessly would require a system build to ensure it can be reliably used and connected to front office trading systems.

⁸ See above

Appendix 3

AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers.

ISLA

The International Securities Lending Association (ISLA) is a leading non-profit industry association, representing the common interests of securities financing market participants across Europe, Middle East, and Africa (focusing primarily on securities lending and borrowing (SLB) activity). Its geographically diverse membership of over 200 firms includes institutional investors, asset managers, custodial banks, prime brokers and service providers. Working closely with the industry, as well as national, regional, and global regulators and policy makers, ISLA advocates for, amongst other things, the importance of securities lending to the broader financial services industry. It supports, maintains, and obtains legal opinions for the Global Master Securities Lending Agreement (GMSLA), covering both the Title Transfer and Securities Interest over Collateral variants.