



February 6, 2017

Ms. Quyen Huynh
Associate International Tax Counsel
Department of the Treasury
1400 Pennsylvania Avenue, NW
Washington, DC 20224

Mr. John Sweeney
Office of Associate (Chief Counsel), International
Branch Chief, Branch 8
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Chapter 3 temporary regulations providing requirement for beneficial owner withholding certificates to include foreign TIN and date of birth

Dear Ms. Huynh and Mr. Sweeney:

The Securities Industry and Financial Markets Association ("SIFMA")¹ appreciates the opportunity to submit comments on the requirement in the IRC, Subtitle A, Chapter 3 temporary regulations for a beneficial owner withholding certificate to include the beneficial owner's foreign Taxpayer Identification Number ("TIN") and date of birth.² While we may comment further on other aspects of the final and temporary Chapter 3 and 4 regulations, given the immediate impact of this provision of the regulations, SIFMA is respectfully submitting the following comments.

I. Requirement for beneficial owner withholding certificate to include foreign TIN and date of birth

The members of SIFMA are concerned by the January 1, 2017 effective date of the requirement for a beneficial owner withholding certificate to include the beneficial owner's foreign TIN, and, for an individual, date of birth. Given that the regulations were published December 30, 2016, our members did not have sufficient time to update account opening documents to inform customers of this requirement, train personnel, or implement form validation procedures. Although previous versions of the form instructions provided a similar requirement³, the regulations change the

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Treas. Reg. Sec. 1.1441-1T(e)(2)(ii)(B).

³ See Instructions to Form W-8BEN-E, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) which requested a foreign TIN but did not require a reasonable

requirements significantly without providing any time for implementation. Additionally, the regulations seem to require that before January 1, 2018, members will be required to re-solicit forms from our customers that have valid tax forms on file. Financial institutions have been remediating pre-existing accounts for the last few years to implement the requirements of FATCA and have learned from this experience that it takes time to reach out to customers to inform them of new requirements and re-solicit forms. While we recognize the need to meet the U.S. information exchange requirements, SIFMA requests additional time to obtain customer's foreign TIN and date of birth. The requirement in the regulations also presents a number of questions for which our members need answers in order to properly implement these requirements. For example:

- Must an individual provide both a foreign TIN and date of birth?
- If a foreign TIN is required in 2017 why is there no option for a reasonable explanation for the absence of a foreign TIN?
- Who is considered an account holder - a "direct" account holder or does it also include an "indirect" account holder?
- Who is considered a financial institution?
- How does this requirement apply to forms posted on a third party repository?

SIFMA also respectfully requests that Treasury and the IRS assist us in our effort to comply with this new requirement by: (1) adding reasonable explanations for the absence a foreign TIN to the Form W-8BEN and Form W-8BEN-E, and (2) providing a list of jurisdictions that do not issue TINs. Specifically, we request that future versions of the forms contain a list and corresponding check box of reasonable explanations for the absence of a foreign TIN, such as the country of residence does not provide TINs, or the account holder is exempt from any such TIN requirement. We also respectfully request that the IRS publish a list of jurisdictions that do not issue TINs and thus our members would not need an explanation or to resolicit valid forms. We believe such a rule would promote compliance by avoiding confusion about identification numbers that are not TINs.

II. Proposal for FAQs

For the foregoing reasons, and in an effort to clarify the guidance our members are seeking, we have taken the liberty of drafting the following proposal for two frequently asked questions (FAQs) to resolve many of the questions and address our need for additional time to implement these requirements.

"Q. Under what circumstances must a beneficial owner withholding certificate include a foreign TIN or date of birth?"

A. Pursuant to Treas. Reg. § 1.1441-1T(e)(2)(ii)(B), an otherwise valid beneficial owner withholding certificate provided before January 1, 2018, for an account maintained at a U.S. branch or U.S. office of a financial institution may be treated as valid notwithstanding that it does not include a foreign TIN, and, for a withholding certificate of an individual, a date of birth.

explanation for the absence of a foreign TIN and Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), which provided that an individual could provide a foreign TIN or date of birth.

An otherwise valid beneficial owner withholding certificate provided on or after January 1, 2018, for an account at a U.S. branch or U.S. office of a financial institution, must include a foreign TIN, and, for a withholding certificate of an individual, also a date of birth, unless:

1. The account holder provides a reasonable explanation for the absence of a foreign TIN (e.g., the country of residence does not provide TINs or the account holder is exempt from any such TIN requirement) or the account holder provides the foreign TIN orally or in writing (including by email), provided that the withholding agent retains a record of the confirmation, which will become part of the beneficial owner withholding certificate, or the withholding agent already maintains the foreign TIN in the withholding agent's files.
2. If the account holder is an individual, the withholding agent obtains the date of birth orally or in writing (including by email) provided that the withholding agent retains a record of the confirmation, which will become part of the beneficial owner withholding certificate, or the withholding agent already maintains the date of birth in the withholding agent's files.

Further, if a withholding agent treats a beneficial owner withholding certificate provided prior to January 1, 2018, as having indefinite validity under Treas. Reg. § 1.1441-1(e)(4)(ii)(B), and if the withholding certificate is for an account maintained at a U.S. branch or U.S. office of a financial institution and lacks a foreign TIN and/or for an individual the date of birth, then the withholding agent must, by the last day of the third calendar year following the year in which the withholding certificate is signed, obtain a new beneficial owner withholding certificate that includes a foreign TIN and (for an individual) date of birth. Alternatively, a withholding agent may continue to rely beneficial owner withholding certificate treated as having indefinite validity under Treas. Reg. § 1.1441-1(e)(4)(ii)(B) if the withholding agent obtains a reasonable explanation for the lack of a foreign TIN or obtains a foreign TIN and, for an individual, a date of birth as described above (i.e., orally, in writing, or otherwise in account files).

A withholding agent is not required to validate the foreign TIN or its format, composition, length or other characteristics, nor is it required to verify that all TINs from a particular jurisdiction are consistent.

The foregoing rules apply only to a beneficial owner withholding certificate collected from a direct "account holder," meaning the beneficial owner withholding certificate is not one that is associated with a withholding certificate of a flow-through entity or nonqualified intermediary that is the direct account holder of the financial institution. The foregoing rules also apply only to "financial accounts" as defined in Treas. Reg. § 1.1471-5(b).

Financial institution has the meaning provided in Treas. Reg. § 1.1471-5(e). For a financial institution described in Treas. Reg. § 1.1471-5(e)(4) (regarding investment entities), an account shall be considered maintained at a U.S. office or U.S. branch of a financial institution if the account is not an offshore obligation within the meaning of Treas. Reg. § 1.6049-5(c)(1)(i).

Q. How does the foreign TIN/date of birth requirement apply to beneficial owner withholding certificates obtained from third-party repositories?

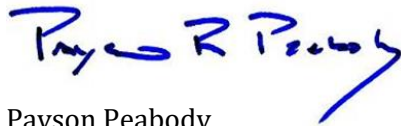
A. Such withholding certificates are treated as provided to the withholding agent on the day the account holder (or its agent) authorizes the withholding agent to obtain the withholding certificate from the repository.”

III. Conclusion

We greatly appreciate your consideration of our views and concerns, and we would appreciate the opportunity to discuss the issues in this submission with you and your colleagues.

Please do not hesitate to contact me at (202) 962-7300 or ppeabody@sifma.org, or SIFMA members’ outside consultants John Staples or Phil Garlett at Ernst & Young. John can be reached at (202) 337-5662 or john.staples@ey.com and Phil can be reached at (202) 327-5809 or Philip.garlett@ey.com.

Sincerely,



Payson Peabody
Managing Director & Tax Counsel
Securities Industry and Financial Markets Association