



**Securities Industry Association**

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December 4, 2003

The Honorable Mark W. Everson  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224-0002

Dear Commissioner Everson:

I am writing on behalf of the members of the Securities Industry Association<sup>1</sup> to request that the Internal Revenue Service grant securities firms (and others who hold investments as nominees on behalf of customers in the ordinary course of business) an extension of the due date for providing 2003 Forms 1099 to customers from January 31, 2004 to February 28, 2004.<sup>2</sup> This extension is urgently needed in order to greatly reduce the number of corrected Forms 1099-DIV that will need to be provided to customers by securities firms and other nominees reporting dividend distributions as qualified or nonqualified dividend income under the Jobs and Growth Tax Relief Reconciliation Act of

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<sup>1</sup> The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2002, the industry generated \$222 billion in domestic revenue and \$356 billion in global revenues. (More information about SIA is available on its home page: [www.sia.com](http://www.sia.com))

<sup>2</sup> The January 31, 2004 due date would continue to apply for issuers (e.g., corporations, mutual funds and REITS) making payments on their own stock, and for banks and credit unions paying interest on customer deposits. In addition, securities firms would continue to be required to meet the January 31 due date for tax reporting obligations to employees and vendors (or such other due date as is currently applicable for certain other payments).

2003 ("JAGTRRA"). Because securities firms typically provide customers with consolidated Forms 1099 (including the 1099-INT and 1099-B, as permitted by the Internal Revenue Service), the extension should apply to all of the Forms 1099 that may be included in these consolidated statements. We request that this extension be granted quickly, in the form of an Internal Revenue Service notice or other administrative announcement.

As you know, JAGTRRA provides a reduced 15% rate for "qualified dividend income" paid by domestic and certain foreign corporations to individuals and certain other types of U.S. shareholders. In order to claim this 15% rate, individual shareholders will need to know what portion of the dividend income that they receive is "qualified dividend income" within the meaning of the new legislation. Where an individual holds securities (including stocks, mutual fund shares and shares in real estate investment trusts) through an account with a securities firm, the securities firm is required to inform the individual on Form 1099-DIV with respect to the portion of his dividend income that may be qualified dividend income. In order to report this information, securities firms need to undertake a substantial amount of due diligence with respect to securities distributions that they receive on behalf of their customers and modify their information processing systems to accommodate this new information.

Notice 2003-79, issued on November 26, provides guidelines to securities firms and other nominees for reporting distributions on the newly revised Form 1099-DIV as qualified or nonqualified dividend income. While the guidance provided in the Notice is very helpful in resolving various questions regarding the responsibilities of securities firms and other nominees, the Notice will require that securities firms do a significant amount of due diligence in order to rely upon the presumptions set forth in the Notice. For example:

- In order to rely on the presumption that a security other than a common or ordinary share issued by a foreign corporation satisfies the "equity test" of Notice 2003-79, a firm must establish that the foreign corporation has made an SEC filing stating that the security will be, should be or more likely than not will be classified as equity for U.S. federal income tax purposes.
- In order to determine whether an equity security meets the "readily tradable test", a firm must determine whether the security is listed on one of the exchanges referenced in Notice 2003-79 and Notice 2003-71.
- In order to rely on the presumption that a foreign corporation satisfies the "treaty test", a firm must determine (i) whether the corporation is organized in a treaty country listed in Notice 2003-69, (ii) whether the U.S. income tax treaty with that country includes a limitation on benefits provision, (iii) if so, whether the foreign corporation satisfies the public trading test of that provision by having its stock listed on an appropriate foreign stock

exchange. Moreover, a firm will need to establish that the foreign corporation has *not* stated in its most recent SEC filing that it is *not* eligible for benefits under the relevant treaty.

- Although Notice 2003-79 generally permits firms to presume that a foreign corporation satisfies the “foreign investment company exclusion test”, this presumption does not apply if the foreign corporation has stated in its most recent SEC filing that it is or expects to be a foreign investment company, passive foreign investment company or foreign personal holding company.

SIA appreciates the substantial amount of time and effort that were required on the part of the Treasury Department and the Internal Revenue Service to resolve the issues addressed in Notice 2003-79 and to publish the Notice. At the same time, however, the publication of Notice 2003-79 will now require securities firms to undertake a similarly substantial effort to implement the provisions of the Notice. Therefore, while Notice 2003-79 is certainly very helpful, it does not reduce the amount of work that securities firms must undertake in order to prepare accurate Form 1099-DIVs, nor make it any easier for securities firms to meet the current January 31 mailing deadline for 2003.

In addition, securities firms commonly hold mutual fund (RIC) and real estate investment trust (REIT) shares on behalf of their customers who are individuals and trusts. In these cases, a securities firm is completely dependent on the RIC or REIT to supply the securities firm with the information needed to report a distribution from the RIC or REIT to the customer. The RIC or REIT, however, needs to undertake essentially the same analysis with respect to its stock holdings that a securities firm must undertake with respect to directly held stock in order to determine what portion of the RIC or REIT distributions constitute qualified dividend income. Moreover, RICs and REITs are not required to transmit information on their distributions to securities firms and other nominee holders until January 31 – the same deadline that applies to securities firms for mailing their Form 1099-DIVs to customers. Although the mutual fund and REIT industries normally try to provide securities firms with the relevant information several weeks in advance of the January 31 deadline, we expect that it will be difficult for these industries to do so for 2003.<sup>3</sup>

The Taxpayer Relief Act of 1997 required that capital gain distributions from RICs and REITs be classified as long-term, mid-term and unrecaptured Section 1250 capital gains. Reclassifications of income by a very

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<sup>3</sup> We note that, even in “normal” years, roughly 5-8 percent of Forms 1099 provided by securities firms must be reissued after January 31 because the securities firm is advised after that date that the information originally included on the form was incorrect. If the mailing deadline is not extended for 2003 Forms 1099, we expect that this error rate will increase significantly.

significant number of RICs and REITs in early 1998 presented a tremendous challenge for the securities industry, contributing to an unusually high industry-wide amendment rate of 17% after the initial Form 1099 mailings. The JAGTRRA changes present an even greater challenge for 2003 reporting. In addition to the need to report qualified dividend income, securities firms and other nominees are required to identify post-May 5 capital gains and, with respect to regulated futures contracts, report post-May 5 gain or loss on Form 1099-B.<sup>4</sup> In addition, securities firms are in the process of modifying their reporting systems for substitute dividend payments in accordance with Notice 2003-67.

We strongly believe that extension of the due date to February 28 would significantly reduce the number of amended Forms 1099 that would otherwise need to be sent to taxpayers, primarily because nominees would be able to incorporate a large percentage of corrected information received from others into original Forms 1099 sent to taxpayers. The reduction in corrected returns would provide a very significant benefit to taxpayers, reducing confusion and the need to file amended returns. It would also minimize the number of Internal Revenue Service inquiries due to mismatched income amounts and reduce the processing of multiple tax filings.

Code Section 6081(a) provides ample authority for the Internal Revenue Service to grant the one-time extension that we request without requiring that each affected securities firm or other nominee request its own individual extension. That section provides as follows:

The Secretary [of the Treasury] may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

Treas. Reg. § 1.6081-1(b)(3) provides generally that a particular taxpayer desiring an extension of the time for filing a return must file its own application with the Internal Revenue Service (on Form 2758) and provides some specific rules for requesting an extension of the time for filing information returns. However, in view of the large number of securities firms who file Forms 1099, it would be impractical and undesirable to require that all affected firms request individual extensions. Moreover, there is nothing in the statutory language of Section 6081 that would preclude reliance on that section to grant a broader extension to a class of filers all of whom are affected by the same circumstances.

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<sup>4</sup> JAGTRRA reduced the long-term capital gain rate from a maximum of 20%, prior to May 6, 2003, to a maximum rate of 15% after May 5, 2003.

Therefore, we believe that the Internal Revenue Service could grant the extension we request in reliance on Section 6081.<sup>5</sup>

Code Section 7508 provides an additional source of authority. Although the statutory language of this section refers only to the grant of extensions to certain individuals serving in the Armed Forces, Treas. Reg. § 301.7508-1(a) extends the scope of this section to other acts specified in a revenue ruling, revenue procedure, notice or other guidance published in the Internal Revenue Bulletin. We recognize that the Internal Revenue Service has traditionally used its authority under this regulation to grant filing extensions to taxpayers affected by natural disasters or acts of terrorism, rather than difficulties associated with changes in law. Nonetheless, the language of the regulation does not restrict the scope of Section 7508 in this manner, and we believe that the Internal Revenue Service could also rely upon Section 7508 to grant the extension we request.

Thank you for your consideration of our request for an expedited extension of the January 31 deadline on a uniform basis to all securities firms and other nominees, serving the interests of all investors and other affected taxpayers. Please do not hesitate to call me (at 202-216-2031) or Emily McMahon of Sullivan & Cromwell, SIA's outside counsel on this matter, (at 202-956-7675) if we can be of assistance in any way.

Sincerely,

Patricia McClanahan  
Vice President and Director for Tax Policy  
Securities Industry Association

cc: The Honorable Pamela Olson  
The Honorable Emily Parker  
Barbara Angus  
Dale Collinson  
Viva Hammer  
Michael Hara  
Helen Hubbard  
Greg Jenner

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<sup>5</sup> We note that, in 2002, the Internal Revenue Service issued Announcement 2002-34 extending the date for filing 2001 Forms 1042-S from March 15, 2002 (the date prescribed by Treas. Reg. § 1.1461-1) to May 15, 2002 to allow filers additional time to implement the recent changes in the regulations under Code Sections 1441 and 1461.

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