



Securities Industry Association

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December 7, 2005

Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)
and Deputy Assistant Secretary (Regulatory Affairs)
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Steve Musher
Acting Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Request for expedited guidance concerning the withholding, reporting and
deposit procedures with respect to Section 302 distributions

Dear Mr. Solomon and Mr. Musher:

I am writing on behalf of the members of the Committee on Tax Compliance and Administration of the Securities Industry Association ("SIA")¹ seeking expedited, interim guidance that would immediately extend to all securities dealers the ability to rely on a recent private letter ruling approving new withholding, reporting and deposit procedures with respect to share repurchase transactions of publicly traded corporations (commonly referred to as "self tenders").² We understand that there may be a new guidance project underway to address this topic, and we would strongly support the issuance of new proposed regulations as soon as feasible. However, for the "gap" period pending the release of such guidance, we believe that all firms should be

¹ The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (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, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

² We do not have the number of this private ruling to cite. The company that obtained the ruling is an active participant in SIA's tax committees and has shared it with the SIA's tax committees.

permitted to utilize the procedures set forth in the private ruling to benefit their foreign account holders.

Today brokers face the competitive reality that there are varying withholding practices among withholding agents with respect to Section 302 distributions of publicly traded companies. Many foreign investors will determine where to keep their brokerage accounts based on a broker's withholding practices. Thus, current withholding tax rules operate in practice to penalize the firms with the more conservative withholding procedures.

The recent private ruling provides its recipient with a means of achieving certainty regarding its withholding practices while avoiding the onerous result of a withholding tax imposed on the full amount of the Section 302 distributions to its foreign customers. Under the ruling, the broker has the option of utilizing the 60-day period following a Section 302 distribution to determine from each of its foreign investors receiving the distribution - - in the manner specified in the ruling - - whether or not the distribution is properly characterized as made in exchange for their stock. The broker is to hold back and place in escrow an amount of the distribution equal to the withholding tax that would be due if the distribution is not properly treated as made in exchange for the foreign investor's stock. However, if the foreign investor provides the broker with an appropriate certification within the 60-day period, the broker may release the escrowed funds to the investor.

SIA believes that the IRS should act *immediately* to notify the financial community that the procedures approved in this ruling are approved as an acceptable method of meeting withholding, reporting and deposit responsibilities for any broker choosing to incorporate them. Very simple published guidance could simply state that all brokers are authorized to rely on the procedures set forth in the private ruling pending the issuance of new guidance.

SIA also would like to see a broader reexamination of the withholding tax treatment of Section 302 distributions of publicly traded corporations and new proposed regulations on this topic as soon as practicable. New guidance should take into account that the overwhelming majority of the Section 302 distributions by publicly traded companies are properly characterized as made in exchange for an investor's stock and therefore should not result in the collection of a withholding tax.

We would welcome the opportunity to discuss this matter with you further if you would find it helpful as you consider our request. Please do not hesitate to

call me at 202-216-2031 or contact me by email at pmcclanahan@sia.com.
Thank you for your assistance.

Sincerely,

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

Cc: Hal Hicks
Carl Cooper