



August 20, 2013

***Via electronic delivery***

Mr. Danny Werfel  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

RE: Comments on Draft Forms 1099-R and 5498; Tax Year 2014 (June 20, 2013)

Dear Commissioner Werfel:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> and the American Bankers Association<sup>2</sup> (“ABA”) appreciate the opportunity to comment on the draft Internal Revenue Service (“IRS”) Forms 1099-R and 5498.<sup>3</sup> The IRS is proposing to require additional information in Form 5498 about certain specified assets in individual retirement accounts (“IRA”). These specified assets include securities and options not traded on an established securities market, real estate, ownership interests in companies, partnerships, trusts, or other entities not traded on an established securities market, and other assets without a readily available fair market value.

Many of our member institutions are responsible for completing and submitting these forms to the IRS when acting as custodian or trustee of an IRA. As such, we would like to make practical comments on any potential changes to these forms in the shared desire to make them more workable.

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<sup>1</sup>SIFMA brings together the shared interests of securities firms, banks, and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

<sup>2</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s \$14 trillion banking industry and its 2 million employees. Learn more at [aba.com](http://aba.com).

<sup>3</sup> Form 5498 reports contributions, including any catch-up contributions, required minimum distributions, and the fair market value of an IRA account. Form 1099-R reports distributions from IRA accounts to recipients.

### **Timing**

We urge the IRS to delay any proposed changes to the forms until January 1, 2015, at the earliest. The draft forms are intended to report IRA contributions, distributions, and fair market value of assets in calendar year 2014. Unfortunately, the effective date of 2014 does not give sufficient time for IRA custodians and trustees to design, build, and implement the systems and programming changes that are necessary to capture and report the new information required once the draft forms are made final.

In particular, for Form 1099-R, our member firms will need to be able to identify systematically distributions of non-cash assets or assets that do not have a readily available fair market value from the first potential distribution date (i.e., January 1, 2014). It would not be possible to recreate systematically this information after the fact. Thus, if the effective date is not delayed, our member firms would have to revise the distribution forms and modify the tax reporting systems to make them fully operational by January 1, 2014, in order to begin capturing the data for distributions on or after that date. The January 1, 2014, effective date applies even though firms would not need to report the information on the form until January 2015. Given these constraints, there is simply not enough time in 2013 to complete the necessary preparations.

### **Form 5498 Comments**

Draft Form 5498 includes new boxes 15a, *FMV of Certain Specified Assets*, and 15b, *Code(s)*. These new boxes are to be used to report the fair market value (“FMV”) of investments in the IRA that are specified by category codes in box 15b (codes A-H). Code A refers to “stock or other ownership interest in a corporation that is not readily tradable on an established US or foreign securities market.” We seek clarification of the term “readily tradable.” Does this term mean that the security has been traded once in the past year, month or week? Some securities traded on the over-the-counter exchanges are traded only every few months. Codes C and E refer to “ownership interest” in limited companies, partnerships, trusts and similar entities. A further definition of this term would be helpful.

We would ask that the IRS confirm that when issuing the annual statement of FMV, even if the IRA account owner holds one of the types of investments indicated in codes A-H, the provider need not issue a Form 5498 to the client but may continue to send the client a qualifying substitute or composite substitute statement.

### **Form 1099-R Comments**

Draft Form 1099-R introduces a new code K for distribution of assets other than cash. We note that the draft instructions clearly state that code K applies to non-cash distributions that include “stocks, short or long-term obligations, ownership interests in limited liability companies (LLCs), partnerships, trusts, or similar entities, not readily tradable on an established US or foreign securities market, real estate, or option contracts or similar products not offered for trade on an established US or foreign option exchange.”<sup>4</sup> We, therefore, assume that code K is to be used when making any non-cash distribution to the client from a traditional or a Roth IRA.

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<sup>4</sup> Draft 2014 Instructions for Forms 1099-R and 5498, page 16.

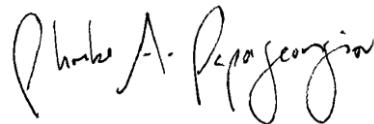
The instructions state that code K can be used in conjunction only with distribution code 1 - *Early distribution, no known exception*, code 2 - *Early distribution, exception applies*, code 4 - *Death*, and code 7 - *Normal distribution*. There is some confusion over whether code K would also apply to direct rollovers. We, therefore, seek clarification that code K only applies to distributions to IRA account holders or beneficiaries, and not distributions that are direct rollovers. In other words, an IRA custodian or trustee would never use both code K and code G - *Direct rollover and rollover contribution*.

SIFMA and ABA appreciate your consideration of our collective views and concerns on the draft forms. Please do not hesitate to contact Lisa Bleier at (202) 962-7329 or [lbleier@sifma.org](mailto:lbleier@sifma.org), or Phoebe Papageorgiou at (202) 663-5053 or [phoebep@aba.com](mailto:phoebep@aba.com), if you have any questions or if we can be of further assistance.

Sincerely,



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