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Dear Mr. Sweeney and Mr. Musher,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is writing to discuss a critical, time sensitive issue that financial institutions are currently facing as they try to obtain the required tax documentation under Chapters 3 and 4 from their population of legal entity clients.

Industry Background

A large portion of the client base for investment banks is the investment fund community. The general business set-up of mutual funds, hedge funds, or private equity funds (collectively, “investment funds”) is that the investment fund, itself, does not have employees. Rather, the investment manager² of the funds (“Investment Manager”) often acts as agent for the investment funds and handles the negotiation and execution of all legal arrangements for the fund entities to allow the investment funds to transact business. The Investment Manager either acts directly as the agent for the investment funds with respect to legal matters or the Investment Manager contracts with other agents, such as a fund administrator, to act on its behalf (together

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. 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 The Investment Manager may or may not be an authorized signer of the tax form for the investment fund. However, the Investment Manager is usually authorized to act on behalf of the investment fund in opening accounts at banks and securities firms and in presenting documentation respecting the investment fund to the withholding agent as part of the account opening process.

“authorized representative” of the investment fund). These business relationships are well known as a regulatory matter, and this is why the anti money laundering/know your customer (“AML/KYC”) rules generally require an investment bank to perform AML/KYC diligence only on the Investment Manager, and not the investment funds. Some fund complexes are so large that an Investment Manager may act on behalf of thousands of funds. These Investment Managers have account relationships with numerous investment banks. In order to streamline the AML/KYC process and other administrative tasks, including the delivery of tax documentation, many Investment Managers have contracted with third party document repositories, such as Markit, (“document repository”)³ to house documentation that investment banks typically request as part of new account set-up and ongoing maintenance. The authorized representative of the investment fund⁴ uploads electronically the relevant documentation to the document repository and then “permissions” specific investment banks (“withholding agent”) to access the documents on the document repository when a request is made for documents. Electronic delivery of the documents takes place when an authorized bank accesses the electronic version of the tax documentation.

The current situation in the marketplace is that some withholding agents believe that the relevant Treasury regulations regarding electronic delivery provide sufficient guidance to allow them to validate documents obtained from document repositories under similar circumstances to those outlined below. Other withholding agents, however, have concluded that they cannot accept forms from document repositories until the IRS issues affirmative guidance that specifically addresses the requirements for making an electronic delivery via a document repository. These withholding agents are concerned about the potential under withholding liability that exists if the IRS determines that these forms were not obtained in a proper manner.

³ One such repository is Markit Group Ltd. While this letter addresses third party document repositories that are currently used to house tax and non-tax documentation to facilitate AML/KYC review, a similar analysis applies to document repositories created on the website of a client, authorized representative or the local government where the client or its Authorized Representative directs a Withholding Agent to the relevant website. For purposes of this letter and proposal, the term "document repository" should be read to include internal websites, databases and repositories.

⁴ Although the letter focuses primarily on Investment Managers as users of document repositories, other market participants use these repositories as well, such as pension funds, banks, and securities firms. There is a growing trend in the marketplace towards the use of Document Repositories to reduce administrative costs for all of the market participants.

The lack of specific guidance regarding electronic delivery via repositories is creating significant hardships and customer relationship concerns for withholding agents and other market participants. Withholding agents that currently allow delivery of tax documentation via a depository may have a material competitive advantage over withholding agents awaiting specific guidance. It is vital that this matter be addressed by the IRS quickly to dispel uncertainty about the state of the law in this area. Under the FATCA due diligence requirements for pre-existing accounts, some withholding agents have to obtain well over 100,000 forms from their pre-existing legal entity clients to determine their FATCA status. Moreover, starting January 1, 2015, the FATCA procedures for documenting the FATCA status of new legal entity accounts went into effect; this adds to our members' concerns.

Proposal

It is the view of SIFMA that, if the following procedures are followed, financial institutions should accomplish a valid electronic delivery via a document repository under the applicable IRS electronic transmission regulations under IRC Section 1471 and 1441. Treas. Regs. §§ 1471-3(c)(6)(iv) & 1441(e)(4)(iv)(C). Specifically, we recommend that the IRS issue an FAQ or other guidance confirming that a withholding agent may treat such tax documents (e.g., Form W-8BEN-E) as being "scanned and received electronically" within the meaning of §1.1441-1(e)(4)(iv)(C). We do not believe that our proposal requires a change in existing regulations.

We respectfully request that the IRS issue such guidance as soon as possible to eliminate the uncertainty in the marketplace and allow for the orderly collection of the millions of tax documents that will need to be collected in the marketplace over the next 16 months. It should be noted that this proposal relates specifically to tax documents that are filled out by the investment fund or their authorized representative and manually signed and then uploaded to a document repository electronically. Thus, the proposal does not cover electronically signed Forms W-8. Of course, we would welcome any guidance that could be provided in this area as well given we anticipate electronically signed Forms W-8 becoming a growing trend in the marketplace.

Procedures

- 1) The U.S. tax forms that are being relied on are filled out manually and signed by or on behalf of the client (which may be an individual acting under a tax power of attorney or an office of the investment fund), as opposed to being completed through an electronic signature Form W-8 system, and are uploaded to the document repository;

- 2) The financial institution requests tax documents from or is otherwise authorized to access tax documents by the investment fund or the agent that it contacts in the ordinary course of business for information or documentation related to account opening for the client or to authorize transactions on behalf of the client.⁵ The client or its representative authorizes and directs the withholding agent's personnel to access the specific client's tax and other documentation within the document repository and such personnel will download images or portable document format (.pdf) of the information and tax documents of the investment fund via the web site. It is possible for more than one U.S. tax document to be housed on the site for a single investment fund, and this issue will be addressed below.

- 3) The withholding agent would be responsible for validating U.S. tax forms obtained from the document repository and for tracking changes in circumstances internally⁶;

- 4) The withholding agent anticipates taking one of the three following approaches to confirming that the tax form applies to the investment fund client's accounts at the withholding agent:

⁵ The withholding agent will generally contact the same representatives of the investment fund client that they would ordinarily contact to get a tax form from directly. Under our proposal, the course of dealings with the representative for trading and other activity, as well as the fact that the withholding agent is specifically authorized to access the document repository for tax and non-tax documents by their normal contact would be held sufficient to indicate that there is no reason to know that the party contacted and the document repository are not authorized to act on behalf of the client. Under these circumstances, it should not be necessary for a withholding agent to obtain confirmation that the authorized person is authorized to distribute the tax form through the document repository. Given that withholding agents are already downloading other AML/KYC information from such document repositories, the market has determined that this is a more efficient approach for all parties involved.

⁶ The document repository simply changes how the form is received electronically. It would not change the responsibility of the withholding agent to validate the form or make a determination as to whether there is reason to know that the tax form is valid by reviewing AML/KYC information obtained for the investment fund.

a) Before obtaining the tax form off of the document repository, the withholding agent would send an email to its contact for the investment fund requesting the U.S. tax form and that email would include the following language, or something similar to the following language:

“We request that you provide us with the appropriate U.S. tax form or forms for [investment fund name or names] with respect to any and all relationships with [withholding agent and its affiliates]. [To the extent that you provide us with a single U.S. tax form for an investment fund, we will apply such form to all relationships the fund has with withholding agent and its affiliates. To the extent you provide us with multiple U.S. tax forms, please provide us with information of which withholding agent relationships apply to which form.] If you direct us to a document repository where you store data, including U.S. tax forms, i) you are hereby agreeing to submit a new form to us (or direct us to the location of the new form) within 30 days if any certification on the form provided through the document repository becomes incorrect.;

b) If the withholding agent spoke to its contact over the phone and was granted access to obtain tax forms from the document repository, the withholding agent will send the following confirmation email to the authorized representative.

“Pursuant to our conversation, we obtained the tax form or forms for [investment fund name or names] located on the document repository. To the extent that the document repository had a single U.S. tax form for a client, we will apply such form to all relationships such fund has with the withholding agent and its affiliates. [The document repository had multiple U.S. tax forms for the following [investment fund name or names], please reply to this email and provide us with information of which withholding agent relationships apply to which form.] Please also reply to this email and confirm you are hereby agreeing to submit a new form to us (or direct us to the location of the new form) within 30 days if any certification on the form provided through the document repository becomes incorrect; or

c) If the withholding agent already had access to the document repository for the investment fund and downloaded tax forms without speaking to the authorized

representative ahead of time, the withholding agent will send the following email to the authorized representative.

“We obtained a tax form or forms for [investment fund name or names] located on the document repository while retrieving other information or documents respecting the investment fund(s). To the extent that the document repository had a single U.S. tax form for the investment fund(s), we will apply such form to all relationships such fund has with the withholding agent and its affiliates. [The document repository had multiple U.S. tax forms for the following [investment fund name or names], please reply to this email and provide us with information of which withholding agent relationships apply to which form.] Please also reply to this email and confirm, i) the tax form obtained from the document repository is the appropriate tax form for all investment fund(s) relationships with withholding agent and its affiliates; ii) you are hereby agreeing to submit a new form to us (or direct us to the location of the new form) within 30 days if any information/certification on the form provided through the document repository becomes incorrect.”

5) Under the above procedure, there should be no requirement that the withholding agents or the document repository meet the requirements under Temp. Reg. section 1.1471-3T(c)(9)(i).

SIFMA appreciates your consideration of its collective views and concerns regarding this important issue. Please do not hesitate to contact me at (202) 962-7300 ppeabody@sifma.org if you have any questions or if we can be of further assistance.

Sincerely,



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