



June 30, 2016

Leni C. Perkins  
Attorney-Advisor  
Department of the Treasury  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224  
[leni.c.perkins@irs.counsel.treas.gov](mailto:leni.c.perkins@irs.counsel.treas.gov)

**Re: Comments on Form W-8BEN-E Requestor Instructions and Form W-8-IMY**

Dear Ms. Perkins,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide comments to the Internal Revenue Service (“IRS”) regarding the Instructions for the Requestor of Forms W-8 and the Form W-8IMY.

**Requestor Instructions for Form W-8BEN-E**

Part III of Form W-8BEN-E regarding “Claim of Tax Treaty Benefits” includes new checkboxes for the limitation of benefits (“LOB”) provisions that may be included in an applicable tax treaty. This inclusion is a substantial change compared to prior versions of this form and will entail significant effort to update systems and procedures to allow withholding agents to validate Forms W-8BEN-E that include a tax treaty claim. It is unclear to what extent a withholding agent is required to substantiate the accuracy of the LOB box checked, and we are concerned that withholding agents would need tax treaty expertise and information that they do not currently possess to fully validate these boxes. We also believe that without adequate implementation time

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<sup>1</sup> 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>.

this new requirement will result in a high level of failed treaty claims, which will give rise to over withholding. This requirement adds significant complexity to an already difficult form for which the error rate already is high. Accordingly, we request that the IRS consider adding the following guidance to the Instructions for the Requestor of Forms W-8:

Part III, Line 14(b):

The Form W-8BEN-E requests the payee's LOB code, which provides the specific reason supporting the payee's claim of eligibility for an LOB provision of the applicable treaty. However, the facts supporting the payee's choice of LOB code and the reasons why it qualifies for a particular LOB provision are not generally in the possession of the withholding agent. Accordingly, a withholding agent may accept a Form W-8BEN-E in which the LOB code is provided unless the withholding agent has actual knowledge that the LOB code is incorrect.

In addition, we request that the IRS consider adding the following transitional relief to allow both clients and withholding agents time to familiarize themselves with, and update systems and procedures to accommodate, these codes:

Part III, Line 14(b):

In order to allow the payee and withholding agents sufficient time to implement the new LOB codes, withholding agents may accept a treaty claim on a Form W-8BEN-E that does not contain the applicable LOB code prior to January 1, 2018. Further, withholding agents need not review LOB codes until January 1, 2018.

Part I of the Form W-8BEN-E regarding "Identification of Beneficial Owner" allows payees to select the option "Account is not a financial account" on Line 5. SIFMA believes that the inclusion of this status on the Form W-8BEN-E could be a source of confusion for clients completing the form, as the determination of whether a financial account exists is made primarily by the withholding agent. To illustrate, if a client checks this box when it holds a financial account, the form presumably would be invalid. Conversely, if a client fails to check any Chapter 4 box when it does not hold a financial account, we believe that the form should still be acceptable. We request that the IRS include language in the requestor instructions that reflects the preceding sentence.

## **Form W-8IMY and Instructions**

The following comments on the Form W-8IMY and its instructions relate to the version of the form currently in use. We anticipate submitting additional comments when the updated draft Form W-8IMY is released, but hope that the IRS will consider the following issues in drafting the updated form.

We request clarification on instances where Qualified Intermediaries (“QIs”) check combinations of boxes 14(b) through 14(f) are acceptable. It is not clear which combinations are acceptable. In addition, SIFMA requests that the IRS should update the Instructions for Form W-8IMY to clarify that box 14(e) does not need to be checked when the QI does not maintain accounts held by US non-exempt recipients. Certain withholding agents will not accept a Form W-8IMY if the QI does not check box 14(e) in cases where the QI maintains no accounts for US non-exempt recipients. This is an ongoing concern for our members and we request that the IRS specifically consider the IRPAC recommendation to include the following language in the instructions:

“You are not required to check box 14(e) if you do not have any U.S. account holders (i.e., you are not providing Forms W-9 or other information regarding U.S. account holders and you are not providing an allocation to a withholding rate pool of U.S. payees). Note, however, that if you do not check box 14(e) because you do not have any U.S. account holders at the time you complete the form, but later acquire a U.S. account holder, you will need to provide an updated Form W-8IMY to your withholding agent with box 14(e) properly completed.”

Some foreign intermediaries and flow-through entities provide no withholding statement (despite checking a box stating they will) or – more frequently – provide withholding statements that are incomplete. SIFMA requests that the IRS issue an example of a withholding statement that is complete. SIFMA would be happy to assist the IRS in drafting such a sample withholding statement.

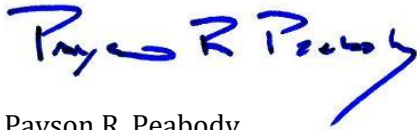
SIFMA further requests that the IRS consider adding instructions that allow a withholding statement to incorporate, by reference, data included on any withholding certificates provided for the beneficial owners. Treas. Reg. §§ 1.1471-3T(c)(3)(iii)(B)(1) and 1.1441-1T(e)(3)(iv)(B) state

that a withholding statement forms an integral part of the withholding certificate. Since the regulations state that the withholding statement is an integral part of the withholding certificate, it should be the case that certain information on withholding certificates need not be repeated on a withholding statement.

Boxes 14(e)(i) and (ii) should not be a subset of box 14(e). Box 14(e) is for QIs issuing Forms W-9, while boxes 14(e)(i)-(ii) are for QIs that give a pool of US payees. The certifications for each are different and we believe belong in separate sections.

We appreciate the IRS's consideration of our comments. If you have any questions or would like to speak further about our comments, please do not hesitate to contact me at (202) 962-7333 or [ppeabody@sifma.org](mailto:ppeabody@sifma.org).

Sincerely,

A handwritten signature in blue ink that reads "Payson R Peabody". The signature is written in a cursive, slightly stylized font.

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