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Invested in America

June 11, 2015

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Office of the Associate Chief Counsel (Financial Institutions & Products)
Internal Revenue Service
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Re: Comments on Reporting for Premium; Original Issue Discount on Tax-Exempt Obligations; Basis and Transfer Reporting by Securities Brokers for Debt Instruments and Options. Comments on Complex Debt Reporting Requirements.

Dear Ms. Lew,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide comments regarding the final and temporary regulations relating to information reporting by brokers for bond and acquisition premium, and for transactions involving debt instruments and options, including the reporting of original issue discount ("OID") and acquisition premium on tax-exempt obligations, the treatment of certain holder elections for reporting a taxpayer's adjusted basis in a debt instrument, and transfer reporting for Section 1256 options and debt instruments (the "2015 regulations").[2] We are also submitting comments regarding the upcoming reporting requirements for complex debt. We appreciate your attention to our concerns and questions relating to various cost basis reporting issues in the past, and for the opportunity to provide additional feedback.

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 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.
[2] 80 Fed. Reg. 13233 (Mar. 13, 2015).

Effective Date of Constant Yield Assumption for Market Discount Reporting

SIFMA appreciates the change made by Treasury Regulations §1.6045-1T(n)(11)(i)(B) requiring brokers to report the information under Treasury Regulations §1.6045-1(d) by assuming that a customer has made the election described in Treasury Regulations §1.6045-1(n)(4)(iii) (the election to accrue market discount based on a constant yield). The change applies to a debt instrument acquired on or after January 1, 2015. Because the prior Treasury regulations required a broker to assume a customer was accounting for market discount on a ratable basis, there is significant risk of confusion among ordinary investors due to the different treatment of debt instruments purchased in 2014 versus 2015 and later. Given that the election to accrue market discount under Section 1276(b)(2) is made on an instrument by instrument basis, it is possible that a customer could hold a tax lot of debt instruments purchased on December 30, 2014 and another tax lot with the same CUSIP purchased on January 2, 2015 and held at the same broker, and the customer would receive information returns from the broker calculating accruals using different assumptions. Indeed, worse than the possibility of confusion regarding different accrual methodologies, SIFMA is concerned that some holders may not notice the discrepancy and thus fail to reconcile the methodologies on their personal income tax returns. For the sake of consistency and to minimize holder confusion and erroneous taxpayer returns, SIFMA respectfully requests that the constant yield presumption be extended to debt instruments that both (i) were acquired with market discount on or after January 1, 2014, and before January 1, 2015, and (ii) for which the broker has not provided any reporting on Form 1099 that reflects accruals on a ratable basis (*i.e.*, the debt had not been subject to any partial principal payments and the customer had not provided notice to the broker of an election to currently include accrued market discount under Treasury Regulations §1.6045-1(n)(4)(ii)). We believe that applying the taxpayer favorable presumption promulgated in the 2015 regulations to those market discount debt instruments purchased on or after January 1, 2014 and before January 1, 2015 that have not already been reported under the ratable method would result in greater consistency and predictability for holders, less effort spent reconciling broker reporting, and more accurate taxpayer returns.[3]

[3] Moreover, we believe this request is consistent with IRS guidance regarding the timing of the constant yield election and timely notice thereof to brokers. Pursuant to Rev. Proc. 92-67 (Section 2.12), the constant yield election must be made no later than the due date (including extensions) for the income tax return for the earliest taxable year for which the taxpayer is required to determine accrued market discount. The Rev. Proc. indicates that the election remains available through the year that certain events occur, including an election under Code section 1278(b), a partial principal payment on the bond, or the existence of net direct interest expense causing deferral under Section 1277(a). In turn, notice of the election would be timely through the end of the calendar year in which the election was effective, pursuant to Treasury Regulations §1.6045-1(n)(5)(ii)(B). Thus, for many of the securities in question that have not already been subject to reporting on a ratable basis, the taxpayer could still affirmatively

Transfer Statements for Section 1256 Options

SIFMA is appreciative of the change made by Treasury Regulations §1.6045A-1T(e) requiring transfer statements for Section 1256 options. We are requesting clarification regarding the Form 1099-B reporting obligations of the transferor and transferee firms. Specifically, we request clarification that with respect to the transfer of a covered Section 1256 option, the transferee, not the transferor, has the Form 1099-B reporting obligation for the year of the transfer. The current regulations under Treasury Regulations §1.6045-1(c)(5)(i)(C) require a broker to report on Form 1099, *inter alia*, a holder's net unrealized profit or loss in all open regulated futures contracts at the end of the preceding calendar year. Absent further clarification, it would appear that a transferring broker would nonetheless have to report the net unrealized profit or loss on a transferred position, potentially creating duplicative reporting and causing confusion both for the taxpayer and the IRS as each reconciles the double-reporting data. We believe that information furnished to a transferee as required by Treasury Regulations §§1.6045A-1(b) and 1.6045A-1T(e)(2) is sufficient to enable the transferee to perform any required Form 1099-B reporting for the year of the transfer, and that requiring the transferee broker to make that reporting would alleviate the confusion under the current rule.

To help illustrate this issue, we have included an example below:

- Assume a covered section 1256 option is acquired in 2014 with an original cost basis of $10,000, and the option has a 2014 year-end fair market value (FMV) of $12,000 and a 2015 year-end FMV of $13,000. Also assume the option is closed in 2016 at a FMV of $13,500.
- 1099-B Reporting is as described below:

2014

8: $0	9: $0
10: $2,000	11: $2,000

2015

8: $0	9: $2,000
10: $3,000	11: $1,000

2016

8: $3,500	9: $3,000
10: $0	11: $500

elect in to the constant yield method and still provide timely notice to their broker under the Section 6045 regulations. SIFMA believes that expanding the default presumption under the 2015 regulations to these debt instruments, rather than requiring the holder to affirmatively notify the broker, would be appropriate.

In this example, pursuant to Treasury Regulations §1.6045A-1T(e)(2), if the asset was transferred in 2015 the transferor would provide a transfer statement including the $10,000 cost basis under paragraph (e)(2)(i) and the 2014 year-end FMV of $12,000 under paragraph (e)(2)(ii). Without clarification, there is the possibility of duplicate reporting for 2015 under Treasury Regulations §1.6045-1(c)(5)(i)(C) with respect to the $2,000 unrealized gain reported in box 9. However, with the additional information required under Treasury Regulations §§1.6045A-1T(e)(2)(i) and (ii) of the 2015 regulations, the transferee will have the information necessary to report the $2,000 unrealized gain in box 9. In order to avoid the potential that both the transferor and the transferee will issue a 1099-B for the same amount, SIFMA asks that the IRS add a clarifying rule that would confirm that the transferor is not responsible for issuing a Form 1099 for the tax year of transfer, and that a transferee firm is solely responsible for reporting on a section 1256 option upon a transfer between brokers In effect, the transferor should be responsible for reporting for years prior to the transfer (2014 in the example above), and the transferee should be responsible for reporting for the year of the transfer and any subsequent years (2015 and 2016 in the example above).

Reporting of Original Issue Discount on a Tax-Exempt Obligation

Treasury Regulations §1.6049-10T requires a payor to report OID and acquisition premium amortization on a tax-exempt obligation acquired on or after January 1, 2017. SIFMA respectfully requests that Treasury affirmatively provide that beginning with reporting for calendar year 2017, in addition to the requirement to report with respect to a tax-exempt obligation acquired on or after January 1, 2017, a payor be permitted, at its option, on an instrument-by-instrument basis, to report OID with respect to tax-exempt obligations acquired prior to 2017, and to report acquisition premium amortization with respect to covered tax-exempt obligations acquired prior to 2017.

Compensatory Options and Other Equity-Based Compensation Arrangements

SIFMA has previously filed comments on October 4, 2013 and September 23, 2014 requesting that the IRS allow, but not require, brokers to continue the practice of making basis adjustments to account for the income component of compensatory options and other equity-based compensation arrangements. Furthermore, in order to provide notice to the IRS and taxpayers that basis has been adjusted, we recommended that the IRS should add an indicator on the Form 1099-B

to identify the sale of compensation-related stock for those brokers that choose to adjust basis. Upon transfer, brokers generally agree to send to the receiving broker the costs unadjusted for the income component, making it unnecessary to add an indicator to transfer statements.

To illustrate this issue, consider taxpayers who, when performing a partial cashless exercise, do not sell the entire position. Advisors may be instructed to sell only enough shares to cover the exercise and taxes and keep the remainder of the company stock. While some of those taxpayers may be sophisticated enough to recall at tax time that they will have an adjustment from an exercise in the prior year, others will not, and furthermore, even those sophisticated investors will likely struggle to recall years later which tax lots in their account require a basis adjustment. In addition, some taxpayers may gift shares of company stock to children or grandchildren, and the donees will likely face the same difficulties identifying the circumstances under which the donor's basis should be adjusted for taxes paid in prior years.

We respectfully ask that the IRS reconsider this issue as we believe it is important clarification for those taxpayers who may otherwise be under- or over-reporting based on incomplete information. Currently, clients are required to account for the income component themselves on their Form 8949, information which they previously may have received from their broker. Lack of clarification will be particularly detrimental for those investors who do not engage professional tax and accounting experts to prepare their returns, and for the unsophisticated taxpayer not possessing a deep understanding of compensatory stock options.

Challenges in Calculating Basis and Income Adjustments

The requirement to calculate bond premium, acquisition premium and OID puts an additional reporting burden on holders and brokers. In many cases, vital information to perform these calculations is difficult to obtain, and in some cases may be wholly unavailable. This is an issue that affects both simple debt that became reportable beginning for 2014 and complex debt due to be reportable beginning for 2016 The following examples highlight several types of securities for which adequate information is unavailable; SIFMA respectfully requests that the Service consider providing an exemption from broker reporting obligations or a safe harbor for good faith attempts at compliance.

Calculating OID: Notwithstanding the OID information reporting rules for issuers in Treasury Regulations §1.1275-3, actually obtaining the data necessary to calculate OID is difficult in many cases, leaving holders, brokers, and the IRS with incomplete or inconsistent information reporting. While it is sometimes possible to obtain the required information from third-party sources, there are certain securities, particularly in the tax-exempt market, for which little or no data are available. Unfortunately, many tax-exempt bond issues predate the Internet, and many bonds issues in the early 1990s are still actively traded or transferred between brokers. Because tax-exempt securities are not reported in IRS Publication 1212, holders and brokers have to rely on copies of prospectuses and pricing supplements (if they are available) to find the issue price, which is necessary to calculate OID. Finding these documents is both difficult and time consuming. Furthermore, some issuers were not required under the securities laws to publish the bond's issue price under certain circumstances (*i.e.*, instruments that were treated as "NRO," or "Not Reoffered," under SEC Rule G-34(a)). The Securities and Exchange Commission ("SEC") has changed that publication exception in a recent ruling[4]; however, that change was not retroactive, and did not require any new information to be made available with respect to instruments that were already issued as of its effective date in 2012.

Bonds from Foreign Issuers: Another difficulty for taxpayers and brokers will be gaining access to information about debt issued by foreign entities. While foreign issuers generally are required to file a prospectus with the SEC if the obligations are offered in the U.S., foreign entities often lack information about federal tax consequences to U.S. holders. Taxpayers and brokers may be required to make broad assumptions when reporting income and adjustments to income on bonds from foreign issuers.

Comparable yield and projected payment schedule: The existence of certain contingencies with respect to the timing or amount of payments on a debt instrument could cause that instrument to be considered to be a "contingent payment debt instrument" or "CPDI" under Treasury Regulations §1.1275-4 that is potentially accounted for in accordance with the "non-contingent bond method." Treasury Regulations §1.1275-4(b)(4)(iv) requires consistency among issuers and holders of CPDIs , which is intended to be achieved by requiring issuers to provide, or make available upon request, the necessary information

[4] SEC Release No. 34-67908 (Sept. 21, 2012).

under Treasury Regulations §1.1275-2(e). However, in practice, issuers do not always provide or make this information available upon request despite the regulatory requirement. Unlike the calculation of OID, which can be computed in a spreadsheet (provided the required information is available), the creation of a projected payment schedule for a CPDI requires information known only by the issuer, including the issuer's comparable borrowing cost and its internal estimations of the contingencies to which the bond is subject.

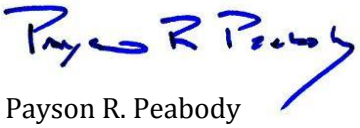
Tax treatment of structured securities: In recent years, structured products have become a popular investment vehicle. However, there is some uncertainty about their tax treatment, and brokers are not in a position to analyze issuer tax disclosures to choose a tax treatment from among multiple uncertain positions.

In light of the aforementioned difficulties, SIFMA respectfully requests that the IRS: (a) issue an exemption from the cost basis reporting requirements for both complex and simple debt, on an instrument by instrument basis, when after good faith attempts to locate the information necessary to calculate proper accounting for the debt instrument, either the prospectus or reliable third-party data is not readily available, and (b) provide a safe harbor for brokers that provides for reporting for structured securities in reliance on the intended tax treatment of the issuer, where such tax treatment is disclosed in the relevant offering documents, or where there is no offering document or no intended tax treatment is disclosed, the safe harbor would allow brokers to treat the security as noncovered. Brokers are able to fulfill their reporting obligations only where the information necessary to calculate accruals on, or properly characterize the tax treatment of, a security is available. Clarifying the rules to confirm that, in the absence of clear data to support those accruals or treatment, a broker is not required to treat a security as a covered security will ensure that the reporting made to taxpayers and to the IRS is as accurate and consistent as possible.

* * *

We appreciate the IRS's continued work relating to cost basis reporting requirements and consideration of our additional questions. We also would be happy to meet to discuss the foregoing recommendations at your convenience. Please do not hesitate to contact me or Jillian Enoch at (202) 962-7300 if you have any questions or if we can be of further assistance.

Sincerely,



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