

July 8, 2008

Via Electronic Mail

Mr. W. Thomas Reeder
Benefits Counsel
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20005

Dear Tom:

On behalf of SIFMA¹, we are writing in connection to the recently released Notice 2008-30 (“Notice”), which provided guidance on distribution issues raised by the Pension Protection Act of 2006, which became effective in 2008. SIFMA members appreciate the clarifications provided in the Notice and applaud the efforts of the staff at the Internal Revenue Service (“Service”) and Treasury. As our members implement new policies and procedures consistent with the Notice, we are writing to request that additional clarification is provided in the following areas: spousal beneficiaries and inherited IRAs, non-spousal beneficiaries and rollovers, recharacterizations and rollovers of after-tax amounts.

Spousal beneficiaries and workplace plans

Notice 2008-30 clearly states that spousal beneficiaries are permitted to roll over an eligible rollover distribution from a workplace plan to an IRA designated as an inherited “Roth” IRA account. However, the Notice does not confirm that a spousal beneficiary may also roll over a distribution from such a plan to an inherited Traditional IRA. SIFMA members believe that a confirmation that spouse beneficiaries can generally roll over to Traditional inherited IRAs is needed. Previously, the IRS has permitted spousal beneficiaries to roll over distributions to an inherited Traditional IRA through private letter rulings but the issue has not been addressed in a form of guidance that can be relied upon universally by IRA beneficiaries and their IRA custodians. In addition, Notice 2008-30 indicates in Q&A #1 that a plan participant may make an “indirect rollover” to a Roth IRA provided the rollover is completed within the mandatory 60 day time period. Confirmation is needed and requested with regard to a spousal beneficiary’s ability to do an indirect rollover of a plan distribution within the 60 day time period to either an inherited Traditional IRA or an inherited Roth IRA.

¹ The Association, or “SIFMA,” brings together the shared interests of more than 650 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.

Non-spousal beneficiaries and IRAs

Another inconsistency raised by the Notice is the ability of a non-spouse beneficiary to rollover from a plan to an inherited Roth IRA and from an IRA to an inherited Roth IRA. The Notice provides that non-spouse beneficiaries may directly roll over eligible rollover distributions from plans to inherited Roth IRAs. However, non-spouse beneficiaries do not have the ability to roll over or convert distributions received from a deceased IRA owner's Traditional IRA to an inherited Roth IRA. SIFMA requests that the IRS clearly address the issue of whether non-spouse beneficiaries may roll over, or convert, from a deceased IRA owner's Traditional IRA inherited by a beneficiary to an inherited Roth IRA.

To the extent a non-spouse beneficiary is permitted to roll over from an inherited Traditional IRA to an inherited Roth IRA, SIFMA encourages the IRS to require non-spouse beneficiaries to do these rollovers as direct trustee to trustee transfers (conversions), consistent with the rules for workplace plans. This would benefit beneficiaries because it would minimize mistakes as well as discourage leakage of retirement assets.

Reporting

Finally, SIFMA would ask that IRS provide additional clarification regarding the obligations of the plan to provide adequate information regarding the intent of the distributee. The Notice confirms that the plan administrator is not responsible for determining eligibility to make a rollover to a Roth IRA. SIFMA would agree with this approach but believes that if a participant (or spouse or non-spouse beneficiary) elects to directly roll over an eligible rollover distribution to an IRA, that plan administrators be required to designate the receiving IRA and/or type of receiving IRA to which the direct rollover is being made. This is critical to insure that rollover amounts are deposited in accordance with a participant's (or spouse or non-spouse beneficiary's) intent into an IRA account and/or to the correct IRA account

Recharacterizations

Notice 2008-30 also addresses the ability of the distributee to recharacterize a rollover contribution if the distributee is not eligible to rollover to a Roth IRA. This answer should be broadened to generally permit recharacterization of rollover contributions to correct for other types of mistakes and situations. Given the lack of supporting documentation that generally accompanies a rollover check or other deposit, the rollover amount can easily be deposited into an IRA other than the one the participant had intended. It is critical that IRA account holders be permitted to direct IRA Custodians to recharacterize misdirected rollover amounts plus earnings from one type of

IRA to another type of IRA (Traditional to Roth / Roth to Traditional) and not limit this option merely to cases where there is a failed conversion due to ineligibility. Such recharacterizations would be done in accordance with the standard recharacterization rules as described in the section 408A regulations. It also needs to be made clear that this same corrective option would extend to a rollover deposit into an inherited IRA.

July 8, 2008

Rollovers of after-tax contributions

In Q&A#1 of Notice 2008-30, it states that a plan participant may perform an indirect rollover of an eligible rollover distribution to a Roth IRA provided the rollover is completed within the mandatory 60 day time period. There has been some confusion as to whether this indirect rollover option equally extends to the portion of an eligible rollover distribution that is attributable to previously made after tax contributions. In addition, there is some confusion as to whether the option to “make up” the 20 percent withholding is available when an eligible rollover distribution is paid to a participant which is subsequently rolled over to a Roth IRA within 60 days. This option is available when an eligible rollover distribution is paid to a participant and subsequently rolled over to a Traditional IRA.

Finally, there is some confusion as to whether an employer is required to offer the option to roll over to **both** a Roth IRA and to a Traditional IRA. Q&A # 4 states that an employer is required to offer the option to do a direct rollover to a Roth IRA. Currently, pursuant to Q&A #10 of regulation 1.401(a)(31)-1, an employer is **not** required to divide an eligible rollover distribution and perform a direct rollover to two different eligible retirement plans for a participant. Clarification is needed as to whether the referenced 401(a)(31) regulation supersedes the requirement to offer a direct rollover option to a Roth IRA as described in Q&A # 4 of Notice 2008-30 or visa versa. Clarification is particularly important for participants who have previously made after-tax contributions to a plan and are now eligible to receive an eligible rollover distribution. In many instances, participants want the option to both directly roll over (i.e. convert) the after-tax portion of their distributions to a Roth IRA and directly roll over the pre-tax monies to a Traditional IRA without triggering taxable income for the year that these two rollovers occur.

Revision of 402(f) Notice

SIFMA is pleased that Treasury and the Service have taken the initiative to create two 402(f) notices – one for plans that do not opt for Roth accounts and one for plans that do decide to offer a Roth account to their participants. SIFMA would be pleased to offer any assistance in this regard, including ideas on how to simplify the content to help ensure plan sponsors and participants are able to understand their options under the plan.

Thank you for your consideration of our comments and suggestions. Again, please do not hesitate to contact me if you need additional information or have questions about this submission.

Sincerely,

A handwritten signature in black ink, reading "Liz Varley". The signature is written in a cursive, flowing style.

Liz Varley, Staff Advisor
Retirement & Savings Committee

cc: David Ziegler, IRS