

**TESTIMONY OF**  
**SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION**  
**BEFORE THE**  
**NEW YORK STATE SENATE COMMITTEE ON FINANCE AND**  
**SENATE STANDING COMMITTEE ON INVESTIGATIONS AND**  
**GOVERNMENT OPERATIONS**  
**HEARING ON**  
**TAX REFORM: REDUCING THE TAX BURDENS AND PROMOTING**  
**ECONOMIC GROWTH**

**October 4, 2013**

The Securities Industry and Financial Markets Association<sup>1</sup> (“SIFMA”) appreciates the opportunity to provide input on tax reform. It is our goal to suggest tax policy that would make New York a more competitive and advantageous place to do business. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. These companies are engaged in communities across the country and New York in particular, to raise capital for businesses, promote job creation and lead economic growth.

SIFMA supports reforms that address the “tax effort” required of New York’s workers and businesses, which continues to be one of the highest in the nation and which, among other factors, contributes to more intense competition from other financial hubs, both nationwide and globally. For example, our New York City based members pay **7.1%** (NYS corporation tax) + **8.85%** (NYC corporation tax) + the MTA surcharge of **1.53%** (original 9% tax rate x 17%) for a combined NYS/NYC total of **17.48%**.

SIFMA has long advocated for tax modernization – updating the rules to accommodate technological advances, market changes, passage of two major federal laws: Gramm-Leach-Bliley and Dodd-Frank, and simplification - combining the two separate sections of the tax code (Article 32, the bank tax and Article 9-A, the general franchise tax) into one set of rules for our industry. In

---

<sup>1</sup> 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 has offices in New York and in Washington, D.C. For more information, visit <http://www.sifma.org>.

our view, this is the right time to adopt many of the modifications proposed in the Department of Taxation and Finance's 2011 Corporate Tax Reform plan, which is supported by the majority of our members. This proposal reflects the productive dialogue between business and government, which provides certainty, clarity and less burdensome rules. As the Committees consider reforming and modernizing the current state tax laws, we encourage consideration of the following issues, as discussed below.

**Gain in Efficiencies from 2011 Corporate Tax Reform Proposal includes:**

- 1) Reduction of Returns Filed - Under the revised proposal, many groups of affiliates would now be filing one combined tax return instead of several groups of returns. This would significantly ease the administrative burden on both the Department and taxpayers.
- 2) Elimination of the Substantial Intercompany Transactions Test - This burdensome and involved test determines whether a combined return needs to be filed among Article 9-A affiliates. Thus, removal of this test will result in a substantial decrease in administrative burdens for Article 9-A taxpayers and for the Department.
- 3) Simplification of Net Operating Loss ("NOL") Rules - The proposed tax reform would simplify the rules concerning NOLs. Currently, they are difficult to apply and administer, in part because there is a limitation based on the federal net operating loss source year or amount. The new rules would simplify the NOL deduction, in part by removing this difficult-to-apply restriction.
- 4) Expense Attribution Election - Determining what portion of expenses are directly and indirectly attributable to subsidiary capital has been a considerable source of disagreement under Article 9-A, causing audit delays and litigation. Under the revised proposal, an election to disallow a certain percentage of expenses is advanced. To the extent that such percentage is reflective of the cost to carry such capital, i.e., a percentage lower than the 40% that is currently in the proposal, would be a very meaningful option to taxpayers, thereby alleviating the disputes on audit. Such election would significantly decrease the administrative burden, audit delays and litigation.

In addition to the aforementioned efficiencies and benefits for taxpayers provided by the Corporate Tax Reform Proposal, we request your consideration of the following recommendations, which would provide greater administrative relief:

**Recommendations for Additional Efficiencies:**

- 1) Eliminate the Stock Transfer Tax - The Stock Transfer Tax should be eliminated as it is redundant and unnecessary. It is not currently generating any revenue for New York State since this tax is instantly rebated to taxpayers, so the elimination of this tax will not result in any revenue reduction for the state.
- 2) Reduce the Corporate Income Tax Rate - Reduce the corporate tax rate to address the "tax burden" of doing business in the state, which when NYC tax is added is the highest in the nation.
- 3) Encourage New York City Conformity - The state and city tax rules should mirror each other for ease of compliance and administration and to provide certainty. This will also facilitate joint tax audits, as noted below.
- 4) Federal Conformity - New York State should conform to the federal bonus depreciation rules.

- 5) Simplify the MTA Surcharge - Having a different computational base for the MTA surcharge makes no sense. Conforming this base would simplify the computation. If revenue is a concern with respect to conforming the base, then the rate (not the base) should be adjusted accordingly.
- 6) Eliminate the NYC Unincorporated Business Tax (“UBT”) - The UBT should be eliminated for entities that are majority-owned by a corporation filing in New York City. Alternatively, a full credit should be allowed at the corporate level for UBT paid for wholly-owned entities; or the UBT should conform (e.g., apportionment, allocable income) to corporate tax law so that the same income is clearly subject to tax and therefore fully creditable.
- 7) Clarify Asset Management Fees - The Tax Reform Proposal rules regarding asset management fees should be extended to cover similar services provided to entities that do not qualify as regulated investment companies. Often, asset management services are provided to retirement plans, pension plans and other types of pools of investment where there may be difficulty in identifying the location of the ultimate beneficiary of the services.
- 8) Provide Allowances Related to Sourcing of Receipts - The proposed legislation provides that receipts from services would generally be sourced to New York if the customer is located in the state. If the specific customer information cannot be obtained, the legislation should provide that it may be reasonably approximated. Similar language is in the current Massachusetts proposed legislation (S. 1766 Section (f)), as well as current California and proposed New Jersey regulations. This provides an option to develop alternative methods where information is difficult to obtain, subject to New York’s right to audit.
- 9) Extend Certain Receipts as a Result of a Securities Correspondent and other Institutional Relationships - The proposed rules regarding sourcing of receipts generated by transactions covered by IRC §475 should be extended to cover receipts from similar services provided to introducing brokers and other institutional clients in a correspondent clearing relationship. Often, securities brokerage services are provided to the introducing broker’s customer directly and indirectly by a correspondent clearing firm. The use of the 8% qualified financial instrument election would be equally necessary to further the goals of ease of compliance and audit administration.
- 10) Clarify Certain Debt Instruments as Investment Capital - The Tax Reform Proposal rules should be revised to provide that debt instruments held for a specific time frame-such as a year or more than 6 months-will qualify as investment capital. This rule will not apply to debt instruments held in connection with broker/dealer activities.
- 11) Clarify Sales Tax Information Services Soft Dollar Accounts - The application of the sales tax to research purchased by an investor from a soft dollar account with a broker/dealer should be clarified.
- 12) Address Sales Tax on Cloud Computing and Internet Transactions - Among the issues that should be addressed are: (1) what constitutes a taxable license of software; and (2) how to source services provided over the Internet. When a company provides services through an internet server that a customer accesses by inputting data, the customer has neither possession nor control of the provider’s software, and the transaction should not be treated as a taxable license of the software.

**Incentive for further growth:**

- Make the Investment Tax Credit (“ITC”) Permanent - The ITC encourages businesses to expand office facilities and hire personnel for employment in New York State. The ITC has the effect of lowering the effective tax rate paid by businesses with significant operations in New York State. As you know, the State and City combined statutory tax rates create the highest effective tax rate in the United States. SIFMA appreciates that this incentive has been renewed and amended over the years. However, SIFMA urges the Legislature and Governor to make the ITC permanent and make one technical correction. This correction would clarify that the ITC definition of “investment advisory activity” should be expanded so that investment advisory services beyond those provided to Regulated Investment Companies (i.e., mutual funds) will qualify for the ITC. This expansion is consistent with SIFMA’s understanding of the original legislative intent to include all investment advisory activities.

Governor Cuomo reinvigorated the tax reform effort by announcing the Commission in December of 2011, then formally naming the Commission members in December of 2012. We appreciate your leadership on these tax issues and hope that many of the reforms and recommendations outlined in this statement are included in the Governor’s Executive Budget and passed by the Senate.

Thank you for the opportunity to provide our tax reform recommendation to your Committees. On behalf of SIFMA, I look forward to working together on this important endeavor. If you, other Senators or staff have questions or need additional information, please contact me.