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Re: Forms W-8 and W-9

Dear Ladies & Gentlemen:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup>, in an effort to achieve compliance with the documentation requirements of chapter 3, 4 and 61 of Code<sup>2</sup> and the regulations thereunder, seeks clarification on the requirements for completing and validating Forms W-8.<sup>3</sup>

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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 \$18.5 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>.

<sup>2</sup> All “Section” references are to the Internal Revenue Code of 1986, as amended (the “Code”), or to the Treasury Regulations (“Treas. Reg.” or “Regulations”) thereunder. All references to the “Service” or “IRS” are to the Internal Revenue Service and to the “Treasury” are to the U.S. Treasury Department

<sup>3</sup> Forms include: W-8BEN – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), W-8BEN-E – Certificate of Entities Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities), W-8IMY – Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting, W-

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In addition to the specific issues presented below, the members of SIFMA would like to note the importance of publishing an updated version of the requestor instructions as quickly as possible. It is critical that withholding agents have the requestor instructions in order to understand the nuances of form validation. Withholding agents have been lacking an updated version of this important document for several years causing uncertainty (and likely errors) in requests for the completion and validation of the information on the forms.

<b>Relevant Form/Instruction</b>	<b>Issue</b>	<b>Proposal</b>
Forms W-8BEN, W-8BEN-E, W-8EXP, W-8ECI, W-8IMY (QDDs only)	The instructions are not clear whether an FTIN can be provided on a separate paper when the FTIN would fit on Line 9b (of the Form W-8BEN-E) or Line 6 (of the Form W-8BEN).	Revise the instruction on Line 9b of Form W-8BEN-E, and similar instructions on other forms, as follows: “You may provide a foreign TIN that is indicated and clearly identified somewhere else on the form, or on a separate attached sheet, as long as the foreign TIN is clearly identified as being furnished with respect to line 9b.”
Form W-8BEN-E, Form W-8IMY (QDDs only)	Provide clarity on a withholding agent’s obligation to validate the limitation on benefits provision on Line 14b. Treas. Reg. §1.1441-6(b)(1)(i) states that “a withholding agent may rely on the beneficial owner’s claim regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.”	Include in the requestor instructions a statement that, absent being facially incorrect, a withholding agent may rely on a beneficial owner’s claim regarding limitation on benefits if the income tax treaty under which benefits are claimed is in force.
Form W-8BEN-E, Form W-8IMY	It appears that the word “or” at the end of line 38(ii) of Form W-8BEN-E (regarding excepted territory NFFEs) should be changed to “and.”	Revise the language on the Form W-8BEN-E to replace “or” with “and” so that the language is consistent with the regulations and Form W-8IMY.
Form W-8BEN-E, Form W-8IMY	The new language in the instructions for Forms W-8BEN-E and W-8IMY stating that a trustee of a trustee-documented trust should provide the GIIN it received	Add an addition to the current instruction ( <i>italics new</i> ): “... a trustee of a trustee-documented trust that is a foreign person should provide the GIIN it received when it registered as a PFFI (including a Reporting Model 1 FFI) or Reporting Model 1 FFI. <i>In</i>

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8ECI – Certificate of Foreign Person’s Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States, W-8EXP – Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting, W-8IMY – Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.

	<p>when it registered as a participating FFI or reporting Model 1 FFI appears to contradict the answer to FATCA – FAQs General, Registration Update Q3, which provides that such trustees should obtain a separate sponsoring entity GIIN. The form W-8 instructions should clearly state that a trustee of a trustee documented trust is not required to, but may, provide a sponsoring entity GIIN.</p>	<p><i>lieu of providing this GIIN, such a trustee may provide its sponsoring entity GIIN.”</i></p>
<p>Form W-8BEN-E, Form W-8IMY</p>	<p>A withholding agent may be subject to unnecessarily onerous validation requirements with respect to an indirect account holder that is an owner-documented FFI (ODFFI). This may arise if an intermediary or flow-through entity agrees to act as a designated withholding agent of an ODFFI and must provide an owner reporting statement to an upstream withholding agent (which is not in privity to the agreement between the intermediary or flow-through entity and the ODFFI).</p>	<p>Clarify in the requestor instructions that the limitation on reason to know provided in Treas. Reg. section 1.1471-3(e)(4)(vi)(B) also applies to an owner reporting statement of an indirect account holder that is an ODFFI. In other words, clarify that a withholding agent is not required to verify information contained in the owner reporting statement.</p>
<p>Form W-8IMY (QDD only)</p>	<ol style="list-style-type: none"> <li>1. It is unclear whether a QDD is required to provide a Form W-8BEN-E for portfolio interest paid with respect to a potential section 871(m) transaction.</li> <li>2. There appears to be contradictory language in the instructions on whether a QI that acts as</li> </ol>	<ol style="list-style-type: none"> <li>1. Given the operational impediment to managing two forms for a single relationship and the fact that the IRS has already indicated instances in which a Form W-8IMY will be treated as a beneficial owner withholding certificate, we request that the IRS allow a Form W-8IMY to be treated as a beneficial owner certificate for purposes of the portfolio interest exemption. A QDD could provide an additional statement on or outside the form to indicate it is the</li> </ol>

	<p>both a QI and a QDD may provide a single Form W-8IMY:</p> <ol style="list-style-type: none"> <li>a. Page 9 (lower left): “...if you are a QI that acts as both a QI and a QDD, you may provide a single Form W-8IMY with a withholding statement designating each type of account or transaction”</li> <li>b. Page 9 (top right): “Complete line 15 only if you are acting as a QI that is not a QDD.”</li> <li>c. Heading for Line 15 of the Form W-8IMY states: “Qualified Intermediaries not Acting as Qualified Derivatives Dealers”</li> </ol>	<p>beneficial owner of the income for purposes of the portfolio interest exemption.</p> <ol style="list-style-type: none"> <li>2. Revise the instructions and heading of the form for line 15. The instructions should state “Complete line 15 for QI activity that is not QDD activity.” The heading should state “Qualified Intermediary Activity that is not Qualified Derivatives Dealer Activity (check all that apply)”</li> </ol>
Form W-8IMY	There is no FTIN field on Form W-8IMY, even though, under the regulations, an FTIN is generally required to be provided by a QDD when the Form W-8IMY is treated as a beneficial owner withholding certificate.	Include an FTIN field on Form W-8IMY. Clarify within the instructions for the new FTIN field to state “FTIN is not required for organizations that are acting purely as intermediaries.”
Form W-8IMY	References to individuals have been removed from the face of Form W-8IMY and the instructions.	Revise Form W-8IMY and its instructions to include an individual acting as an intermediary, agent, or nominee.
Form W-8IMY	The Instructions for Form W-8BEN-E provide that if a branch (or disregarded entity) is receiving a payment, a GIIN is required on Line 13 and not on Line 9a. There are no	Include in the Instructions for Form W-8IMY for line 9 the same instruction for the Form W-8BEN-E for line 9a “If your branch is receiving the payment and is required to be identified in Part II, you are not required to provide a GIIN on line 9a.

	comparable instructions for the Form W-8IMY.	Instead, provide the GIIN of your branch (if applicable) on line 13.”
Form W-8IMY (U.S. branches)	Some U.S. withholding agents take the position that withholding under sections 1445 and 1446 applies to U.S. branches that are treated as U.S. persons. This is due to the definition of "chapter 3" at Treas. Reg. § 1.1471-1(b)(16) to exclude sections 1445 and 1446 unless the context requires otherwise. U.S. branches agreeing to be treated as U.S. persons, however, should have that status apply to all of chapter 3, including sections 1445 and 1446. To require otherwise imposes significant and unnecessary burdens on such U.S. branches.	The instructions for U.S. branches claiming the withholding exemption on Part VI by checking boxes 19a and 19b (since the branch is treated as a U.S. person) should clarify that the exemption also covers payments subject to withholding under sections 1445 and 1446. Consequently, U.S. withholding agents could exempt payments to U.S. branches checking these boxes from withholding under sections 1445 and 1446.
Form W-8IMY (U.S. branches)	<p>1. The instructions do not make clear whether an entity that chooses a chapter 3 status of “U.S. branch” and properly completes Part VI should also complete Part II.</p> <p>Part II is primarily relevant for DREs and branches outside of the U.S. and also outside of the entity’s country of incorporation (i.e., those situations in which the DRE or branch has its own Chapter 4 status). Note that Part II includes a status of “U.S. Branch” but does not then reference Part VI.</p> <p>2. Finally, the new instructions state that a U.S. branch completing Part VI does not need to provide a FATCA status on line 5 or a GIIN on</p>	<p>1. Clarify that Part II should be left blank in those circumstances where an entity that choose a chapter 3 status of “U.S. branch” has completed Part VI.</p> <p>However, if there are certain situations that make it appropriate to complete Part II in this scenario, it would be helpful if the instructions clearly delineate the interaction with the chapter 3 status on line 4 and the certifications in Part VI.</p> <p>2. We request this is an optional field based on the withholding agent’s election or agreement between the Form W-8IMY provider and the withholding agent (for example, accepting ODFFI).</p>

	line 9. This makes systematic validation difficult.	
Form W-8BEN-E	The chapter 4 status “Account that is not a financial account” should be eliminated, as the requester, not the form provider, is in the best position to determine whether the requester is maintaining a financial account. If, however, this status is retained, additional instructions are needed for Part I, Line 5, chapter 4 status: Account that is not a financial account. The instructions merely cite to the US tax regulations and do not provide any explanation that would assist a client that does not consult a tax advisor to understand the regulations.	Instructions should list examples of types of accounts that are not a financial account, such as escrow accounts, accounts held by an estate, tax favored retirement and pension accounts. The instructions should also emphasize that the withholding certificate may be used to document more than one account held with the withholding agent and, therefore, if any account held with the withholding agent is not an excluded account, the beneficial owner should provide a valid FATCA status.
Form W-8BEN-E	The instructions provide that a hybrid entity may use a Form W-8BEN-E “either” solely to document its chapter 4 status (because it holds an account with an FFI) or to claim treaty benefits. In many circumstance a hybrid entity will need to document itself because (i) the account is a financial account for FATCA purposes <u>and</u> (ii) the withholding agent is making a payment that is not a withholdable payment but is an amount subject to chapter 3 withholding. A single form should be acceptable for these purposes.	Clarify in the instructions that a single form can be used to certify the chapter 4 status of the hybrid entity and also to claim treaty benefits.  Further, clarify in the instructions that Part I, Line 4 should be completed as “No” only when using the form to certify to the chapter 4 status of the hybrid entity.
Form W-8BEN-E	The instructions are not clear as to whether a non-profit organization that meets the definition of “active NFFE”	The instructions for line 5 of the Form W-8BEN-E should be revised to state (italics new): “If you are a non-profit entity that is established and maintained in a jurisdiction

	<p>under an applicable IGA should provide an alternative certification or claim a FATCA status on line 5 when it is documenting its status to a U.S. withholding agent, rather than to an FFI.</p>	<p>treated as having an IGA in effect and you meet the definition of “active NFFE” under Annex I of the applicable IGA, you should not check a box on line 5 if you are providing this form to an FFI for purposes of documenting yourself as an account holder. Instead, you should provide a certification of your status under the IGA. <i>However, if you are documenting your status to a U.S. withholding agent, you should check the relevant box on line 5 (e.g., “nonprofit organization”) rather than an alternate certification under the IGA.”</i></p>
Form W-8BEN-E	<p>The 2017 W-8IMY instructions amended the GIIN requirements for a US Branch so that the Line 13 GIIN is not required for a US Branch, and the Line 9 parent GIIN is mandatory. This is a welcome amendment since US branches are not required to obtain their own GIIN; however, the same change was not made to the 2017 W-8BEN-E instructions. On the 2017 W-8BEN-E the old requirement for a US Branch is still present, “a GIIN applicable to any other branch of the FFI should be provided on Line 13,” and the parent entity GIIN should be provided on Line 9a.</p>	<p>The W-8BEN-E instructions should include amended GIIN requirements to correspond with the changes made to the W-8IMY instructions, which provide that a GIIN would not be required on Line 13 for a US branch, and only required on Line 9a for the parent GIIN.</p>
Form W-8BEN	<p>The instructions for Line 10 do not mention other income, and this absence implies that Line 10 Special rates and conditions must be completed for other income article treaty certification. This is inconsistent with the corresponding Line 15 of the W-8BEN-E, which states Line 15 “is generally not applicable to claiming treaty benefits</p>	<p>Include in the instructions for Form W-8BEN Line 10 the same instruction from the Form W-8BEN-E Line 15 “This line is generally not applicable to claiming treaty benefits under an interest or dividends (other than dividends subject to a preferential rate based on ownership) article of a treaty <i>or other income article</i>, unless such article requires additional representations.”</p>

	under an ... or other income article”.	
Form W-8EXP	The 2017 W-8EXP requires a registered deemed-compliant FFI, under an applicable Model 2 IGA, to provide its GIIN on line 15, rather than line 8a.	The W-8EXP should be amended to require the beneficial owner to provide its own GIIN in Part 1, where required. This would be consistent with all other W-8 forms which have been updated with this change.
Form W-9	The new Form W-9 and Instructions updated on the IRS website on November 9, 2017 includes significant new language in the instructions.	We request confirmation that the additional verbiage included on the W-9 Instructions is not necessary to be included on substitute Forms W-9.

I. Conclusion

The members of SIFMA appreciate your consideration of their comments to the Forms W-8 and W-9 and instructions, and would appreciate the opportunity to discuss the issues in this submission with you and your colleagues. Please do not hesitate to contact me at (202) 962-7300 or [ppeabody@sifma.org](mailto:ppeabody@sifma.org), or SIFMA members’ outside consultant Tara Ferris at Ernst & Young. Tara can be reached at (212) 360-9697 or [tara.ferris@ey.com](mailto:tara.ferris@ey.com).

Sincerely,

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 SIFMA