



January 11, 2016

John Dalrymple
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
Room 5203 P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

**Re: Notice of Proposed Rulemaking - - Extension of Time to File Certain
Information Returns (REG-132075-14)**

Dear Mr. Dalrymple,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide comments to the Internal Revenue Service (“IRS”) regarding the proposed regulations which would remove the automatic 30-day extension of time to file certain information returns listed in the rulemaking. Those forms listed in the rulemaking include: forms in the W-2 series, 1097 series, 1098 series, 1099 series, 5498 series, and Forms 1042-S, 1094-C, 1095-B, 1095-C, 3921, 3922, and 8027. Extension of Time to File Certain Information Returns, 80 Fed. Reg. 48,472 (2015) (REG-1322075-14) (proposed August 13, 2015).

Our members collectively file tens of millions of tax information returns with respect to hundreds of millions of financial transactions every year. They employ thousands of highly educated professionals and maintain state-of-the-art systems and computer code bases that supply the business logic for this difficult task, while maintaining the highest possible level of security for client and taxpayer data. To observe that there is a substantial cost to our members to maintain and modify these systems is an understatement. Nevertheless, our members endeavor to supply the most accurate data possible as quickly as possible to allow the IRS to

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>.

carry out its important mission while contributing to the deterrent effect that studies say flows from greater information return disclosure.

I. The automatic 30-day extension provides firms with necessary time to test and validate data and incorporate information from third parties, providing more accurate information to the IRS and reducing the compliance burden for taxpayers and the IRS.

While we understand and support the IRS's goal to deter identity theft and tax refund fraud, we are concerned that the proposal is not targeted at tax information returns where there is a demonstrated nexus to refund fraud. In this regard, we note that the Government Accountability Office study cited in the preamble to the accompanying final and temporary regulations focuses primarily on forms in the W-2 series, and not on the 1099-Bs, -DIVs, -INTs, and -Rs and the Forms 1042-S and 5498 that are the majority of forms filed by our member firms.² We are not aware of any studies that highlight fraudulent return risks associated with the automatic extension for returns filed by brokers.

Our members frequently take advantage of the automatic extension and file the majority of information returns after the initial March deadline for electronic returns. We believe our members need the time provided by the automatic extension to compile more accurate returns, and for testing and validation of data. Accordingly, we are concerned that requiring reporting to the IRS earlier has the potential to reduce the quality of data provided to the IRS by shortening the time window between the receipt of such data by third parties and the time it must be reported.

Furthermore, our members often serve as the clearinghouse for information reported by third parties. These third parties frequently update or correct information provided to our members before filing is required. This often triggers a requirement for our member firms to file a correction with the IRS. One of our members that files nearly 6 million forms per year estimated that 50% of its forms' corrections occur as a result of third party corrections. Another member that files over 2.5 million information returns estimated that 97% of its forms' corrections originate with third party corrections. A third member was able to substantiate that 20% of the corrections made on its tax year 2014 broker consolidated statements resulted from amended information provided by third parties after March 15, 2015 and before April 30th. Such corrections are often the result of reclassifications triggered by information provided by third parties, particularly mutual funds and REITs. In addition, clients with mutual fund investments may receive constructive receipt dividends up through the month of January of the following year, which are not reported by third parties until later in the reporting season.

² In addition to those listed, our members file substantial numbers of the following forms: 1099-MISC, 1099-OID, 1099-Q, 1099-C, and 5498-ESA. Identity Theft, Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud, Government Accountability Office, GAO-14-633, August 2014.

If corrections from third parties are not received before the filing deadline (with extensions), they cannot be incorporated into our members' initial IRS filing. This means that the number of corrections they file will increase, unless the information supplied by third parties somehow can be accelerated. For example, prior to the filing deadline (with extensions) a payee may receive a corrected payee statement but the corrected information will appear as original data in the member's initial information return. Because the payee receives reclassification information before the information return is filed with the IRS, a corrected return need not be filed with the IRS. If the deadline is advanced, post-deadline reclassifications will trigger the need for a corrected payee statement, a corrected information return filing, and possibly an amended payee tax return.

It should also be noted that the reclassification of distributions can occur for valid reasons beyond the control of brokers compiling information returns or third parties reporting to them, such as determinations by issuers about whether there was adequate corporate earnings and profits. These determinations may not be made until late in the filing season, sometimes after the March deadline for electronically filed returns.

Removing the automatic extension would result in a significant increase in the number of corrected returns filed with the IRS. In the absence of a proposal to accelerate third party reporting to avoid this result - - and we do not advocate such a proposal or know that it would even be feasible - - we are seriously concerned about the impact on our members of replacing the automatic extension with an extension granted only where the requester demonstrates the extension is needed "as a result of extraordinary circumstances or catastrophe." This new standard is likely to increase the filing burden not only for taxpayers but for the IRS as the Service will be required to process and reconcile many more corrections.

In cases where a correction is due to information reported by a third party, our members still are subject to penalties. Even though such penalties ordinarily would be abated under the reasonable cause exception, applying for and adjudicating penalties of this nature will be administratively burdensome both for our members and for the IRS.

We recognize that Congress has, as part of the Protecting Americans from Tax Hikes (PATH) Act (P.L. 114-113), now enacted a \$100 *de minimis* exception that will reduce the number of corrections for small dollar amounts that our members must file. This is a welcome change, but it is not enough to overcome the need for a continuation of the automatic extension. Moreover, a substantial number of corrections generated by third party reclassifications or other changes will still exceed the *de minimis* threshold and require corrections. The elimination of the automatic 30-day extension may significantly offset the policy changes Congress intended when it enacted the *de minimis* exception.

II. Replacement of the Automatic Extension Could Negatively Impact Compliance

To the extent that information our members report is less accurate than would be the case with the automatic extension, such information is less valuable to the IRS for IRS matching and compliance purposes. Attempting to match inaccurate data could lead to an inefficient allocation of compliance resources.

III. Greater Volume of Refund Requests

If the automatic extension is not available, financial institutions may not be able to wait for REITs, RICs, and certain other securities to reclassify distributions before filing is required. This could cause clients to be over-withheld which in turn could result in a substantially higher volume of refund claims. Therefore, the tax administration benefit of receiving information earlier could be offset by compliance tasks that must be performed later to correct or reverse incorrect information provided earlier. This will unnecessarily increase the compliance burden for taxpayers and require the IRS to allocate scarce resources to ministerial tasks with likely small revenue implications.

IV. Increasing Regulatory Complexities

Updates to forms in the 1099 series resulting from recent regulatory changes in tax information reporting rules such as the Foreign Account Tax Compliance Act (“FATCA”), reporting by Payment Settlement Entities under Section 6050W, and the phased-in rules of the Cost Basis reporting regime under IRC § 6045B require significant recalibration of year-end reporting processes by the tax operations functions of our members. These rule changes require our members to make significant investment in system upgrades and testing and increases the difficulty of year-end information reporting.

Furthermore, the tax operations functions tasked with performing domestic year-end information reporting are often the same persons who are responsible for performing year-end FATCA reporting under the multitude of bilateral intergovernmental agreements between the United States and foreign partner jurisdictions.³ This increased reporting responsibility will draw resources away from an already complex year-end compliance process further adding to our member’s need for an automatic 30-day extension.

³ The United States has executed nearly 80 of these agreements with an additional 33 agreements that are treated as agreements in substance.

SIFMA appreciates your consideration of its recommendation regarding this issue and we would like to request a meeting with the IRS to further discuss these concerns. Please do not hesitate to contact me at (202) 962-7300 or ppeabody@sifma.org if you have any questions or if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Payson R. Peabody". The signature is written in a cursive, flowing style with a long, sweeping underline.

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