May 9, 2018

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Re: Foreign Account Taxpayer Compliance Act ("FATCA") Gross Proceeds

Dear Ladies and Gentlemen,

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to submit the following additional comments on gross proceeds withholding under FATCA. Our members appreciate the practical approach you taken to implementing FATCA, including the implementation deferral with respect to gross proceeds withholding that is currently scheduled to expire on January 1, 2019. Noting the cost and complexity associated with implementation of this rule, we feel it is important to reiterate our members' strong interest in working with you to develop an approach that is least disruptive to financial markets.

The President's Executive Order 13777 ("Presidential Executive Order on Enforcing the Regulatory Reform Agenda") points the way towards a least disruptive approach and we are encouraged that

[1] 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.

you have prioritized the FATCA gross proceeds regulations as an area for near-term burden reduction in the Second Quarter Update to the 2017-18 Priority Guidance Plan released on February 7, 2018. In partial response to your recent request for comments in Notice 2018-43, we would encourage you to continue to prioritize FATCA burden reduction and to consider ideas such as those listed in Appendix I to this letter that we are happy to discuss in more detail.

As you know, beginning in 2019, a withholding tax of 30 percent is scheduled to apply to gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are U.S.-source fixed or determinable, annual or periodical ("FDAP") income.[2] U.S. withholding agents, participating foreign financial institutions ("PFFI"), and withholding qualified intermediary ("QI") FFIs will then generally be required to withhold on payments of gross proceeds made to recalcitrant account holders and non-participating FFIs.

This new requirement represents a fundamental change for brokers and other financial institutions and it has the potential to seriously disrupt financial markets, as SIFMA has stated in previous comment letters.[3] Gross proceeds withholding could impact many billions of transactions, resulting in substantial new costs and burdens to withholding agents, on top of the significant sums, in the billions of U.S. dollars, that financial services companies large and small already have spent to implement the 2010 law. We believe that U.S. Treasury already has achieved substantial compliance with FATCA and the disruption to the capital markets that could result from implementing gross proceeds withholding rules would improve compliance only marginally and would not add significantly to achieving FATCA's policy objectives. This is true in part because the vast majority of FFIs and account holders are already FATCA compliant. The result would be a significant burden on withholding agents, increasing the need for complex reimbursement and set-off procedures on withholdable payments for payees who verify FATCA compliance after the payment date. The additional withholding may also increase IRS administration burdens by triggering an increase in the number of attempted refund claims filed, even if not all such claims are valid.

Further, because the intergovernmental agreements ("IGAs") generally do not currently require withholding on gross proceeds, the new requirement would fall largely and disproportionately on withholding agents that are not in IGA jurisdictions.[4] Such withholding agents will need to withhold on entities largely due to documentation issues rather than because the entity is not FATCA compliant. In addition, market practice of not providing underlying payee information has long been in use by many NQIs so that non-U.S. persons can cost efficiently access the U.S. market, but the economics of doing so (including accepting withholding on U.S. source FDAP income) are no longer viable if there is withholding on gross proceeds. Moreover, there is a higher risk of an adverse outcome to securities markets for gross proceeds withholding due to the complex systems build out that will be required—very different than existing withholding requirements with respect to U.S.

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[2] Treas. Reg. § 1.1473-1(a)(1)(ii).

[3] https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-additional-comments-to-the-us-department-of-treasury-and-the-irs-on-proposed-fatca-provisions.pdf

[4] *See*, U.S. Treasury, "Model 1A IGA Reciprocal, Preexisting TIEA or DTC," June 6, 2014, Article 4(1)(d)-(e) (limiting FATCA withholding of Reporting Financial Institutions to US source FDAP income) and Article 6(2) (commitment to developing an alternative to achieving policy objectives of gross proceeds withholding that minimizes burden). (Available at https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-6-6-14.pdf)

source FDAP income, with more systems likely impacted—as well as the uncertain consequences to delivery versus payment (DVP/RVP) settlement.

In addition, the difference between the definitions of gross proceeds under FATCA and under the 1099-B reporting rules is too divergent and does not lend itself to leveraging extensive and robust systems already designed for 1099-B reporting. The definition of gross proceeds under FATCA should be limited to U.S. source reportable payments to bring this in line with what U.S. payors are already doing for purposes of backup withholding and 1099-B reporting. Moreover, to this point the list of "exceptions" in Treas. Reg. § 1.6045-1(c)(3) should be extended to withholding under FATCA.

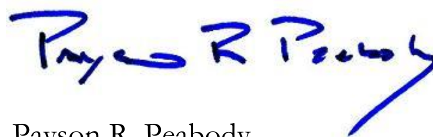
Withholding on gross proceeds under FATCA should not apply when an entity is defaulted to NPFFI status under the presumption rules due to an inevitable documentation failure that occurs when an otherwise valid document expires at the end of a year. For example, if an account holder is presumed to be an NPFFI because an otherwise valid W-8 expired on December 31 of the prior year, gross proceeds withholding should not be required unless the entity's Global Intermediary Identification Number ("GIIN") is no longer verifiable against the published IRS FFI list.

We urge Treasury and the IRS to extend the delay to withhold on gross proceeds until a reasonable solution can be developed and implemented to comply with the statute while avoiding unnecessary market disruption and significant costs and burdens to withholding agents. SIFMA would be pleased to work with Treasury and IRS in this endeavor.

In addition to the foregoing, our members would be pleased if you would consider the additional burden reduction ideas included in Appendix I to this letter. These issues stem from our members' recent experiences with FATCA. We would be happy to talk to you about any of these ideas in more detail.

SIFMA appreciates your consideration of our views and concerns over the years on the regulations to implement FATCA and would like to request a meeting to discuss at your earliest convenience. Please do not hesitate to contact me at (202) 962-7333 or ppeabody@sifma.org should you have any questions.

Sincerely,



Payson R. Peabody
Managing Director & Tax Counsel
SIFMA

Appendix I

Additional FATCA burden reduction ideas:

- Allowance in Treas. Reg. § 1.1471-3(d) of publicly available information that withholding agents possess to document account holders that are FFIs (similar to IGA provision).
- Consider eliminating the Foreign Taxpayer Identification Number ("FTIN") requirement for a beneficial owner certificate of an FFI. Our reciprocal IGA partners may not need FTINs for their own financial institutions.
- Exception from FTIN requirement for onshore accounts that would, by analogy, qualify as excluded financial accounts.
- Revise Treas. Reg. § 1.1471-3(a)(3)(v) to provide that any disregarded entity that is a hybrid entity making a treaty claim is a payee with respect to a withholdable payment for chapter 4 purposes. Alternatively, revise this section of the regulations to provide that any disregarded entity that is a Participating FFI (including a Model 2 FFI) or Registered-Deemed Compliant FFI (including a Model 1 FFI) with a GIIN is the payee with respect to a withholdable payment for chapter 4 purposes.
- Elimination of Form 1099 reporting for US payors in Model 1 IGA jurisdictions that have reported the account holder to their local jurisdiction for FATCA purposes.