February 22, 2019

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Re: Regulations Reducing Burden Under FATCA and Chapter 3 [REG-132881-17]

Dear Ladies and Gentlemen,

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to submit comments on the proposed regulations to reduce burdens under the Foreign Account Tax Compliance Act ("FATCA" or "chapter 4") and chapter 3 of the Internal Revenue Code (the "Code"). Notably, we greatly appreciate the elimination of gross proceeds from the definition of the term "withholdable payment" under § 1.1473-1(a)(1). Removal of this withholding requirement lifts an enormous compliance burden from withholding agents and will avert market disruption. SIFMA also appreciates removal of the problematic mismatch associated with the lag method, restriction of

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. 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.

the definition of an "investment entity," and the deferral of withholding on foreign passthru payments. These provisions represent a significant burden reduction for SIFMA member firms complying with FATCA. There are a few provisions on which SIFMA would like to provide additional comments.

1. **Applicability of the extended due date for a reimbursement or a set-off procedure.**

The proposed regulations provide an option for withholding agents to use the extended due date for filing Forms 1042-S (i.e., April 15th) to repay a recipient whose income was overwithheld. However, the proposed regulations indicate that taxpayers cannot rely on this extended due date until the Forms 1042 and 1042-S are updated for the 2019 calendar year. Since Form 1042 has not yet been updated, SIFMA members are unable to rely on this extended due date for the 2018 tax year. Therefore, SIFMA requests that the IRS permit taxpayers to rely on the revised due date (i.e., April 15th) for overwithholding occurring in 2018.

2. **Extended due date for a reimbursement or a set-off procedure for partnerships**.

The proposed regulations provide that a partnership that withholds on payments after March 15th subsequent to the year of payment (to the partnership) can file and provide a copy of Form 1042-S to the recipient by September 15th of that subsequent year. However, the proposed regulations do not specifically clarify whether the extended due date for an adjustment of over-withholding under the reimbursement and/or set-off procedure also includes the September 15th due date where a partnership withholds after March 15th of the subsequent year. In order to allow partnerships to apply the reimbursement and/or the set-off procedures in a consistent manner, we would urge you to clarify that an extended due date of a repayment to a recipient under the reimbursement and/or set off procedure includes the September 15th due date for partnerships that withhold after March 15th subsequent to the year of the payment.

3. **Enable withholding agents to refund after the 1042-S was issued so long as a corrected 1042-S is issued.**

The proposed regulations stipulate that the reimbursement and set-off procedures may not be applied after the date on which the Form 1042-S was furnished to the recipient. We request that the IRS permit that such procedures be used even after the Form 1042-S is furnished to the recipient (and by the April 15th extended deadline), so long as the withholding agent issues an amended Form 1042-S in a timely manner. This additional time is necessary to accommodate refunds of amounts overwithheld (whether caused by the taxpayer or the withholding agent) that are identified after the original Form 1042-S is issued. Under current rules, to the extent that the pertinent original Form 1042-S has been furnished, taxpayers are forced to file income tax returns with the IRS to claim refunds, typically at the expense of hiring a tax-return preparer, which in the case of a flow-through entity with many beneficial owners (for example) can be cost prohibitive. In contrast, obtaining a refund from the withholding agent is generally cost free.

We understand the potential concern that taxpayers could be paid the same refund twice if withholding agents were permitted to refund after the original Form 1042-S is furnished: once by the withholding agent via the reimbursement or set-off procedures; and once by the IRS in response to a refund claim by the taxpayer on an income tax return. We think this outcome is unlikely, however, because we understand that the IRS does not pay refund claims made on Forms 1040-NR and 1120-F until well after April 15th of the year following the tax year. Thus, the risk of duplicative refunds could be eliminated if the IRS confirms that a refund has not already paid by the

withholding agent by reviewing the corrected Form 1042-S (as required to be filed by the withholding agent, if any) in the IRS's records at the time that the IRS would otherwise pay the refund. The recently instituted rules requiring withholding agents to include a unique form identifier on each form and to indicate an amendment number on any amended form would facilitate the IRS performing the review as described. To this end, we would welcome the IRS permitting withholding agents to refund up to a date after April 15th (but not later than September 15th of the year following the taxable year, which is the extended due date for filing Form 1042) that is shortly (for example, 30 days) prior to the earliest date that the IRS processes refund claims made on Forms 1040-NR and 1120-F. For example, if the IRS does not process refund claims made on Forms 1040-NR and 1120-F before August 15th of the year following the year of withholding, the IRS could permit withholding agents to refund by July 15th of such year (provided that the withholding agent files a corrected return by July 15th). This would ensure the IRS has sufficient time to identify any corrected Forms 1042-S reflecting refunds already made by the withholding agent in determining whether to process a refund claim on the pertinent Form 1040-NR or 1120-F.

4. **Effective elimination of the lag method for a partnership that does not withhold**.

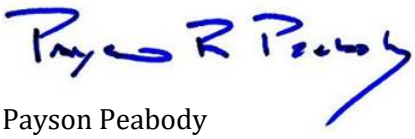
The proposed regulations appear to address partnership reporting under the modified lag method when withholding occurs but do not specify whether the change in reporting would apply where withholding is not required (e.g., under the portfolio interest exemption or where there is an exemption under a treaty). Elimination of the lag method for a partnership that does not withhold would simplify reporting and ensure consistency. Based on the foregoing, we request that the IRS clarify that the effective elimination of the lag method is applicable to partnerships that do not withhold but need to report U.S. source income on a Form 1042 or 1042-S.

5. **Additional time in modifying the procedures pertaining to the lag method**.

While the effective elimination of the lag method is a favorable change, we believe it would be beneficial to provide additional time to partnerships which currently use this method to gradually phase it out, implement new procedures and allow necessary communications to impacted parties.

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

Sincerely,



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