March 25, 2020

Mr. Dave Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Mr. Michael Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, D.C. 20224

Re: Information reporting deadlines and other relief relating to the COVID-19 pandemic

Dear Mr. Kautter and Mr. Desmond,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to submit comments on behalf of our member firms during this period of uncertainty and disruption. We would like to thank the Department of the Treasury and the Internal Revenue Service ("IRS") for the tax filing deadline extension in response to the COVID-19 pandemic, and offer below several other recommendations to help ease the burden on taxpayers, the financial institutions that serve them, and IRS personnel.

Our industry is committed to helping "flatten the curve" and has taken actions to minimize our on-site work force by having employees work from home ("WFH"), where possible, and significantly limiting travel. In addition, several states and municipalities are requiring non-essential personnel and individuals to shelter in place, further limiting the activities of our workforce in many areas. These critical efforts, which are necessary to mitigate the spread of COVID-19, will likely impede SIFMA members' ability to meet their tax deadlines. Furthermore, due to the worldwide impact of COVID-19, similar circumstances exist for non-U.S. financial institutions with U.S. tax filing and reporting obligations. SIFMA has identified several issues below where we believe relief should be granted to help alleviate the negative impact during this challenging time.

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[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).

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Information Returns and Other Filing Extensions

SIFMA requests that for filing purposes, all information returns required to be filed or corrected pursuant to Chapter 3, 4, and 61 of the Internal Revenue Code be given an automatic blanket extension to July 15. This date would align the filing date for these information returns with the recent IRS guidance under Notice 2020-18, the Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic. These returns include, but are not limited to, all Forms 1099, 1098, 1042-S, 8966, 2439, etc. Also, extensions requiring a request for IRS approval of an extension should be treated as automatic.

Additionally, we request the filing deadline for Form 5498 be extended to at least August 31. SIFMA is pleased that Notice 2020-18 extends the date taxpayers can make prior year IRA contributions to July 15; however, without a subsequent extension of Form 5498 reporting, firms will need to issue revised or late Forms 5498 for prior year contributions made between April 15 and July 15. The typical filing deadline is the end of the month following the April 15 contribution deadline, or May 31. Following the same cadence, August 31 is the end of the month following the new July 15 contribution deadline. Retaining the existing due dates for these returns raises immediate challenges for firms and, in many instances, could result in inaccurate reporting and an influx of revisions and corrections down the road.

Also, because of the global impact of COVID-19, SIFMA suggests that information exchange deadlines between countries with Model 1 Intergovernmental Agreements ("IGAs") and the IRS under FATCA be delayed in the spirit of relief. This would permit other jurisdictions to extend their local FATCA reporting deadlines applicable to financial institutions, as they are undoubtedly facing similar challenges relating to the upcoming information exchange deadline, and relief in this area would help alleviate some pressure while countries grapple with the pandemic. Finally, we appreciate the new FAQ granting an extension of time to file the Form 8966 and reporting for Model 2 Financial Institutions and Participating Foreign Financial Institutions ("PFFIs"). However, we also request filing of Form 8966 be extended for other types of entities that are required to filed form 8966 including impacted U.S. withholding agents and financial institutions.

Finally, financial institutions are working diligently to ensure taxpayers receive their IRS form recipient copies in a timely manner so recipients may complete their own tax filings. However, with the uncertainty and quickly evolving situation there are circumstances beyond SIFMA member firms' control that will likely delay delivery of some recipient copies. For instance, many firms rely on third party vendors to print and mail documents to clients, and with shelter in place policies in effect in more and more jurisdictions, it is becoming increasingly difficult to provide mailings in a timely manner. Even those firms that conduct printing and mailing internally are impacted by WFH conditions, essential personnel restrictions, and limited access to physical office locations. Further, once restrictions are lifted and business operations normalize, firms may face a backlog on printing and mailing. SIFMA therefore requests the IRS offer a temporary grace period where penalties would not be assesses for recipient copies mailed by July 15. SIFMA would appreciate leniency in penalty enforcement under Section 6722 given the unprecedented challenges faced by industry. Lastly, in accordance with the relief being provided to taxpayers, we respectfully request that the IRS waive Forms 945 and 1042 federal tax deposit penalties resulting from late deposits of tax due to government and corporate WFH mandates, relating to deposits due March 13 through July 15, 2020 (or later if the COVID-19 impacts extend past this date).

Form 990-T Penalty and Filing Relief

SIFMA requests that the IRS provide an extension for the filing of Form 990-T and specifically, payments relating to Unrelated Business Taxable Income ("UBTI"). We appreciate the recent guidance provided in Notice 2020-18 and the related FAQ clarifying that Forms 990-T due to be filed by April 15 have been postponed to July 15; however we note that this only compresses the timeline in which taxpayers have to submit UBTI payments which are still due by October 15. Further, the May 15 filing deadline was not included in this extension and we anticipate those taxpayers will also be impacted. SIFMA believes that taxpayers should not be penalized for late payment under the current circumstances and should similarly receive an extension for payment without interest or penalty. Anecdotally, firms are seeing unusually low numbers of Schedules K-1 being sent to tax-exempt organizations which could be attributable to the disruption COVID-19 has caused. The Schedule K-1 is necessary for determining whether a taxpayer will have a tax liability related to UBTI. In addition, it is our understanding that there is a backlog on Employer Identification Number ("EIN") requests, which would also delay the timely filing of Schedule K-1 forms and the ensuing Form 990-T. SIFMA requests that the IRS provide penalty and filing relief for taxpayers in this situation.

Responsible Officer Certification Extensions under FATCA, Qualified Intermediary, Withholding Foreign Partnership and Withholding Foreign Trust Agreements

We request that the Qualified Intermediary ("QI"), Withholding Foreign Partnership ("WP") and Withholding Foreign Trust ("WT") certification deadline be extended 180 days (for Certification Periods 2017-2019 and 2018-2020). Many financial institutions are slated to begin their periodic reviews this year, which require on-site work due to local privacy and bank secrecy restrictions and require significant travel by third party reviewers. Due to both international and domestic travel restrictions, and the global presence of the financial institutions SIFMA represents, we believe these periodic reviews for QI, WP and WT Responsible Officer certifications will be significantly impeded. Furthermore, any delay in the periodic review will likely result in a domino effect on other subsequent year certification deadlines.

FATCA Responsible Officer certifications also require substantial internal socialization in advance of a certification, and coordination among related entities is key. FATCA certifications do not require a formal periodic review, and as a result, the level of travel and on-site examination of documentation is less than that required of a QI, WP and WT. Therefore, we believe a 90-day extension of the deadline (as opposed to a 180-day extension) would be appropriate in this instance.

Temporarily Postpone IRS Automatic Notices

During this period of significant WFH arrangements, employees will be challenged in receiving and responding to IRS Notices, many of which we understand may be automatically generated by the IRS. Not only are individuals not present at offices to receive the mail, but large contingents of the workforce are remote and will likely be unable to respond within the typical 45- to 60-day time frame. Accordingly, SIFMA requests that, to the extent feasible, IRS postpone sending automatically generated notices. In addition, the IRS should grant firms additional time to respond in the event they do receive a notice. We would request an additional 90 days beyond the due date shown on the notice. As an additional measure in the case of QI notices specifically, if the IRS is unable to halt the automatically generated notices, SIFMA suggests those notices be posted to the QI Portal.

SIFMA also requests that the IRS offer flexibility with respect to curing B Notices. Generally, second B notices can only be cured by providing a social security card (for individuals) or a 147C letter (for entities). SIFMA member firms' clients have asked for flexibility from members, noting that they are experiencing delays associated with obtaining 147C letters or copies of a social security card where required. This may result in unnecessary backup withholding. SIFMA asks that for a limited period of time, withholding agents be able to rely on Forms W-9 and verification of a client's TIN via the IRS Tax Identification Number online matching service to cure second B Notices, and that withholding agents need not collect any additional supporting material. To the extent possible, we also suggest that B Notices scheduled to be sent this Spring be delayed to a later date.

Provide Flexibility Regarding Documentation Requirements

Another area impacted by large scale WFH arrangements is signatures on tax documentation and tax filings. Many forms, including Forms W-8, W-9, 8281, 1042, and others, either require a physical—or "wet"—signature, or an electronic signature in accordance with specific requirements. Even other related forms such as Forms 2848 and 8821 will likely require action of someone who has not been previously authorized, and therefore would require wet signatures. Firms' ability to obtain wet signatures are significantly hindered by shelter in place and WFH policies taking effect across the globe, and similarly, electronic or scanned signatures are hindered by limited or restricted access to technology. Moreover, lack of secure communication channels in WFH arrangements, and firewalls in place at firms, make remote printing, scanning and submitting physically signed forms difficult. For these reasons, SIFMA requests that the IRS allow for the following relaxed electronic signature requirements:

- Allow for electronic signatures using approved processes, such as DocuSign, for forms not previously permitted to be signed in this manner;
- Expand the scope of an acceptable electronic signature on any tax return or other tax document by permitting any signature which indicates a form is signed electronically, for example, if it contains any e-signature designation or "S-signature" designation (e.g., "/s/ John Doe"), regardless of whether it contains a date and time stamp; and
- Expand the scope of an approved electronic signature to include an email from the form signer making express reference to the specific tax form (e.g., pdf attached) and individual or entity name (where applicable), confirming capacity to sign such form, and stating "this message shall be treated as signature on such form." The withholding agent or other party relying on a particular form would be permitted to treat the email as a statement attached to the form.

Related to this issue is the added challenge of obtaining and validating Forms W-8 and W-9. The same challenges noted above due to WFH arrangements will also affect these processes. Account opening, account changes, and other accounts in the middle of the validation process will all be hindered in this remote environment. In turn, these accounts could be unnecessarily subject to 24% or 30% default withholding under the presumption rules, which we believe would unnecessarily impede commerce and could cause economic harm at a time when we need to be bolstering the economy. Corresponding mitigating reliefs could include the following:

- Extend the 30-day period for which a new Form W-8 may be retroactively applied without an affidavit of unchanged status to 90 days;
- Extend the current Form W-9 "TIN applied for" window from 60 days to 90 days, and eliminate the related operational conditions based on type and amount of income;

- Extend the 90-day period to collect and validate a GIIN for a Form W-8 lacking such information to 120 days;
- Permit the use of "TIN applied for" for other mandatory TIN fields on Form W-8, including QI/WP/WT-EINs and Foreign TINs;
- Extend the 90-day window for a withholding agent to document or cure an account where the withholding agent becomes aware that a change in circumstances under FATCA to 120 days; and
- Extend the 30-day change in circumstances period stated above the signature on Forms W-9 and W-8 to 90 days.

Additionally, SIFMA understands that the IRS is experiencing a reduction of documentation processing capacity at the IRS Processing Unit in Philadelphia pursuant to government "stay at home" orders in the State of Pennsylvania. SIFMA requests that the IRS prioritize the backlog of requests for 2020 Forms 6166 (without the word "VOID" in the background), if possible, and recommends providing electronic or scanned versions of Forms 6166 that might be acceptable to foreign tax authorities.

Impact on Regulatory Rulemaking

Finally, SIFMA is concerned about the impact of the response to COVID-19 on anticipated rulemaking efforts. The uncertainty that comes with large scale WFH arrangements and shelter in place policies for undetermined periods of time will likely impact firms' abilities to implement new regulatory changes, such as those expected in the upcoming changes to the QI Agreement or changes anticipated under Section 1446(f). Constraints on human and technological resources is expected to further impact implementation and compliance efforts. As always, firms will continue to work diligently and in earnest to comply with all regulatory changes and requirements, but SIFMA notes that additional time or flexibility is likely needed in this novel environment.

Conclusion

We greatly appreciate the guidance that the IRS and Treasury have already published in response to COVID-19 and your consideration of these additional challenges our members face. Please don't hesitate to contact me at JWall@sifma.org or (202) 962-7440, or my colleagues Jillian Enoch at JEnoch@sifma.org or Justin Sok at JSok@sifma.org if you have any questions.

Sincerely,

Jamie Wall

Jamie Wall
Executive Vice President, Advocacy

Cc:
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