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Re: Draft Form W-9 (Rev. October 2023)

Dear Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is pleased to provide you with comments on the draft October 2023 revision of Form W-9 (“Draft Form W-9”) relating to new line 3b (regarding foreign partners, owners, or beneficiaries). In an effort to achieve clarity and compliance with the documentation requirements of Chapter 61 of the Code and the regulations<sup>2</sup> thereunder, we are also providing comments on the general requirements for completing and validating Forms W-9 for single-member limited liability companies (“LLCs”).

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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> Except as otherwise expressly provided herein, all references to a “section” are to sections of the Internal Revenue Code of 1986, as amended (the “Code”), and all references to “Treas. Reg. §” or “Regulations” are to Treasury Regulations issued pursuant to the Code.

## **Draft Form W-9**

### **(a) Line 3b is not applicable to withholding agents receiving Forms W-9 from account holders and payees**

Line 3b of the Draft Form W-9 states, “If you checked “Partnership” or “Trust/estate” on line 3a (*and you are providing this form to a partnership, trust, or estate*) (emphasis added), check this box if you have any foreign partners, owners, or beneficiaries.” The instructions for line 3b on page 3 of the Draft Form W-9 provide: “Check this box if you are a partnership (including an LLC classified as a partnership for U.S. federal tax purposes), trust, or estate that has any foreign partners, owners, or beneficiaries, and you are *providing this form to a partnership, trust, or estate* (emphasis added).”

Based on the language in the Form and instructions, our understanding is that line 3b is not applicable when a withholding agent is receiving a Form W-9 from an account holder (e.g., to open a deposit or custody/brokerage account) or a payee (e.g., regarding vendor fees for services).<sup>3</sup> Therefore, a withholding agent receiving a Form W-9 from an account holder or payee, regardless of the line 3b selection, is not required to perform any due diligence on, or otherwise store, such information.

A withholding agent may be classified as a partnership for U.S. federal tax purposes. However, these withholding agents frequently collect Forms W-9 from account holders and payees who are not partners in such partnership. The withholding agent is not collecting Forms W-9 from its own partners or performing any partnership reporting (Schedules K-1, K-2, and K-3) on those account holders or payees. Our understanding is that line 3b is not relevant to such a withholding agent collecting Forms W-9 from account holders or payees.

Accordingly, we propose updating the instructions for line 3b to clarify that this checkbox is not required in the circumstances describe above, and whether checked or not, that the withholding agent not be required to perform any due diligence relating to this checkbox.

### **(b) Withholding agents can accept substitute Forms W-9 that do not include line 3b (substitute Forms W-9)**

Withholding agents are permitted to utilize and accept substitute versions of Form W-9 if the substitute version meets specific IRS requirements.<sup>4</sup> As noted above, our understanding is that line 3b is not applicable (or relevant) to withholding agents receiving Forms W-9 on behalf of account holders or payees (e.g., vendors). Therefore, we believe that withholding agents can present for completion and accept a substitute Form W-9 from account holders and payees without including a line 3b checkbox, as long as the substitute Form W-9 satisfies all applicable requirements under the regulations.<sup>5</sup> It would be helpful if the instructions to the Form W-9 (or the Instructions for the Requester of Form W-9) were updated to explicitly acknowledge this point.

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<sup>3</sup> “Withholding agent” refers to brokers and payors who are responsible for Form 1099 reporting on behalf of account holders, customers, and payees.

<sup>4</sup> Treas. Reg. §§ 31.3406(h)-3(a), 31.3406(h)-3(c), and 31.3406(h)-3(e), Rev. Proc. 83-89, Instructions for the Requester of Form W-9 (Rev. October 2018) page 2.

<sup>5</sup> Id.

## **General Comments on Form W-9 for Single-Member LLCs**

Withholding agents frequently receive Forms W-9 with an entity named on line 1, and the line 3 “individual, sole proprietorship or single-member LLC” box checked. The instructions provide that that box should not be checked by a single-member LLC unless it is a disregarded entity owned by an individual. However, account holders and payees completing a Form W-9 often see “single-member LLC” on the face of the Form, interpret it literally, and select this box whether or not they are individuals or disregarded entities. Account holders and payees also see “single-member LLC” on line 3 and often record the name of the single-member LLC on line 1. Historically, Forms W-9 did not include this language. The 2014 revision to the Form W-9 added “single-member LLC” to the line 3 checkbox selections.

### **(a) Clarify instructions for the name on line 1**

The checkbox description in line 3a of the Draft Form W-9 notes, in relevant part, that it is for a “Individual/sole proprietor or single-member limited liability company (LLC).” In addition, the chart on page 3 of the Draft Form W-9 instructions states: “IF the entity/person on line 1 is a(n) ... Single-member LLC owned by an individual and disregarded for U.S. federal tax purposes...THEN check the box for ... Individual/sole proprietor or single-member LLC.”

The information above is misleading because the box checked on line 3 should always correspond to the U.S. federal income tax classification of the person named on line 1, which should never be a disregarded entity.<sup>6</sup>

The current “Individual/sole proprietor or single-member LLC” checkbox and the chart on page 3 often confuse account holders and payees, and lead many of them to believe they can enter the name of the single-member LLC in line 1. To help with the accurate completion of Forms W-9 by single-member LLCs, we propose the following changes to the Form W-9:

- Eliminate the reference to single-member LLCs in the line 3a checkbox, to only indicate that the checkbox should be selected by “an Individual/sole proprietor”, consistent with pre-2014 versions of Form W-9, and
- Remove the reference to single-member LLCs in its entirety from the chart on page 3.

### **(b) Clarify instructions for single-member LLCs owned by entities**

On page 3 of the Draft Form W-9, the line 1 instructions for a “Sole proprietor or single-member LLC” state (emphasis added): “Enter your *individual name* as shown on your Form 1040 on line 1.” There are additional and separate instructions on page 3 for completing line 1 by an “Individual” and by a “Disregarded entity.”

It is possible for a single-member LLC to be owned by a corporation, partnership, or trust, and not by an individual. In addition, there may be differences between how a sole proprietor and a single-member LLC complete a Form W-9. More specifically, a sole proprietor should complete a Form W-9 in the same manner as an individual and leave line 2 blank (unless disclosing a trade or business name), while a single-member LLC should complete line 2.

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<sup>6</sup> The instructions on page 3 of Form W-9 (Rev. October 2018) state: “The name of the entity entered on line 1 should never be a disregarded entity... For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1.”

We propose removing the line 1 instructions on page 3 that refer to “Sole proprietor or single-member LLC” and incorporating the following changes into the line 1 instructions on page 3:

- Include the single-member LLC instructions in the “disregarded entity” section; and
- Reference sole proprietors in the “Individual” section.

## **Conclusion**

The members of SIFMA appreciate your consideration of their comments to the revised Form W-9 and its instructions and would appreciate the opportunity to discuss the issues in this submission with you and your colleagues. Please do not hesitate to contact P.J. Austin (paustin@sifma.org) or our outside advisors, Tara Ferris (tara.ferris@ey.com), Jonathan Jackel (Jonathan.jackel@ey.com), and Ryan Blewitt (ryan.blewitt@ey.com).

Sincerely,



P.J. Austin  
Vice President, Tax

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