AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

World-Class Solutions, Leadership & Advocacy Since 1875

Phoebe A. Papageorgiou
Senior Counsel
Center for Securities, Trust and Investments
202-663-5053
Phoebep@aba.com

February 12, 2010

Via electronic delivery

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20044

Re: Basis Reporting by Securities Brokers and Basis Determination for Stock; Proposed Rule; 74 Federal Register 67010 (December 17, 2009).

Dear Commissioner Shulman:

The American Bankers Association[1] (ABA) appreciates the opportunity to provide comments on Internal Revenue Service (IRS) proposed regulations for basis reporting of securities transactions. Pursuant the Emergency Economic Stabilization Act of 2008 (EESA), brokers that file IRS Form 1099-B will soon be required to report additional information on these forms, such as the adjusted cost basis of customer securities sold and whether any resulting gain or loss is short or long term. In addition, applicable persons, including brokers, custodians, and issuers, when transferring securities to a broker must furnish the broker a transfer statement that contains certain information about the securities. The new reporting requirements will take effect for sales of stock in corporations after December 31, 2010, for sales of shares of regulated investment companies after December 31, 2011, and for sales of other specified securities after December 31, 2012.

In providing fiduciary and related services to individual and institutional clients, many of our member banks fall within the definition of broker and must soon comply with the new cost basis reporting requirements.[2] ABA hopes that the IRS will acknowledge the industry's "resource and system constraints" in addition to its own[3] and modify the proposal so that it facilitates taxpayer compliance while

[1] The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

[2] In 2008, banks held more than $17 trillion in fiduciary and related assets in 22 million accounts. FDIC Call Report Data, December 2008. As used in this letter, the term "banks" will include all ABA members who act in fiduciary and related capacities.

[3] The IRS proposal notes that it did not adopt a commentator suggestion "due to IRS resource and system constraints." 74 Federal Register 67023.

imposing as little burden as possible. In that vein, ABA urges the IRS to delay the effective date of the transfer statement requirement by one year, as well as to amend the rule in part and provide certain important clarifications. In addition, as we mentioned in our March 3, 2009, letter, we respectfully request that the IRS provide an exemption from cost basis reporting for corporate trustees of certificated bonds.

Transfer Statements

ABA requests that the IRS implement a one year delay until January 1, 2012, for the transfer statement requirement. The IRS will likely not release the final rule for another few months, giving the industry and vendors that produce systems and software at most ten months to implement its requirements. Not only must brokers adapt their systems and software to collect and store additional information, but also to provide triggers for incomplete or rejected transfer statements. There is likely not enough time to create such a sophisticated new system that can electronically send and receive statements and is compatible with other brokers' systems by the January 1, 2011, effective date. Therefore, in order to comply with the requirement, brokers will likely have to furnish manually, by fax or by email, the transfer statements to transferee brokers.

In addition to being an extremely time-consuming process, manual submission of transfer statements may violate state privacy laws. Under the proposal, the transfer statement must hold sensitive information about the client, such as name of owner prior to and after the transfer. Many state privacy laws bar businesses from sending personally-identifiable consumer information unless it is encrypted. ABA believes that the transfer statement need not include all of this sensitive information. Therefore, we also ask that the proposal be amended so that sensitive information that is not essential for the transfer to be effected properly would not be required.

Information on Gifted or Inherited Securities

The proposal's treatment of gifted and inherited securities poses a complicated and potentially burdensome requirement for brokers. As we recommended in our March 3, 2009, letter, brokers should be allowed to make a good faith effort to adjust basis to reflect events outside of their control, but not be penalized if the information is incorrect or incomplete. For example, brokers should not be required to record the date of death in a bequest if that information is not initially furnished or to adjust for gift taxes paid if this information is unknown to them. The information required to be included in a transfer such as date of the gift, fair market value at the date of the gift, and date of death may not be available, and if so, the storage of this information for an indefinite period (after the security is transferred or sold) is a very expensive and will require extensive changes to accounting systems. In most cases the brokers would need to assume that these securities are non-covered securities.

The proposal, however, puts an obligation on the broker to request the information from the authorized representative of an estate if not furnished. The difficulty with this approach is that often the broker does not know that the transfer is the result of a bequest and subsequently will not know if it has an obligation to request the information. In other situations, if the securities are non-probate assets, there may not be an authorized representative to supply the information.

Corrected Reporting

Under the proposal, brokers must file a corrected transfer statement or Form 1099-B if the transferring broker receives information from another broker or from the issuer that affects the

basis of the stock at the time of the sale or transfer. Although ABA and others requested a *de minimis* exception or a statute of limitations for corrected reporting, the IRS did not adopt that approach in the proposal.

We understand the purpose of transferring and reporting correct information and how it promotes taxpayer compliance. However, the new basis reporting system, like all other tax reporting systems, will never be perfect or able to capture accurately all of the information intended.

In an effort to avoid excessive burdens, we strongly urge the IRS to introduce certain exceptions. We recommend that there be a statute of limitations on corrected Form 1099-B filings of 8 months after the calendar year end which is consistent with tax reporting for individual taxpayers who have extended their returns. If changes are made to corporate actions or to other information during the year of the transfer, the prior broker has the obligation to provide a corrected statement. If the changes to the corporate action are made after that period, we recommend that the current broker (who will be receiving the information from the issuer of a corporate action) should assume that the cost basis received needs to be adjusted by the correction. Requiring the initial broker to store indefinitely the information on all Form 1099-B filings, including those made for closed accounts, would be extremely expensive.

Basis Method Elections and Options

ABA members appreciate that the proposal allows brokers to rely on a standing order to determine the lot selection method. For existing accounts, the broker may not have previously provided the client with the ability to select a lot selection method. We therefore request that for accounts currently in existence as of December 31, 2010, the broker be permitted to continue to use the lot selection method currently in use by the account even if it was not specifically requested by the client.

DRP for Investment Management Accounts

The proposed regulations provides that a plan qualifies as a DRP plan "if the plan documents require that at least 10 percent of any dividend paid is reinvested in identical stock."[4] ABA requests clarification as to whether an arrangement which does not specify the percentage of dividends reinvested may qualify as a plan under the proposal. As an alternative to the narrow approach in the proposal, we urge the IRS to apply the statutory definition of DRP broadly to mean "any arrangement" to reinvest dividends in stock. If the final regulations impose this narrow interpretation, the broker may be required to review each DRP to determine if it has reinvested the required amount in the stock, which would be a very expensive and time-consuming process when it is not explicitly required under the statute.[5]

Wash Sales

ABA again strongly urges the IRS to incorporate a *de minimis* exception for wash sales. According to a number of our member banks, many wash sale losses are small and due to the sale of

[4] Proposed 26 CFR 1.1012–1 (e)(6).

[5] 26 USC 1012 (d)(4)(A) reads "The term 'dividend reinvestment plan' means ***any*** arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid." [Emphasis added].

fractional shares. Without such an exception, brokers will be required to undertake significant additional work, including adopting extremely expensive changes to systems that reconcile the bank broker's accounting software with its trust tax accounting software.

Exemption for Corporate Trustees

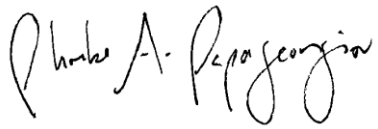
Although the proposal does not address cost basis reporting of debt securities, we would like to take this opportunity to urge the IRS to exempt corporate trustees of certificated bonds and notes as soon as possible. As we stated in our March 2009 letter, ABA strongly believes that it will be unduly burdensome and costly for these corporate trustees to develop cost basis reporting systems by 2013. The number of certificated bonds and notes continues to decrease and represents a small share of the total debt market. Corporate trustees if given no relief will have to start making expensive changes for marginal gains in information reporting.

Conclusion

ABA appreciates this opportunity to offer comments on the proposed regulations. We urge the IRS to delay the effective date of the transfer statement requirement until 2012, as well as modify the rule as suggested to minimize burdens on reporting brokers. We again request that the IRS exempt corporate trustees of certificated bonds and notes from the cost basis reporting requirements effective in 2013.

Should you have any questions or comments with respect to the issues raised in this letter, please do not hesitate to call the undersigned at (202) 663-5053. If you have particular questions about the role of corporate trustees, please call Cris Naser at (202) 663-5332.

Sincerely,



Phoebe A. Papageorgiou
Senior Counsel