Notice 2009-17

Broadridge Financial Solutions, Inc.

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CC:PA:LPD:RP (Notice 2009-17)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Attn: Stephen Schaeffer
Office of Associate Chief Counsel
(Procedure and Administration)

RE: Notice 2009-17

Dear Mr. Schaeffer:

The following comments are being made by Steven Neiss[1] on behalf of Broadridge Financial Solutions, Inc.[2] ("Broadridge"), a leading outsourcing provider to the global financial industry, providing tax accounting and reporting services to the brokerage industry through multiple tax applications, including the Tax Information Reporting Service[3] and cost basis reporting systems. Broadridge offers Aspire Portfolio Accounting and BPS Tax Lot Engine to support our clients' full cycle of cost basis reporting through the coverage of various tax lot pairing methodologies, adjustments for corporate actions and wash sales, option processing, account transfers, as-of transaction reprocessing, dividend reinvestments, unrealized and realized gain / loss calculations, and year-end reporting. We continue to monitor the legislation and, as details are provided, our systems will be enhanced as needed to assist our clients with their compliance obligations.

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[1] Steven A. Neiss, Vice President of Broadridge Tax Information Reporting, has a 35-year background in tax reporting, dividends and operations for major brokerage firms. He is a member of the Securities Industry and Financial Markets Association (SIFMA) Dividend Division and past chairman of the SIFMA Tax Compliance & Administration Committee. He was appointed a member of the Information Reporting Program Advisory Committee (IRPAC) for the term 2004-2006.

[2] Broadridge Financial Solutions, Inc., formerly part of Automatic Data Processing's Brokerage Services Group, with over $2.0 billion in revenues and more than 40 years of experience, is a leading global provider of technology-based outsourcing solutions to the financial services industry. Broadridge's integrated systems and services include investor communication, securities processing, and clearing and outsourcing solutions. Broadridge offers advanced, integrated systems and services that are dependable, scalable and cost-efficient. Our systems help reduce the need for clients to make significant capital investments in operations infrastructure, thereby allowing them to increase their focus on core business activities.

[3] Broadridge launched its Tax Information Reporting Service (TIRS) in 2005 to support the year-end information reporting needs of brokerage firms and banks. Our solutions provide comprehensive tax information reporting services through the development and maintenance of a database and processing that provide a platform for tax calculations and reporting in order to meet tax reporting requirements for IRS Form 1099. The service includes processing for debt instruments with Original Issue Discount (OID), real estate mortgage investment conduits (REMICs), other collateralized debt obligations (CDOs), real estate investment trusts (REITs), mutual funds and unit investment trusts (UITs) and Master Limited Partnerships (MLP). TIRS is currently working with trustees of Widely Held Fixed Investment Trusts to calculate tax reporting information on behalf of its brokerage clients.

This correspondence is in response to Notice 2009-17 that requests comments with respect to the reporting of basis in securities transactions. In preparing our comments, we have worked with multiple securities industry organizations and perused the comments submitted by other institutions, each of which addressed their specific points adequately as to not warrant additional comment. Instead, we wish to focus on specific questions, including, Basis Method Elections (Questions 4 – 7), Reconciliation with Customer Reporting (Questions 12 – 15) and Broker Practices and Procedures (Questions 33 – 36). We believe Broadridge can provide a unique perspective as a provider of systems that support both cost basis accounting and tax reporting services for the brokerage industry. We wish to thank the Internal Revenue Service (the "Service") for this opportunity to share our viewpoints.

Basis Method Elections

Question 4 - How to ensure that customers are adequately informed of the broker's default basis determination method and that brokers are adequately notified of a customer's election of a different acceptable method for an account.

Brokers should be required to notify clients of the default basis method beginning no later than January 1 of the year in which cost basis reporting will be effective or when an account is opened, whichever is later. For pre-existing accounts, notification can be accomplished through messages added to monthly statements, enclosures with statements or other comparable means. For new accounts, notification should be included in a new account application. Notification of the default basis method should include an equally prominent notice that the customer has the option of choosing an alternative method and should inform the broker promptly of such an election. Customers should be allowed to notify the broker of their election of an alternative method through a written instruction form provided by the broker, or an electronic instruction. This procedure is similar to that through which a customer provides a TIN or SSN to a broker with Form W-9, although we do not feel that it is necessary for the Service to design a form for this notification. The default basis method of reporting, any alternative basis method elected by the client and the date that the client's notification was received should be maintained by the broker as part of their permanent customer account information. This information should also be reconfirmed with clients on a regular basis; however a requirement to re-confirm customer information should be addressed by the SEC under Rule 17a, which requires reconfirmation of customer information every 36 months for purposes of making suitability determinations, rather than by the Service.

Question 5 - How to facilitate customer elections of acceptable basis determination methods, including average cost basis, for an account to maximize customer flexibility and minimize broker burden.

Question 13 - How to ensure consistency between customers making specific identification of securities sold or transferred and broker reporting.

Question 15 - Whether customers, after a sale, may identify or change the identification of specific stock sold and, if so, for what period of time or by what deadline.

We are responding to these three questions together because they are closely related. All three questions deal with declarations that are made today by customers, but are not required to be reported to a broker. Establishing clear rules to facilitate these communications will be the key to achieve matching between Broker Reporting and Taxpayer Returns and to avoid costly correction reporting for brokers. The customer's declaration of basis determination method and

their selection of specific lots sold, should they choose the specific lot method, are required at the time of sale under the current statute. Although it might somewhat reduce a broker's burden under the new statute, enforcing such statue rigidly will inevitably lead to mismatches between Broker Reporting and Investor Tax Returns.

The new cost basis reporting requirements clearly place additional burden on brokers to obtain and report additional information including the customer's basis election method. There are alternatives available that could limit the broker's burden, however, as is clearly implied in Question 5, will reduce a taxpayer's flexibility in determining their methodology of basis determination and ultimately their ultimate tax liability. Brokers clearly have an interest in both reducing their burden under these new statutes and retaining customer flexibility. Since brokers will be perceived by their customers as enforcing these new rules, potentially damaging the broker – client relationship, it is in the broker's interest to also maintain as much of the client's flexibility as possible.

With respect to a customer's election of a basis determination method, the current statutes require a taxpayer to elect a basis determination method when a reportable event occurs. It would facilitate broker record keeping to require customers to choose their basis determination method at an even earlier date, the time an account is opened or at least at the time the shares subject to basis reporting are acquired. This is particularly true with respect to securities that are eligible for basis determination using the average cost method, where tax lot data can be collapsed over time, reducing data storage requirements. However, requiring a taxpayer to choose a basis determination method that will not take effect until a sale or redemption is executed clearly denies the customer options that they have today which could be advantageous. A customer's tax situation could change dramatically between the times of an initial investment and the execution of a sale or redemption. We do not believe that the new statute supports requiring a customer to declare their method of basis determination at the time of purchase or account opening. So, to the degree that a broker does not allow a customer to change their basis method election at the time of sale and adjust the broker reporting accordingly, we would expect mismatching between Broker Reporting and Taxpayer Returns, thus generating Deficiency Notices, General 30 day letters and other follow-up Notices for the Service and the taxpayer.

In addition to electing a basis method, the current statute (1.1012-1(c)(1)) requires that customers identify specific lots sold at the time of the sale and "within a reasonable time thereafter, confirmation of such specification is set forth in a written document from such broker or other agent" if they have elected to use the specific lot basis determination method. However, since brokers are not currently responsible for reporting a customer's basis in securities sold, there is no official record of either the customer's declaration of method at the time of the sale or their specific shares redeemed at the time of sale on the broker's books and records at this time. Some brokers currently maintain tax lot accounting systems and some also use messages on trade confirmations (i.e. "verses purchase" trailer messages) to provide a customer with evidence of the elections that the customer will eventually report on their Tax Return. These services are provided by brokers as a courtesy to facilitate clients' record-keeping and there is not necessarily any corresponding record of the purchase on the broker's books and records (e.g. if the purchase was made through another broker). We anticipate that with the implementation of the new statute, brokers will be required to employ a tax lot accounting system to maintain and manage the cost basis accounting data that they will eventually report on Form 1099-B. In as much as a broker may be subject to penalty for reporting incorrectly, we also believe that they will begin to apply the same kind of controls and audits to these systems that they apply today to their official books and records.

In the current business environment the customer's elections of both basis method and specific lots to be sold may very well be understood by both the broker and the customer at the time of sale, but they are rarely if ever part of the discussion between the broker and the client at the time an order is taken or an execution is reported. These elections can only be processed in the broker's system at the point of sale to the degree that default methods are sufficient. Some tax lot accounting systems have developed very sophisticated algorithms to match executions to open tax lots to achieve specific goals such as minimizing overall tax liability or maximizing long term or short term gains or losses. However, even the most sophisticated algorithm is limited by the information that is available at the time and a myriad of conditions including subsequent executions, non-executions, activity in other accounts, etc., may result in a need for changes to the allocations after the sale to achieve the customer's intentions. To require that the allocations be done at the point of sale would introduce complexities into the order taking and execution reporting process and could put the timely execution of the trades themselves at risk, particularly in volatile or fast moving markets. We do not believe that brokers want to introduce the complexities of an irrevocable lot selection into the order processing and execution reporting process. It makes much more sense to allow the customer and the broker to focus on executing orders at the point of sale and then allow the allocation of executed trades to open tax lots after the executions have been completed.

The current statute supports specific identification of lots to be sold in a variety of circumstances many of which deal with the dates on certificates delivered for settlement of the trade, which was a common practice when the statute was written, but is no longer the case. The section of the statute that addresses securities held in the broker's custody, which is generally the case today, states that the customer has fulfilled the requirements of specific lot identification when "(a) at the time of the sale or transfer, the taxpayer specifies to such broker or other agent having custody of the stock the particular stock to be sold or transferred, and (b) within a reasonable time thereafter, confirmation of such specification is set forth in a written document from such broker or other agent." In the past, brokers have provided this information to customers on trade confirmations. This practice still exists, but it is not widely used. Today it is much more common to provide this information on-line or in year-end statements.

The current statute was written at a time when trade settlement was T+5, trade volume and trade execution practices were dramatically different and cost basis accounting systems were a rarity. Customers frequently did take physical delivery of certificates at that time and could conceivably use dates on certificates as evidence of specific lots sold, as provided for in the statute. Under the new statute, cost basis accounting systems are going to become virtually mandatory for brokers in order to maintain and manage cost basis data and use it for production of Forms 1099. Changes to allocations of sales or basis determination methods in brokers' tax lot accounting systems are generally done either by the customer through a web interface or broker operations staff who can make changes based on instructions from the customer or the registered representative for the customer. If the goal of the new statute is to achieve matching between customer reporting and broker reporting it seems reasonable to allow the customers to change a declaration of method or a selection of specific shares sold until the end of the year when a reportable sale has been executed. This approach preserves the customer's flexibility to obtain tax advice and make decisions that are in their best interest. For the broker, although it does somewhat increase the broker's burden to make post trade corrections to their tax lot accounting systems, it eliminates potential risks from the order execution process and removes the broker from the position of either providing tax advice which they may not be qualified to provide or enforcing a rule that requires a customer to make an irrevocable choice at the point of sale that may be disadvantageous to the customer. With a deadline of the end of the calendar year, the

broker's burden will be limited to making corrections for the current tax year, so the statement production and the information reporting processes should not be impacted. This approach would also have a positive impact to the Service by improving matching and reducing Deficiency Notices and subsequent follow-up.

Question 6 - Whether and under what circumstances a customer may elect to change from the average cost basis method to the first-in first-out or specific identification method and, if so, what cost basis rules and adjustments should apply.

Customers should be able to elect to change the cost basis method applied to an account or a security within an account (see also Question 7 for comments on the application of different cost basis methods within an account) from average cost to another method, up to the point where a sale or redemption is reported. We recognize that this approach places an additional burden on the broker (see also Question 5 for comments on minimizing broker burden) to retain tax lot data potentially for years. However, the alternative, which would be to lock a customer in to a basis reporting method years prior to a reportable event, could result in mismatches between broker reporting and customer reporting. At the point that a client enters into a reportable transaction and the broker reports that transaction using the average cost method, those shares should be irrevocably subject to average cost reporting.

Question 7 - What it means to apply the basis determination conventions on an "account-by-account" basis.

At a minimum, applying a basis determination method on an "account-by-account" basis means that brokers should not be required to search their account base for each client to ensure that if a client employs a particular basis determination for a security, that the same client does not employ a different method for the same security in another account. For example, if a client elects to use average cost method to determine basis for a security that is held in a dividend reinvestment plan, only the shares held in that account would be subject to the average cost basis determination method. If the client had another account and held shares of the same security, the client could elect a different basis determination method for the shares held in the second account. Further, we feel that this rule should be open-ended, so that a client who holds several securities in one account may elect a different basis method for each security. So, if a client holds three securities in one account and two of them are participating in a dividend reinvestment plan, the client could elect to report basis on those two securities using the average cost method and elect to report basis on the third security, which is not reinvesting dividends and therefore is not eligible for average cost basis determination, using a different method.

This interpretation will facilitate accounting for brokers who maintain many securities in one account. Were the rule to be interpreted more strictly and require all securities in one account to use one basis method, the broker would have to open multiple accounts for a client to facilitate these elections, which would be an unnecessary burden. We see no risk in this interpretation in as much as the broker is still required to report basis accurately for each security.

Reconciliation with Customer Reporting

Question 12 - How to ensure that broker reporting on Form 1099-B and customer reporting on Schedule D of Form 1040 are maximally consistent, including whether brokers should report separately for securities subject to basis reporting or report the basis of securities that are not covered securities, for example, securities purchased by their customers prior to 2011.

The ultimate goal of this initiative is accurate basis reporting by taxpayers. Matching the numbers reported on Form 1099-B to those on Schedule D is one aspect of accurate reporting, but it is not the only one. Minimizing the number of errors made by taxpayers in translating the information from the 1099-B to Schedule D will be equally important. To achieve that goal, the importance of the redesign of Form 1099-B should not be underestimated. Ensuring that the "match" is valid should also be an important goal. Designing rules that produce matches that are in fact inaccurate would be counterproductive.

With respect to the changes to Form 1099-B, we are familiar with proposed new forms that industry organizations have developed for submission to the Service. Such industry organizations' proposed new Form 1099-B includes minimal changes to the physical layout of the current Form 1099-B, but requires that as many as three forms be issued for a single trade. Losing the one-to-one relationship between Form 1099-B and the customer's trade is a significant conceptual change. We see a risk of confusion for taxpayers and tax preparers in adjusting to this change. The alternative – completely redesigning Form 1099-B to accommodate the six or more additional boxes that would be necessary to report proceeds, basis and gains or losses on shares held short-term, long-term and pre-effective date – also carries a risk of confusing the taxpayer, as any new form would. However, this approach also seems to present an opportunity for the Service to design a new layout for Form 1099-B that would more closely resemble Schedule D and therefore may be in the taxpayer's interest in the long run. We would be interested in comments from taxpayers and tax preparers on these two approaches and which they would find more attractive. From our perspective, either approach will involve substantial programming changes, so our concern is that a decision is made this year so that we can proceed with the work required to implement either solution.

The second aspect of matching that concerns us is the idea that brokers should be required to report basis data that they have no means to validate. We see this approach as producing matches that may not in fact be accurate and we question the value of this approach. For example, if a client has provided the broker with basis on pre-effective date shares, should the broker report that basis? We would argue "no". If the broker were to report such basis, the "match" that the Service would see on Information Return compared to the customer's Schedule D would only prove that the customer reported the same basis to the broker that they put on their Schedule D. There is no validation of the accuracy of that basis or the acquisition date provided by the customer. In these circumstances, we believe that the Service is better off allowing the broker to report this as not a covered security (no basis available) and running their own analysis of the basis reported by the customer. A broker should still be able to choose to report basis for pre-effective date shares if, for example, the original trade was affected by the broker and they can validate the data. However, requiring brokers to report basis on pre-effective date shares, or shares acquired through gift or inheritance may in fact produce matches, but could hide inaccurate reporting.

Question14 - How to ensure that reconciliation is possible if broker reporting should differ from customer reporting.

Brokers currently have data retention requirements for books and records activity which includes records of trades of up to ten years. With the implementation of this new statute we anticipate that cost basis accounting system data and transfer systems data, which are not currently covered under the books and records rules, will be included in those requirements. However, we do not recommend that the Service look to audit broker data as a general practice. We believe that on-going performance measurements are a more effective means of ensuring compliance. For

example, securities industry regulators currently measure broker performance with respect to account transfers through the ACATS system on an ongoing basis. A similar measurement regimen could be implemented for the broker performance with respect to transfer of cost basis data through an electronic transfer service.

Broker Practices and Procedures

Question 31 - To what extent a broker should verify the reasonableness of basis information and what document retention requirements should apply.

Question 32 - What procedures a broker should follow if the broker derives basis and holding period information for or from customers with respect to a security that is not a covered security, including potential reporting of such information to either the customer or the Service.

Question 33- What procedures a transferee broker should follow if the broker does not receive a transfer reporting statement.

Question 34 - What procedures a transferee broker should follow if the broker receives transfer reporting information with respect to a security that is not a covered security, or from a transferor who is not subject to the transfer reporting requirements.

Questions 31- 34 all contemplate broker reporting of basis that is received through some source other than a transaction on a broker's own books or a transfer of transactional information from another broker. In general, we do not believe that requiring brokers to report in this circumstance, information that they have no means of validating, accomplishes the goals of this legislation. We do not believe that such reporting should be required.

If brokers are required to report basis information that was, for example, received from a customer for shares that were inherited, we would like to be able to differentiate this kind of report on the information return and on the 1099-B from information that is derived from the broker's own books or from a transfer. In addition, we believe that brokers should not be subject to penalty if such reporting turns out to be inaccurate.

We recognize that the Service would like to maximize matching between broker reporting and customer reporting on Schedule D. However, we would like to better understand what different treatment the Service would give to these two scenarios:

- ⇒ an individual Schedule D filed that matched the broker reported basis but the broker indicated that the basis was received from the customer
- ⇒ an individual Schedule D filed for which the broker reported that the security was not a covered security

What difference would the Service perceive in these two reports? The most that the broker could do in the first case is to compare the acquisition date and price provided by the client to a historical database to confirm that the security traded at "x" price on "x" date. This step may be more appropriate for the Service to take as part of their validation criteria for an uncovered security.

Question 35 - What procedures a broker should follow with respect to basis adjustments if an issuer report on a corporate action is insufficient or untimely.

In general, we believe that brokers should be required to make adjustment to basis for securities affected by corporate actions, but only to the extent that the issuers publish the required information and only until such time as information reporting to the Service for the tax year has been completed. We do not see that forcing brokers to file corrected information reports and distribute corrected 1099s to clients is a viable solution. Does the Service really want individual taxpayers to have to re-file their tax returns because an issuer was untimely in publishing basis adjustment information?

Ultimately, we do not believe that corrected broker reporting is an appropriate solution to this issue. In our view, provision of basis adjustment information should be a condition of approval for a corporate action. If that information cannot be provided on a timely basis, then the action should not be allowed to proceed.

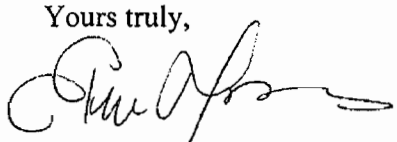
Question 36 - Under what circumstances penalties may apply to brokers or other reporting entities and when relief from penalties should be available.

We believe that the Service will need to work closely with the brokerage industry over the next few years to provide guidance and clarification of the rules for cost basis reporting and exercise great discretion with regard to the imposition of penalties for inaccurate reporting, particularly after the first few years that the rules have been in effect. As we are sure the Service is aware, there are millions of securities transactions and thousands of customer account transfers executed every day. This translates into a tremendous amount of data to be captured, managed and ultimately reported. Some of this work is being done today, but by all accounts it is only a fraction of what will be required under these new rules. Implementing an initiative of this scale will be a challenge for the brokerage industry.

The good news is that Congress has, in our opinion, allowed sufficient time to complete the work necessary to successfully implement this initiative. However, to proceed with the work required the brokerage industry needs final regulations before the end of 2009 and we will need ongoing communication with the Service throughout 2009 and 2010 to clarify rules and technical requirements. There are numerous brokerage industry organizations that the Service can leverage to provide this ongoing communication.

We thank the Service for reaching out to the industry in this way prior to publishing rules and we hope that the communication will continue over the next two years until the rules become effective. We wish to thank the Service for the opportunity to comment on the rules and we are available to answer your questions. Please do not hesitate to contact Robert Linville at (303) 590-6062 (robert.linville@broadridge.com) or me at (201) 714-3401 (steve.neiss@broadridge.com.)

Yours truly,



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