

FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

February 27, 2009

Stephen Schaeffer
Office of Associate Chief Counsel (Procedure & Administration)
Internal Revenue Service
CC:PA:LPD:PR (Notice 2009-17), Room 5203
P.O. Box 7604, Ben Franklin Station,
Washington, DC 20044

Re: Notice 2009-17

Dear Mr. Schaeffer,

The Financial Information Forum (FIF)¹ would like to take this opportunity to provide feedback on IRS Notice for Comment 2009-17. The FIF Cost Basis Working Group includes broker-dealers and service bureaus responsible for implementing the new cost basis requirements added in section 403 of the Energy Improvement and Extension Act of 2008, Div. B of Pub. L. No. 110-343, 122 Stat. 3765. Given the short comment period, FIF would like to submit this preliminary comment letter outlining implementation issues which we will describe in more detail in a subsequent letter to be submitted the week of March 16. As the industry moves forward with implementation, the FIF Cost Basis Working Group would like to stress the importance of addressing the following issues:

Transfer Reporting

- Use of a centralized utility for facilitating the transfer of cost basis information that includes all participants of the transfer process including broker-dealers, mutual fund companies and transfer agents. Participants of this utility should be afforded relief from any penalties associated with the transfer process. Functionality of a centralized utility including an appropriate reconciliation process and associated metrics will be discussed in more detail in our subsequent filing.
- Establishing an efficient process for corporate action processing and wash sales including the application of corporate actions/wash sales occurring after the transfer of assets.
- Establishing a consistent methodology for dividend re-investment plans (DRIP) cost basis reporting to facilitate transfers.

Forms

- Further discussion required among industry participants on new layouts/fields for Form 1099B that will be required to meet the new cost basis requirements given the tradeoff between the creation of new forms and/or issuing multiple forms for a transaction.
- Consideration of implementation issues in the modification of Form 1099B

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

Industry Testing

- Development of industry test plans to ensure adequate testing both from a cross-participant and point-to-point perspective
- Adequate time for functionality and stress testing of the filing process with the IRS as well as the transfer reporting

General Implementation Issues

The establishment of clear requirements, uniform standards and established best practices will be critical to the successful implementation of the new requirements. Some areas for consideration/clarification include:

- Minimum data retention requirements on a broker dealer to recreate a client's cost basis for any given tax year to justify the realized gain/loss presented on the 1099 and to the IRS
- Confirmation for how to identify securities for purposes of determining applicable effective date, e.g., definition of "stock" for the 2011 date
- Treatment of DRIPS and the definition of a DRIP Plan (i.e., do DRIPS include any stock for which the account holder has selected dividend reinvestment or is it solely a sponsored DRIP plan?). Considerations include the customer perspective as well as the implementation impact.
- Treatment of "held away" assets that firms may reflect on their brokerage statements as a client convenience
- Cost Basis Election Process
 - Requirements and methodology to retain client instructions specifying account level lot selection methods in the event it is different than default
 - Need to allow different accounting methods at the CUSIP level instead of the account level
 - Applying average cost basis specifically pertaining to pre- and post-legislation active dates
 - Accounting at the trade level as opposed to the purchase level.
- Ability of a Financial Advisor or other intermediary to supply instructions for account level lot selection method as opposed to instructions coming directly from and evidenced by tax payer / account holder
- Treatment of day traders with respect to wash sales. Specifically, a tax payer who files as a day trader is not required to account for wash sales. How are brokers to validate a client's status as a day trader?
- Is it expected that brokers will be required to bifurcate holdings of a given security for one of the following reasons:
 - Account holder holds shares of a stock that are part of a DRIP plan and holds shares that were acquired through a straight purchase. Do DRIP shares need to be treated as average cost and other shares as FIFO if FIFO is the default method?
 - For Mutual Funds, which use average cost, do we need to create two positions: one for the shares purchased pre effective date and one for those lots purchased post effective date?

Summary

Eliminating ambiguity and establishing processes that will ensure consistency across the industry is critical to the successful implementation of the new requirements. As noted above, we will provide additional comments and specific responses to the questions raised in IRS Notice 1009-17 in a subsequent letter after further discussion among the FIF Cost Basis Working Group. We look forward to participating in a constructive dialogue with the Internal Revenue Service and other industry participants to ensure the successful and efficient implementation of the new cost basis requirements.

Sincerely,



Manisha Kimmel

Executive Director, Financial Information Forum