



February 11, 2010

CC:PA:LPD:PR (REG-101896-09)
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: Proposed Regulations for Basis Reporting by Securities Brokers and Basis
Determination for Stock (REG-101896-09)

Dear Mr. Schaeffer:

The following comments are presented on behalf of Broadridge Financial Solutions, Inc.¹ ("Broadridge"), a leading outsourcing provider to the global financial industry, and our clients who are listed in Attachment I to this letter. Broadridge provides cost basis accounting, tax reporting and back office processing services to the brokerage industry including the Tax Information Reporting Service², cost basis accounting systems and

¹ 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. These systems and services 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.

² 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"), widely held fixed investment trusts ("WHFITs"), real estate investment trusts ("REITs"), mutual funds and unit investment trusts ("UITs") and Master Limited Partnerships ("MLP").

brokerage back office systems that will all be modified to support the Proposed Regulations for Basis Reporting by Securities Brokers and Basis Determination for Stock (“Proposed Regulations”).

We embrace the underlying goals of the legislation and the Proposed Regulations which we see as providing both taxpayers and the Service with the data necessary for accurate and timely tax reporting. We are committed to making the investments necessary in the systems and processes to achieve these goals. We are also committed to reaching out to the securities industry in this effort, as achieving the goals of the legislation will require cooperation among a broad range of industry participants as well as other public and private interests involved in tax reporting and tax preparation. In preparing these comments, we have consulted with broker/dealers, banks, mutual fund companies, industry utilities, data vendors and other brokerage industry organizations.

At this time our primary concern with the Proposed Regulations and the forthcoming final regulations is their timing of the former and the effective date of the latter. The scope of the work required for systems changes, staff development and investor education to support these regulations is broad and complex. The statute provides for a phased implementation of the regulations from 2011 through 2013, however, many of the most far reaching requirements – those that involve interrelated changes by multiple entities - are proposed to be effective in the first year, beginning 1/1/2011. In Broadridge’s our prior comment letter dated March 30, 2009, Broadridge stated that the brokerage industry needed Final Regulations before the end of 2009 to implement the changes necessary to fully support the new reporting requirements. It is now February 2010, and we do not anticipate seeing final regulations for at least several months. We still believe that it will take a year or more for the brokerage industry to complete the work necessary to support the Proposed Regulations. For this reason, we request that the Service consider postponing the implementation date of some or all of these requirements.

Specifically, we would like the Service to consider delaying or changing the following requirements:

Transfers of Basis

The requirements to transfer basis in the Proposed Regulations are significant and include the modification and development of existing and new utilities to transfer data between brokers and other custodians or “applicable persons” as defined in the Proposed Regulations. The brokerage industry currently has some capability to transfer cost basis from broker to broker through the Cost Basis Reporting Service (“CBRS”) of Depository Trust and Clearing Corp (“DTCC”). The CBRS service provides a secure and standardized utility for brokers to exchange cost basis data for customer securities that have transferred between the brokers through DTCC’s Automated Customer Account Transfer Service (“ACATS”). To meet the requirements of the Proposed Regulations, CBRS will require substantial modifications by both DTCC and by current participants. In addition, not all broker/dealers and only a few banks currently participate in CBRS.

No transfer agents or other custodians currently participate. So, in addition to making significant changes to CBRS, DTCC and the brokerage industry also face the additional challenge of integrating many new participants.

For CBRS, DTCC plays the role of clearinghouse and the single point of contact for all brokers. Due to this unique role, DTCC's programming efforts to modify CBRS must be complete *before* any current or prospective CBRS participants can program and test the changes required to their systems. So, DTCC must first complete a process of gathering requirements, analyzing its system to determine the required changes, designing the changes to CBRS and producing its final requirements. Based on our analysis of the Proposed Regulations, the changes to CBRS will include additional data fields, additional functionality including transferring corrections to basis data for an indefinite period of time after the original transfer and supporting requests initiated by the receiver of the transfer when no data or incomplete data is received within the prescribed timeframe. New input utilities will also be required for brokers that use utilities other than ACATS to transfer assets but will use CBRS to transfer cost basis data. All of this analysis and design work must be completed by DTCC *before* brokers or service bureaus like Broadridge can begin an identical process of requirements gathering, analysis, design and specification for their individual systems.

DTCC and the brokerage industry have been engaged in requirements gathering and analysis work already for this project for some time. Based on this analysis, DTCC has estimated its development timeframe to be seven months *before* it would be in a position to support participant testing. Participant testing for these changes to CBRS is critical to achieving the goals of the Proposed Regulations. DTCC's role as the clearing house for CBRS means that every participating broker or service bureau must validate its system changes with DTCC. Typically, DTCC supports participant testing for three months prior to implementing new versions of CBRS. For one recently completed industry initiative that required changes to ACATS and CBRS, DTCC supported participant testing for six months prior to implementation. Given the size and scope of these changes, we believe that three months is the minimum reasonable time that should be allotted for participant testing.

Based on our assumptions and given the new data and new functionality required, Broadridge has identified three projects so far that will need to be completed to support the requirement to transfer cost basis data. Each of these projects will require five months or more of effort. We don't have an estimate for elapsed time for these projects yet because we have not yet identified all the projects that will need to be completed to support all of the Proposed Regulations. We do know that the projects to support transfers of basis will impact the same resources (programs, people, test environments, etc.) that will be impacted by projects required to support the new basis calculation and basis reporting requirements. None of this work – either DTCC's or ours – can begin until Final Regulations are published. To begin any programming work prematurely would introduce a risk that additional requirements would be included in the Final Regulations that would invalidate the design and any programming work that had been done to that point.

Were Final Regulations available today, this project would be difficult for DTCC and the brokerage industry to complete and implement the changes necessary to support the transfer requirements of the Proposed Regulations by 1/1/2011. Based on DTCC's current estimates, if Final Regulations were not published until June of this year, DTCC would not have sufficient time to complete the required changes to CBRS before the end of the year or support any participant testing. Should the final regulations be published later than June, it is unreasonable to expect that the brokerage industry, including its service providers, depositories, custodians and agents will have sufficient time to complete the sequential development necessary to accurately and efficiently transfer basis for covered equities beginning on 1/1/2011.

In addition to a modified CBRS system to transfer basis data in compliance with the transfer requirements of the Proposed Regulations, brokers will clearly need to have a utility to generate manual transfer letters that can be mailed or faxed to brokers or applicable persons who do not participate in an automated basis transfer service. We expect such a utility to be necessary, but it is not a viable solution for a majority or even a large percentage of the thousands of assets and hundreds of thousands of tax lots that are transferred between brokers daily. Manually re-keying that amount of data would simply be unmanageable. This kind of solution is something that Broadridge and other service bureaus and brokers can begin work on immediately upon the publication of Final Regulations, however it is only a very small part of the solution to support the requirement to transfer basis beginning 1/1/2011.

Given the already late date and the work required to support the transfer requirement, we recommend that the Service postpone the effective date of the requirement to transfer basis when a security is transferred from broker to broker to a date one year from the date that Final Regulations are published. Prior to that date, brokers will continue to transfer basis as they do today on a best efforts basis. However, brokers would not be required to transfer basis, to transfer corrections to basis or to request basis when a security is received and a transfer of basis is not received. During the period from 1/1/2011 until the transfer requirements becomes effective, brokers would be allowed to consider securities received by transfer uncovered.

Adjusting Basis for Corporate Actions

We are concerned that not all applicable persons as defined in the Proposed Regulations are required to adjust basis for corporate actions. Applicable persons who may maintain custody of securities for customers but are not brokers in that they do not stand ready to execute sales of the securities are required to receive and transfer cost basis for the securities but are not required to adjust basis for that security due to corporate actions. This exclusion creates an additional burden for all issuers and brokers, adds complexity to the process of transferring basis from broker to broker and introduces a risk that basis will be not adjusted properly for the taxpayer.

The exclusion of some applicable persons from the requirement to adjust basis for corporate actions creates the need for corporate actions to be uniquely identified by a number provided by the issuer as described in Proposed Regulations. This identifying number will be used in the transfer process by the delivering broker to inform the receiving the last corporate action for which basis had been adjusted. A broker receiving a transfer of a security would presumably use this number to determine if there are adjustments to basis required for corporate actions that occurred while the security is in a prior broker's custody. However, there are a number of problems with this presumption that could result in errors in the calculation of a shareholders basis in a security.

First, is the broker receiving custody of a security responsible for adjusting basis for corporate actions that occurred prior to their receiving custody? The Proposed Regulations are not explicit on this point. The Proposed Regulations suggest that a broker must make adjustments to basis at the time of a sale, but suppose that no sale is made. Is the receiving broker required to correct basis or "catch up" for adjustments not made by the prior custodian? Or should the receiving broker expect the prior custodian to send a correction to basis subsequent to the original transfer letter? Clearly, to make this determination, the receiving broker must know if the prior broker is subject to the requirement of making adjustments to basis for corporate actions and sending a corrected transfer letter for such adjustments. Further, suppose that the receiving broker does not execute a sale and there are no subsequent corporate actions. If the receiving broker (Broker 2) then is asked to transfer the security to yet another broker (Broker 3), can both brokers execute the transfer without making the adjustment to basis for the corporate action that occurred when the security was in the prior broker's (Broker 1's) custody? Clearly, opportunities exist in these scenarios for adjustments to basis to be done twice or not at all. If the Service believes it is essential to exclude certain applicable persons from the requirement to adjust basis for corporate actions, then the identity of custodians who are exempted and the rules for cost basis adjustments and the obligations of subsequent custodians who are subject to those rules must be clearly defined.

Without this exclusion, any applicable person maintaining custody of a security would be required to adjust basis for that security for any corporate actions that are effective while the security is in that person's custody. There would be no need for issuers to assign identifying numbers to corporate actions or for this number to be passed from broker to broker as part of the data included in the transfer letter. Each broker would be responsible for adjusting basis for corporate actions that occurred during the time it held a security in custody. Each broker would only need to look to the effective date of the action to determine those customers for which the broker is responsible for making adjustments to basis. This approach would place the burden of adjusting basis, including the responsibility to send corrections to basis for securities transferred to another broker, equally on all applicable persons, which is fair and reasonable. We therefore recommend that the Service require that all applicable persons who maintain custody of a security and are required under the Proposed Regulations to receive and transfer basis for said security also be required to adjust the basis for the security for any corporate actions that are effective while the security is in their custody.

Back-Up Withholding on Short Sales

There are several problems with the proposed change to perform back-up withholding at the time a short sale is closed rather than when it is opened. A short sale is a sale of securities not owned by the seller and therefore the securities are borrowed by the short seller from the broker to satisfy the requirement to make delivery of the securities upon settlement of the sale. A short sale must be executed in a margin account where the broker may extend credit to the customer, in this case loaning the customer the securities necessary to settle the sale in the same way that the broker would loan cash to a customer to settle a purchase on margin.

The amount of cash or other acceptable collateral required to be maintained in a margin account for a short sale is specifically defined under SEC Rules. Initially, the margin required to open and maintain a short sale is 100% of the proceeds of the short sale plus an additional percentage of the value of the short sale in cash or marginable securities. However, the amount of that requirement can decrease over time if the value security sold short decreases. In fact, as the value of the short security approaches zero (which is the goal of every short seller), the amount of margin required in the account to maintain the short position also approaches zero. Therefore, it is conceivable that when a short sale is closed, the amount of cash available in the account under current margin regulations could be less than the 28% required for withholding under the current back-up withholding rules.

Under current margin regulations, a broker cannot deny a client access to funds in a margin account that are not required to be held in an account to satisfy margin requirements. So there is a real risk that at the time a short sale is closed, there may not be sufficient funds in the account to cover the 28% of the original sale proceeds required for back-up withholding unless there is a change to substantive law that requires the broker to retain a minimum of the current value of the short positions plus 28% of the original value of a short sale for an account subject to back-up withholding. Current withholding rules also provide for brokers to withhold funds in new accounts subject to withholding for a specific period of time prior to remitting the funds to the Service ("grace period" withholding). However, this rule limits the withholding period to a specific period of time. To extend such a rule to cover back-up withholding would require that the "grace period" for the withholding to extend for an indefinite period of time which would be the life of the short sale. In addition, provisions would have to be made in the transfer process to transfer the withholding requirement should the account transfer to a new broker.

As an alternative to changing substantive law or risking that there are not sufficient funds to satisfy the withholding requirement at the time a short sale is closed, we propose that back-up withholding on short sales be performed and the funds remitted to the Service at the time that the short sale is opened, as is current practice. Brokers could support the Proposed Regulations requiring the reporting of short sales on a Form 1099-B when they are closed, but, in the event that a short sale remains open past the end of the tax year, it would be necessary for the broker to issue a Form 1099-B to the taxpayer and the Service

for both the year in which the withholding occurred and the year in which the short sale was closed. This could be accomplished with a minor additional change to Form 1099-B that would allow brokers to file Form 1099-B with an additional option in Box 2 for "Federal Tax Withheld-Open Short Sale" and no reported Gain or Loss in Boxes 7 and 8 for the year in which the withholding occurred. The broker's reporting for the year in which the short sale is closed would be done as proscribed in the Proposed Regulations with the exception that no withholding would be reported in the year in which the short sale was closed if the withholding had been reported in a prior year as described above.

Calculation of Basis for Gifted and Inherited Securities

The requirements presented in the Proposed Regulations to report basis for gifted and inherited securities are complex and will be difficult to apply, particularly when considering customers residing in 50 states that have varying rules for determining the date of a gift or the basis adjustments allowed for property held jointly in the event of the death of one of the joint owners. For gifted securities, we believe that there is a reasonable alternative that will significantly reduce the complexity of the reporting requirements and the frequency of corrections. For inherited securities, we believe that there is also a reasonable alternative for estates in the name of a single decedent.

With respect to basis adjustments for securities held solely in the name of a single decedent, we recommend that the broker be allowed to step up the basis of the securities held in the sole name of the decedent to the fair market value as of the date of death. The date of death is easily documented with a death certificate and obtaining such documentation is normal brokerage procedure in the disposition of assets held for a decedent. Such a procedure may even be a welcome service to the authorized representative of the estate, who would only need to provide additional instructions to the broker regarding basis adjustments if an additional adjustment was necessary. We believe that this procedure would simplify the basis adjustments required of the broker and result in the correct basis information being reported on a Form 1099-B or transferred upon disposition of the estate's assets more frequently than if the broker were required to wait to receive instructions to adjust basis from the authorized representative of the estate. Therefore, this alternative procedure would significantly reduce the incidence of corrected transfer statements or corrected Form 1099s for this kind of account.

With respect to securities held for multiple tenants where one tenant becomes deceased and the survivor or survivors inherit the securities, we see the new regulations as introducing far more complex requirements. In these cases we believe that the broker has no alternative but to rely on the authorized representative of the estate to provide instructions for basis adjustments as described in the Proposed Regulations. However, as a practical matter that representative is likely to be the surviving tenant, who has full legal access to the assets in joint name and no immediate need to inform the broker of the basis adjustments required or even that the other tenant is deceased. If you add to that fact the complexity of determining basis adjustments required for different tenancy relationships under various state laws, we expect that in such situations, securities are likely to be sold or transferred before the taxpayer provides the broker with information

necessary to adjust basis. These circumstances will result in the need for the broker to issue corrected transfer statements and / or corrected Form 1099s, but we do not see any means to reduce this need for corrections short of defining the securities in these cases as uncovered.

With respect to gifted securities, we feel there is also an opportunity to reduce the burden on the broker and still achieve the goal of the legislation. The Proposed Regulations require that the broker obtain, maintain, transfer and eventually use both the donor's basis and the fair market value as of the date of the gift in order to calculate the gain or loss for a gifted security. Although we understand these requirements in the context of existing statutes, we believe that the goals of the Proposed Regulations will be achieved in nearly all cases if brokers are only required to transfer the donor's basis. The requirement to obtain the date of the gift, the fair market value as of that date and transfer that information in addition to the donor's basis is a significant burden which we believe serves little purpose. The fair market value ("FMV") as of the date of the gift is information required to determine the amount of any loss that may be claimed by the recipient of the gift when the recipient sells the security at less than the donor's basis. We believe that such a circumstance (the recipient of gift realizing a taxable loss upon the sale of a gifted security) is rare and does not justify the burden of obtaining and transferring this additional information for every gift of securities processed by a broker. Furthermore, we believe that the complexity of determining the date of the gift will, in many cases result in incorrect or incomplete information on the transfer statement. Finally, for gifts to a taxable recipient where the FMV is less than the donor's basis, the donor would be better advised to sell the security himself, realize the tax benefit of loss and make a gift of the same value in cash, rather than give the security to a recipient who would not be able to realize the benefit of the loss. In those rare circumstances where a taxable recipient sells a gifted security for an amount that is less than the donor's basis, we believe that it is reasonable for the broker to be required to report a basis amount equal to the gross proceeds of sale (no gain and no loss) and require the taxpayer to document the date of the gift, the fair market value as of the date of the gift and the amount of the allowable loss on their tax return. We therefore recommend that brokers only be required to maintain and transfer the donor's basis for gifted securities.

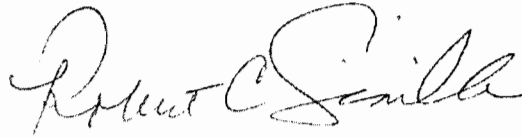
Conclusion

We thank the Service for this opportunity to comment on the Proposed Regulations and we hope our observations will be helpful to you in formulating final regulations. We hope that the communication will continue in the coming months and over the next two years until the rules become effective. Please do not hesitate to contact Robert Linville at (303) 590-6062 (robert.linville@broadridge.com) or Steve Neiss at (201) 714-3401 (steve.neiss@broadridge.com.)

Yours truly,



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Attachments:

1. Co-Signers

Attachment 1:
Co-signers³

Alliance Bernstein

D A Davidson

Deutsche Bank

FirstSouthwest

H C Denison Co.

HSBC Securities

MacAllaster, Pitfield, Mackay Inc.

People's Securities, Inc.

³ Comment Letter co-signers of Securities firms for which Broadridge processes transactions. The firms' contact information will be made available upon request.