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February 5, 2010

Internal Revenue Service
CC:PA:LPD:PR (REG-101896-09).
Room 5203
P O Box 7604 Ben Franklin Station
Washington DC 20044
Attn: Stephen Schaeffer

Re: IRS REG-101896-09

Dear Mr. Schaeffer:

The Securities Transfer Association (“STA”) appreciates the opportunity to comment on the proposed regulations relating to reporting sales of securities by brokers (and transfer agents) and determining the basis of securities. The STA is the professional association of transfer agents. Founded in 1911, the STA membership of over 150 transfer agents maintain records in the aggregate of more than 150,000,000 registered shareholders on behalf of more than 15,000 issuers. The STA supports the regulation that will require basis reporting being provided to shareholders, believing it to be an important service. Although the STA has both equity transfer agents and mutual fund transfer agents among its members, the equity transfer agent STA members perform distinctly different functions than broker dealers or mutual fund transfer agents, and have some unique and specific concerns. Our comments, specific to our equity transfer agent members, follow:

In general, the STA is pleased that the proposed regulations that provide guidance as to how cost basis must be recorded and reported have been released, but is very concerned about the timing of the release. The regulations take effect on January 1, 2011 for equity

securities, (other than DRP shares, for which the effective date is January 1, 2012). The proposed regulations were not made available until December 16, 2009, which affords our members only a little over one year to assess and analyze them and to begin the extensive programming changes to their systems that will be required. In addition, since they were released as proposed regulations, and not in final form, transfer agents still cannot finalize the needed system specifications. The IRS has not made known the date that the final regulations will be published, (possibly not until late spring or summer of 2010), which would provide no more than 6 to 7 months for agents to complete programming and testing activities, increasing the difficulty of achieving compliance by January 1, 2011.

This problem is exacerbated by requirements in the proposed regulations that are quite different than those the STA had proposed in our earlier comment letters and direct discussions with the IRS staff. As stated above, this short time frame between the release of the proposed regulations and the effective date for equities will make accurate compliance difficult for our members. In particular, the programming changes that the financial services industry must make to accommodate the requirement of sending transfer statements between brokers and agents will be particularly difficult to accomplish by the January 1 deadline, now less than 11 months away. It is important to note that unlike the brokerage industry and the mutual fund transfer agents (who have been tracking and reporting cost basis for some years), the equity transfer agents' systems do not presently have this capability. The work entailed in building a system to track and report basis, and to modify transfer agents' tax reporting systems, is extensive and expensive in itself, even absent the build needed for sending transfer statements between brokers and agents. For this reason the STA strongly urges the IRS to delay the effective date for the transfer reporting statements by one year, until January 1, 2012. We *urgently* request that brokers and agents be only required to capture and report basis for transactions that occurred on their own books for covered securities in 2011, and then add the transfer reporting piece for January 1, 2012. Based on data collected from some of our larger members, we believe that the basis data not reported because of this change would impact only a very small number of shareholders. One large agent estimated it would be less than 0.05 per cent of the shareholder file. We further ask that any penalties that might be assessed under any part of this new regulation be waived for the first three years of operations. Other specific comments about each part of the proposed regulations follow.

Basis Adjustments for Corporate Actions: The proposed regulations require that “brokers adjust the basis they report to take into account the information received on a transfer statement in connection with the transfer of a covered security (including transfers from a decedent and gift transfers) as well as information received from issuers of stock about the quantitative effect on basis from corporate actions.” The proposed regulations further provide that entities defined as applicable persons (perhaps transfer agents) who must provide transfer reporting statements do not have this obligation. The STA believes they should. If all parties in the chain are not required to adjust basis for shares held on their books on the date a corporate adjustment is announced, then every

broker, and every agent defined as a broker, will continually have to research the dates and impact of all applicable corporate actions for a security each and every time shares move to their books from one of these entities without the obligation. The STA strongly urges the IRS to require all entities that must furnish transfer statements to adjust basis stemming from corporate actions. The receiver of the information should be able to know that it is up to date and to rely on it. Additionally, the proposed regulations require that the adjustments to basis needed as a result of corporate actions must be made prior to the reporting of a sale of the security. The STA believes that this provision will lead to confusion, error, and the unintentional failure on the part of some parties to apply the required corporate action adjustment. The STA recommends that every party that must provide a transfer reporting statement make these adjustments within 15 days from the time that the information required by Section 6045B is announced.

Concerns with the Transfer Statement: The proposed regulations list on page 114 a number of pieces of information to be required on the transfer statement. The STA has grave concerns about many of these data items, believing that information such as taxpayer name, address, taxpayer identification number, account number and telephone number represent Non Public Information (“NPI”). To include this information on the transfer statements would violate certain state laws which control and restrict the transmission of such information and would heighten the chance that this information could be accessed by persons who would use it for purposes of identity theft. In addition, representatives from the STA, the Investment Company Institute (“ICI”), the Securities Industry and Financial Markets Association, (“SIFMA”), and other industry participants have been working to establish an electronic form of transfer statement that will use a unique identification number to pass basis between the parties, intended to be the industry standard way of passing cost basis information, when completed. The unique identification number ties back to the prior electronic (or in paper) transfer of the actual shares through various Depository Trust Company, (“DTC”), systems and acts as a code that represents the actual taxpayer information. It is important to note that the party needing to receive the cost basis on the transfer statement already has the actual taxpayer data that it needs on its books and records, received at the time the actual transfer was processed. There is no need to resend this personal information on the cost basis transfer statement. The STA also points out that most of its members do not have shareholder telephone numbers on their records and would be unable to pass that data in any event. Telephone numbers are not a required piece of information in the transfer process.

1099 B Reporting for S Corporations: The proposed regulations remove the exemption from Form 1099B reporting for sales by S Corporations and also curtail the ability of brokers to rely solely on the name of the customer to determine whether the customer is a corporation that is exempt from the reporting. STA member transfer agents’ systems do not presently distinguish between S Corporations and other corporate or business entities. In order to comply with the regulations as proposed, transfer agents would have to send a mailing to all non-individual shareholders in their records, to solicit information about whether or not the entity is organized as an S Corporation. This would be prohibitively expensive, considering the cost of printing and postage today. The STA strongly requests

that those non-individual shareholders existing in their records prior to the effective date of January 1, 2012 be grandfathered, so that no solicitation is required. The STA further requests that the IRS amend Form W-9 so that the required information could be captured at the time that the account is opened, going forward.

Wash Sales in DRP's: The proposed regulations, as presently worded, will require those transfer agents that administer DRP's to calculate adjustments for wash sale situations arising from the reinvestment of dividends in DRP's within 30 days of either side of a sale in those plans. The STA has filed a letter with the IRS on October 30, 2009 requesting that an exception be made so that brokers and agents will not be required to adjust basis, amending Forms 1099B, because of the reinvestment of dividends that might occur within 61 days of a sale in these plans (excluding preferred or extraordinary dividends and optional cash purchases). However, we did not ask that the tax law be changed, in that shareholders would still have the obligation to report disallowed losses from wash sales as required by present regulations. The STA believes that any discrepancy between transfer agents' records and shareholder filings resulting from this requested exception would be minimal. Our substantiation for this request follows: The wash sale rule is intended to keep investors from claiming a tax loss and then replacing the very shares that they sold at a loss. The reinvestment of dividends into a DRP is a pre-authorized, repetitive transaction, the timing of which cannot be controlled or directed by the investor, and as such, cannot, by any rationale, be categorized as trying to replace the shares sold and intentionally creating a capital loss while maintaining the same security ownership. Moreover, many stock transfer agents produce Form 1099B for the investor at the time that the sale takes place, printing the required information on the stub of the check for the proceeds. If the shares are sold at a loss within 30 days prior to a reinvestment, and no exception is granted, agents will have to generate yet another, corrected tax form to the investor, adjusting his basis by a very small amount. The cost of producing and mailing this extra tax form is substantial, when compared to the benefit to be derived. The production of this second, amended tax form would undoubtedly confuse investors, lead to possibly incorrect investor tax reporting, and increase volume in agents' call centers. In our October letter, we forwarded statistics from our larger agent members that indicate that the resultant disallowed loss adjustment would be minimal. Moreover, when coupled with the holding period adjustment requirement, such de minimis transactions would significantly add to processing and data storage requirements for transfer agents. The STA again strongly requests that relief be granted so that transfer agents will not have to perform wash sales adjustments in DRP accounts as the result of reinvested dividends.

The 10% test for a DRP should be eliminated. Page 24 of the summary of the proposed regulations discusses a 10% test to be applied to a DRP Plan Document. A number of our larger members have reviewed various plan documents for plans that they administer and find that there is seldom, if ever, any language about a 10% requirement to be found in these documents. If the issuer clients of transfer agents were required to amend their plan documents to include the 10% wording it would be a costly exercise with little practical benefit. The Board of Directors would have to convene a meeting to

discuss and approve the new wording, and Plan Documents would have to be rewritten, printed and distributed to existing Plan participants. In reality, our transfer agent members advise that it is unlikely that shareholders would choose to reinvest less than 10% of any dividend. For these reasons, the STA asks that this requirement be eliminated. Additionally the 10% requirement seems to conflict with the statement further down the page that a plan can be considered a DRP, and suitable for average cost as the basis determination method even if no dividends have ever been declared or paid. The STA recommends that the definition of a DRP on pages 67 and 68 of the proposed regulations be modified to read as follows: Dividend reinvestment plan – (i) In general. For purposes of this paragraph (e), the term dividend reinvestment plan means any written plan, arrangement, or program under which **dividends on any share of stock may be reinvested** in stock identical to the stock on which the dividend is paid. A plan is a dividend reinvestment plan if the plan documents **allow dividends paid** to be reinvested in identical stock even if the plan includes stock on which no dividends have ever been declared or paid or on which an issuer ceases paying dividends.

Issues with Reporting of Gifted Securities: The proposed regulations state that if a broker or transfer agent receives a transfer for which they do not know the underlying reason, (and assuming that no one of the original owners of the shares is named as a transferee) that the broker or agent should record that transfer as a gift and follow the proposed regulations for gifted shares. They further state that the broker or agent must record the cost basis of the donor account, the date of gift, if known, and the fair market value on that date. There are many problems with this approach from our perspective. Absent any information from the presenter of one of these transfers about the date of the supposed “gift”, the proposed rules are unclear about what should be recorded as the date of the gift. The STA recommends that the date of gift recorded should be the date that the transfer was recorded on the books of the transfer agent. Additionally, the existing tax code that taxpayers must follow when reporting the tax consequences of the sale of gifted shares are complex, requiring comparisons between the donor’s basis and the fair market value on the date of the gift. The STA believes that having to record two possible values of basis for a share lot and make that comparison introduces needless complexity to our members’ programming effort. We recommend that brokers and agents be allowed to mark these transfers as a gift, and carry over the donor account’s basis only. It should be up to the taxpayer to select the correct basis when preparing their tax return. The STA recognizes that this idea would result in less information being filed with the IRS (namely the fair market value would not be provided) but suggests that a “gift indicator” box be added to the new Form 1099-B for 2011 that would indicate that some or all of the shares sold were the result of a gift on the transfer agent’s records.

Corrected reporting: The proposed regulations do not give any cut off date for corrected reporting. The STA believes that corrected reporting should be required up through December 31 for three years following the year of the sale, and the initial tax reporting of that sale, but no longer. If a broker or agent receives a correction following that cut off, corrected reporting should be optional, at the broker or agent’s discretion. This would be

consistent with the present retention requirements for Form 1099-B. The STA notes that for other tax forms, the IRS has allowed filers to file corrections up through August of the year the tax filing is made without penalty. The corrections to Form 1099-B required after the January 1, 2011 effective date are different in one significant respect from corrections to forms in previous years, in that they are just as likely to be the result of corrected information coming to the broker or agent from a third party, rather than the result of some error within the transfer agent's operations or systems. The STA recommends that the regulations make clear that if the corrected filing is the result of new information from a third party that no penalty be assessed, regardless of the date of the correction, and since there is cost associated with the issuance of a corrected tax form, recommends that there be a cut off, after which no correction is required, as discussed above. We further recommend that the same cut off or limit be applied to the requirement to send corrected transfer statements; they should only be required for three years after the year of the transfer.

1099-B Reporting for Cash in Lieu of Fractional Shares: Transfer agents routinely report cash in lieu of fractional shares, ("Cash in Lieu") on Form 1099-B. Presently if the amount of this payment is less than \$20.00, no reporting is required. The STA believes that this ceiling needs to be raised to \$100.00 and asks that the IRS make this change as part of the final regulations.

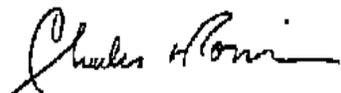
Concerns with Reporting for Employee Stock Purchase Plans: The STA has concerns about the transfer of basis for employee plans, since many of our members are administrators or record keepers of such plans on their records. The proposed regulations note on page 13 that more guidance will be forthcoming. However, on page 96, it appears that the purchase of qualified employee stock purchase plan (ESPP) shares in 2011 or later would be covered securities, and that the basis will be reported as the purchase price. Our concern is that the actual cost basis for ESPP shares, when sold, is a combination of purchase price and the ordinary income recognized. With respect to employee stock purchase plans qualified under Section 423 of the Internal Revenue Code, the ordinary income is not known until the shares are sold, and will vary depending on the qualifying or disqualifying status of the disposition. If the ESPP shares are retained within an ESPP administration system until sale, the system itself can calculate the complete basis upon sale. However, if shares are transferred out of the administration system to the issuer's stock records, or to a brokerage account, the connection between the shares and the data required to compute complete and accurate cost basis will be lost. If, as the regulations suggest, only the purchase price, is to be recorded as basis, then the reporting of this partial basis upon ultimate sale of the shares will be misleading to the shareholder, since it will not include the ordinary income portion. We believe it would be more effective to report no basis, with an indicator code on the transfer statement signifying that the shares were purchased within a qualified plan, and that complete basis information will not be known until sale, and request that the final regulations incorporate this idea. The recently finalized Treasury regulations under §1.6039 require the issuance of Form 3922 upon transfer of ESPP shares upon purchase, or transfer to a brokerage account, which provides all of the information necessary for a shareholder to compute the

cost basis. We believe that Form 3922, in combination with an indicator on the Form 1099-B denoting that the shares are from a qualified ESPP plan, and \$0 cost basis, will result in less taxpayer confusion and more accurate taxpayer compliance than reporting just the purchase price as cost basis on Form 1099-B. Taxpayers may mistakenly use the purchase price without investigating further, and result in under-reporting cost basis on their returns. If taxpayers use the correct basis, then there will be a mismatch compared to the basis the broker reported to the IRS.

Concerns with Reporting of Incentive Stock Options: A similar issue occurs with Incentive Stock Options (ISOs), qualified under Section 421 of the Internal Revenue Code. Shares that are exercised and then sold within two years from the grant date, or one year from the exercise date, are considered disposed of in a disqualifying disposition. As a result, there may be ordinary income recognized which would have to be added to cost basis. As in the case of ESPP shares, if shares underlying ISOs are transferred to a broker before sale, the purchase price included on a transfer statement would be insufficient information to compute cost basis upon sale. The STA recommends that the regulations be modified as suggested above to minimize confusion and aid accurate reporting.

Conclusion: In conclusion, the STA supports the intent of the basis reporting regulations, believing them to be of great benefit to shareholders as well as to the Internal Revenue Service. However, the fact that the proposed regulations were not released until December 16th, and the fact that the final regulations have not yet been released, presents a major challenge for our industry in meeting the compliance date. We hope that we have made clear the operational difficulties our members face in complying with this regulation, and strongly urge that our suggestions for resolving them will be incorporated into the final regulations. In the past we have engaged in dialogue with those who are working on the regulations and will be happy to make our most informed members available for further dialogue, should there be a need to discuss any issues that may arise. The STA hopes to be a valuable resource to you as the final regulations are promulgated.

Sincerely,



Charles V. Rossi
President