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June 29, 2007

Mr. Russ Sullivan
Democratic Staff Director
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Mr. Kolan L. Davis
Republican Staff Director
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Re: Senate Finance Committee Basis Reporting Proposal

Dear Mr. Sullivan and Mr. Davis:

The Clearing House Association L.L.C. (“The Clearing House”), an association of major commercial banks,¹ would like to present its concerns regarding the Senate Finance Committee Basis Reporting Proposal to require basis and holding period reporting by brokers and other financial institutions to customers (the “Proposal”), particularly its impact on the members of The Clearing House. While The Clearing House endorses the recommendations of the comment letter submitted by the Securities Industry and Financial Markets Association, dated June 28, 2007 (the “SIFMA Letter”), The Clearing House would like to expand on several of the concerns addressed in the SIFMA Letter which have special relevance to the banking industry generally, and to the members of The Clearing House in particular.

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The members of The Clearing House are Bank of America, National Association; The Bank of New York; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; LaSalle Bank, National Association; UBS AG; U.S. Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

Gross Proceeds Reporting to Corporate Customers

The Proposal requires financial institutions to report gross proceeds with respect to securities sold by corporate customers. Generally, corporate customers of brokers and financial institutions have been exempted from gross proceeds reporting requirements, because the information that would be reported by financial institutions with respect to corporate customers would differ from the information reported by such corporate taxpayers on their tax returns. For example, financial institutions generally report gross proceeds on a calendar year basis and on a trade date basis, whereas many corporations file tax returns on a fiscal year basis and use mark-to-market tax accounting methods. These timing and accounting differences would lead to numerous mismatches in such gross proceeds reporting rendering the information reported of no use to the IRS and to corporate customers. Moreover, the Proposal is too broad in scope, requiring reporting in respect of foreign corporations that do not pay U.S. taxes as well as nominees that would be indifferent to such information.

The Clearing House understands that the government is concerned about the compliance of small corporations. The problem of small corporate compliance is more likely to occur with respect to day-to-day cash-for-service transactions than with respect to securities transactions for which banks and other financial institutions maintain records. Unlike most individuals, even the smallest corporations generally maintain books and records that are reasonably auditable and that, by the nature of double-entry bookkeeping, render non-reporting of income such as interest, dividends, and capital gains difficult. If a corporation is publicly-held, its books and records will be audited on a regular basis by independent accountants. Although this does not preclude the possibility of tax evasion, those entities which would engage in such activities would likely do it through the non-reporting of day-to-day cash-for-service activities.

The Clearing House also notes that the requirement to report gross proceeds with respect to securities sold by corporate customers will require major systems changes throughout banking organizations. Most of the dozens to hundreds of different business lines within a bank employ their own set of systems. Each product within a business line will often employ its own settlement and accounting systems. And, because many of these products are only sold to corporate customers, there has been no need to date to build reporting and withholding capabilities with respect to these products. The cost to implement gross proceeds and basis reporting on payments to corporations will thus be prohibitive with no foreseeable benefit to the Internal Revenue Service or the corporate customers. While The Clearing House strongly supports Congress in its efforts to reduce corporate under-reporting, The Clearing House joins SIFMA in questioning whether a system of reporting gross proceeds to corporations would significantly decrease the tax gap and whether it would be a cost-effective use of the industry's resources. Accordingly, The Clearing House strongly endorses the SIFMA Letter's recommendation that this provision be removed.

Adjusted Basis and Holding Period Requirement

The Proposal also requires financial institutions and brokers to report adjusted basis and holding period information with respect to certain securities. While The Clearing House generally supports the cost basis reporting proposals, this provision is problematic with respect to several different types of financial instruments such as foreign securities and securities purchased as part of a dividend reinvestment program. For example, because foreign issuers frequently do not report the U.S. tax consequences of various transactions (such as special distributions), it will be nearly impossible for financial institutions to acquire the information needed to provide the required reporting of adjusted basis with regard to such foreign securities. Accordingly, The Clearing House endorses the SIFMA Letter's recommendations regarding foreign securities.

Of particular concern to the members of The Clearing House is the application of the holding period reporting requirements to securities purchased pursuant to a program where dividends on the security can be automatically reinvested into more of the same securities of that issuer. For securities purchased pursuant to such a dividend reinvestment program, the holding period of securities acquired in the program begins upon reinvestment. Thus, holders of such securities might have multiple acquisition dates and holding periods for their investment in such securities. The holding periods also may be different for each portion of a share that was purchased on different dates. This is because dividend reinvestment plans purchase fractional shares with reinvested dividends. It is unclear under the Proposal how the holding periods should be determined and reported when a customer sells multiple tax lots in the same security. For example, a sale of multiple shares of a single security with multiple holding periods would require only the filing of a single Form 1099-B under current law. Any rule requiring a Form 1099-B to be filed for each tax lot of the same security with a different acquisition date with respect to the same sale would impose substantial burdens on financial institutions and would be unnecessarily confusing for taxpayers. The Clearing House recommends that the holding period reporting requirement for securities be removed from the statute and that the IRS instead be granted regulatory authority to specify how the holding period be reported. The IRS should either issue regulations or update the Form 1099-B instructions to allow financial institutions, when reporting a single sale of securities, to aggregate securities held for a year or less and securities held for more than a year into two separate categories, rather than requiring financial institutions to keep track of the acquisition date for every tax lot in a single sale.

Transferring Securities

Additionally, the Proposal requires that persons transferring securities to a broker provide that broker with a written statement containing the necessary information to determine the adjusted basis with respect to those securities. The enormous number of securities transferred to a broker renders a paper transfer system inefficient, burdensome, unmanageable and susceptible to error. One transfer could range from a single security to thousands of securities. The fact that this requirement captures not just broker-to-broker transfers but also bank-to-broker transfers makes such a reporting system even more challenging to centralize and

manage. The Clearing House supports the SIFMA Letter's recommendation to promote electronic statements to transfer basis information.

In addition, The Clearing House is concerned that when foreign banks and brokerages transfer foreign securities to US financial institutions, they may not be willing or able to provide cost basis information. Therefore, to the extent foreign financial institutions transfer foreign securities to a US financial institution without the required cost basis information, the US financial institution should not be penalized for failing to report that basis upon sale of the security.

Wash Sales

Tracking wash sale transactions would also be extremely complex and challenging under the new reporting requirements. Operationally, financial institutions often may not be able to determine whether a wash sale has occurred, because "substantially identical" securities may have different CUSIP numbers. Financial institutions would likely be able to track such transactions only if they occurred in the same account of a particular holder, which would be unlikely—taxpayers would not generally use the same account for both ends of the wash sale transaction if they were attempting to generate artificial tax losses. Thus, such a reporting requirement would be expensive and administratively complex to implement and would almost certainly not provide equivalent benefits to the government in terms of monitoring and preventing abusive transactions. Therefore, The Clearing House agrees with the SIFMA Letter recommendation that brokers should not be required to track wash sales.

Effective Date

Partly as the result of increased merger activity in the banking industry, banks and other financial institutions are currently facing the challenge of integrating multiple information reporting systems. Among the members of The Clearing House alone, the number of different and distinct information systems ranges up to 180 for a single institution. It would be enormously difficult (both in a financial sense and technological sense) to bring systems into compliance with the new reporting requirements set forth in the time frame envisioned by the Proposal.

In light of the substantial technical, administrative, legal and conceptual difficulties that the Proposal would create for financial institutions as detailed in the SIFMA Letter and as set out above, an extension of the effective time is imperative to ensure that the members of The Clearing House will be able to comply with the new reporting requirements. Because many of the details of the reporting requirements contained in the Proposal will only be presented in proposed and final regulations issued by the U.S. Department of the Treasury, the members of The Clearing House would not be able to design, complete, and test their reporting systems until such regulations are finalized. Further, unlike many brokers and dealers in stock and securities, which already provide some manner of basis and holding period reporting to their customers, few other financial institutions collect and provide basis or holding period

information to their customers. Therefore, financial institutions such as the members of The Clearing House will have to create the basis and holding period information reporting systems entirely from scratch, without relying on pre-existing systems. The Clearing House recommends that the reporting requirements in the Proposal be effective with respect to securities acquired after the later of (a) three years after the date of enactment of the statute or (b) two years after the finalization of the regulations promulgated pursuant to the statute.

The Clearing House urges that the Senate Finance Committee appropriately address these concerns in a new version of the bill responsive to the needs and realities of the banking and financial industries. If you have any questions or if the members of The Clearing House can assist you, please contact Norman R. Nelson, General Counsel of The Clearing House, at (212) 612-9205.

Very truly yours

A handwritten signature in dark ink, appearing to read "N. Nelson", with a horizontal line underneath.

cc: Thomas A. Barthold, Acting Chief of Staff, Joint Committee on Taxation
John L. Buckley, Majority Chief Tax Counsel, House Committee on Ways and Means
Jon Traub, Minority Chief Tax Counsel, House Committee on Ways and Means