Appendix A

IRS Notice 2013-22; 2013-2014 Guidance Priority List

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2013-22)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

May 1, 2013

Re: IRS Notice 2013-22: 2013-2014 Guidance Priority List

Dear Acting Commissioner Miller:

The Information Reporting Program Advisory Committee[1] (IRPAC) appreciates the opportunity to recommend items that should be included on the 2013-2014 Guidance Priority List in response to Notice 2013-22.

IRPAC recognizes the challenges the IRS faces in developing and implementing new reporting and withholding policies and procedures as a result of the increased focus on using information reporting to help reduce the tax gap. Legislative changes continue to expand information reporting requirements, and payers are being requested to enhance their due diligence efforts when obtaining tax certification documentation from their customers.

Examples of that legislation include the addition of the Foreign Account Tax Compliance Act (FATCA) under sections 1471 through 1474 of the Internal Revenue Code, as amended, as well as the payment card transaction reporting under section 6050W, the Patient Protection and Affordable Care Act reporting under sections 6051, 6055 and 6056, and the cost basis reporting under section 6045. With these additional reporting programs comes an increased responsibility of IRPAC to fulfill its mission to reduce taxpayer burden and improve the overall administration of information reporting.

Considering these recent changes and consistent with our comment last year, we strongly recommend that the Guidance Plan include a new subcategory under "Tax Administration" entitled "Information Reporting" that focuses on the efficient implementation and administration of information reporting, with fair consideration of taxpayers' burdens. This would include an understanding of the lead times needed by the reporting community to implement both new programs and changes to existing programs, and consideration of the data requested in light of the availability and cost associated with producing such data, and the usefulness of the data collection.

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[1] IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges, and universities and state taxing agencies.

IRPAC recommends that the priority items set forth below be added to this proposed new subcategory of the Guidance Priority List:

1. FATCA guidance.
The effective implementation of FATCA is dependent on additional guidance items and forms being issued as soon as possible. IRPAC recommends that the following items related to the implementation of FATCA be included in the Guidance Priority List: (a) issuance of conforming regulations between Chapter 4 and Chapters 3 and 61; (b) issuance of technical corrections to the Chapter 4 final regulations, as well as responding to requests for clarification on matters that remain unclear; (c) issuance of the revised versions of Forms W-8, 8966, 1042 and 1040-S, including their instructions; (d) issuance of the FFI Agreement, including any coordination with existing Qualified Intermediary (QI) agreements; and (e) release of the FATCA Portal registration requirements and final Form 8957 and its instructions.

Both US withholding agents and foreign financial institutions have only a few months remaining to begin applying the initial requirements of the FATCA regulations, and we remind the IRS that the standard timeframe is 18 – 24 months to implement major programming. USWAs and FFIs must also revise account opening documentation, policies and procedures, and communicate those changes both internally and externally. In addition, large financial institutions must budget for changes a year in advance and generally cannot make systems changes in the fourth quarter of the calendar year.

2. Identity theft information reporting.
IRPAC thanks the IRS for issuing proposed regulations that will allow payers to truncate individual taxpayer identification numbers (SSN, ITIN and ATIN) on a permanent basis, and expanded the use to forms provided electronically. However, consistent with our comment letter dated February 14, 2013, payers should be allowed to truncate employer identification numbers (EINs) because of the fact many (if not most) tax reporting systems do not distinguish between the types of taxpayer identification numbers. The truncation of EINs would also have a direct benefit in reducing the volume of fraudulent returns – such as the Form 1099-OID showing a withholding amount just slightly less or equal to the income amount – being created that show withholding amounts being applied by a payer. Legitimate payers who filed a Form 941, 945 or 1042 are becoming concerned the IRS will start issuing withholding underpayment notices because of fraudulent information returns being created using the payer's name and EIN and showing withholding amounts for which the payer has no liability or deposit requirement.

The TIN truncation program should be extended to all existing or newly introduced information returns unless doing so is explicitly excluded as stated in the preamble to the proposed regulations or in the new form's instructions. Since fraudulent returns are most likely the result of theft from the postal mail of Form W-2 information, IRPAC recommends that Counsel support the adoption of H.R.1560 ("SAFE ID Act of 2013") which will amend IRC §6051 and permit the truncation of social security numbers on wage reporting statements.

Finally, the ability to provide all information returns electronically rather than through the U.S. mail where an envelope is marked "Important Tax Document Enclosed" and the due date to mail tax forms is well known would also reduce the possibility of thieves taking those statements and using them to create fraudulent information returns,and tax returns. Please see Priority Item #5 below for additional reasons as to why this program should be expanded.

3. *De minimis* threshold for Form 1099 corrections.
There are substantial costs to processing corrections to information returns, regardless of whether any amount corrected is material. The volume of corrections has increased significantly in recent years because of the expanded information reporting requirements, resulting in significantly increased costs to the IRS, financial institutions and taxpayers. Reclassification of mutual fund distributions and updated cost basis information are common causes of corrected information returns.

Filers would like to be allowed to apply a de minimis threshold so that corrections are not required for net changes of, for example, $50 or less (up or down). If you consider the cost to the financial institution (printing, mailing, reputation, etc.), the taxpayer (filing a corrected tax return) and the IRS (processing and data matching), a de minimis threshold would promote sound tax administration in that it would eliminate costly corrections that result in no material change in tax revenue. This recommendation could be achieved through minor changes to the definitions of an "inconsequential error or omission" in the regulations issued pursuant to IRC §6721 and §6722.

By way of background, last year IRPAC provided a histogram with its 2012-2013 Guidance Priority List letter dated May 1, 2012. The histogram illustrated the impact that such a correction threshold would have. For a given brokerage firm, 5150 accounts held a particular Unit Investment Trust (UIT) in 2009. The Forms 1099-DIV issued to those accounts included income attributable to that UIT. In the first quarter of 2011 (nearly a year after the associated tax returns would have been filed), the trustee's accounting firm discovered an error in the factors that the trustee had supplied to the industry allocating its distributions between dividend and non-dividend distributions. The trustee published amended factors that required corrected Forms 1099-DIV. The chart showed the distribution of those accounts across various dollar correction levels. If corrections were not required for changes of $50.00 or less, nearly 45% of the corrections would have been avoided.

In addition, brokers who are required to issue a Form 1099-B for the sale of securities continue to face significant challenges and customer complaints related to the reporting of wash sales, particularly for de minimis amounts and when all the information must be corrected because a company announces all or part of a dividend distribution is being reclassified to return of capital. While IRPAC recognizes the reporting of wash sales is mandated in IRC §6045(g)(2(B)(ii), the regulations should permit some exceptions to the requirement to file correct Forms 1099-B that are based on a de minimis amount. The confusion and volume of corrections is also being affected by the fact both brokers and taxpayers need more guidance regarding wash sales than currently exists. For example, wash sales resulting from purchases and

dispositions within employee stock purchase plans (ESPP) appear to have a dual tracking requirement for both the cost basis and holding period because of the compensation and gain/loss reporting pursuant to IRC §423 versus the holding period adjustment rules under IRC §1223(3).

4. Guidance concerning the merchant reporting rules under IRC §6050W.
Consistent with a request made by IRPAC last year, IRPAC recommends that the IRS provide additional official guidance to further address open questions related to IRC §6050W. Official guidance is necessary to address open questions regarding the meaning and scope of certain terms in the statute and Treasury Regulations, particularly regarding third party networks. Key terms integral to the meaning of "third party payment network" must be defined in official guidance in order for reporting organizations to reasonably apply the rules. These terms include "central organization," "guarantee," and "substantial number of providers of goods or services." IRPAC's detailed recommendations related to the definition of these terms can be found in its March 28, 2011, comment letter in Appendix D of its 2011 Annual Report.

In addition, guidance is needed to clarify uncertainty between the scope and application of the rules related to "aggregated payees" and "third party payment networks." This is needed, in part, due to apparent overlap of the rules in these areas and because a "third party settlement organization" is not required to report transactions for a payee whose aggregate transactions do not exceed $20,000 or 200 transactions, whereas the aggregated payee rules do not include a *de minimis* rule. Now that the IRS has received the first iteration of Forms 1099-K from payment settlement entities ("PSEs"), it should now be in a better position to understand the challenges facing PSEs and putative PSEs and should issue additional guidance accordingly in advance of the 2013 filing season.

5. Electronic furnishing of tax information forms to payees.
Consistent with a request made by IRPAC last year, IRPAC recommends that the IRS provide guidance that expands the authority of parties responsible for issuing information returns *(e.g.,* payers, withholding agents, business entities, etc.) to electronically furnish payee statements and like documents not permitted under current guidance to be issued electronically to recipients. This would include Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding; Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax; Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests; Schedule K-1 prepared and issued in connection with Form 1120S for S corporation shareholders; and Schedule K-1 prepared and issued in connection with Form 1041 for beneficiaries of certain trusts.

The ability to electronically furnish these additional forms to recipients would create greater procedural uniformity and consistency because the documents listed could be issued in a similar manner to Forms 1099 and W-2, and Schedules K-1 prepared and issued in connection with Form 1065 for partners in partnerships. In addition, foreign customers with bank accounts or who receive bank deposit interest through other types of accounts have expressed concern that not being able to receive a Form 1042-S electronically will expose them to kidnapping for ransom or other bodily injury.

Section 401 of the Job Creation and Worker Assistance Act of 2002 provides that "[a]ny person required to furnish a statement under any section of subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 for any taxable year ending after the date of the enactment of this Act, may electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under section 6051 of such Code or in such other manner as provided by the Secretary."

The IRS has exercised such authority to provide for electronic transmission of payee statements in Notice 2004-10 (regarding, in general, Forms 1099-R and 5498) and in Section 4.6 of IRS Publication 1179 (Rev. Proc. 2011-60) (regarding, in general, most Form 1098 and 1099 series). Similar to the regulations issued under IRC §6051 (Reg. § 31.6051-1(j)(2)), affirmative consent of the payee is currently required before Form W-2 payee statements can be delivered electronically.

IRPAC also recommends a change away from an affirmative consent and towards a negative consent in order expand the usage of electronic payee statements, including those that may currently be provided electronically. The response rate to any mail or electronic solicitation is, regrettably, generally ranging only from a few percentage points to the teens. Given the expense incurred to launch such solicitation efforts and the anticipated low response rates, many firms providing payee statements are hesitant to change from mailing paper statements to electronic delivery. As a result, year after year, there are complaints from customers about missing statements and identify thefts resulting from the mailing of paper statements. Firms providing the payee statements spend significant resources to sort and mail the paper statements, and then have to allocate resources to help customers on missing statements and identity thefts. This poses significant burdens both to the businesses providing such statements and the taxpayers receiving such statements.

The above cited legislation clearly grants the IRS broad flexibility in permitting electronic delivery of payee statements. We recommend that the IRS consider new regulations or administrative guidance to allow electronic delivery of payee statements to any person who has established online account access to receive account statements and other communications unless such person affirmatively elects to opt-out of electronic delivery of any or all payee statements (or opt-in to continue to receive paper statements). The IRS may provide for a transition period, such as a period of two years, during which the paper statements must still be provided with a notice informing the recipients of the transition to electronic delivery. This will give the recipients sufficient time and opportunity to opt-out from receiving statements electronically (or opt-in to continue receiving paper statements) should they choose to do so. Further IRPAC believes that permitting issuers to provide information returns electronically creates greater efficiency and security for all parties concerned.

6. IRS forms and publications.

IRPAC reiterates its prior recommendation that the IRS be required to post final information returns, instructions and publications on the IRS web site one year prior to the end of the applicable reporting period. The increasing number and complexity of information returns (for example, Form 1099-B) necessitates payers and software

vendors be able to have final revisions of any forms, instructions and publications available to them at least one year prior to the end of the applicable reporting period. If a final information return cannot be posted by that date, any revisions made thereafter should be optional until the following tax year. Generally, that deadline will be January 1, however, it should be noted that the IRS is creating information returns (such as IRS Form 1097-BTC) that must be mailed to recipients on a quarterly basis, instead of the standard annual basis following the end of a calendar year.

Most financial institutions and other payers do not report to their customers on the official IRS forms because the use of substitute forms and composite statements reduces printing and mailing costs. In addition, payers often include additional information that assists customers in completing their tax returns. IRS Publication 1179 provides guidelines for substitute forms, and in recent years that publication has not been released until December, which is only several weeks before payers start mailing forms for that tax year. Any changes from the prior year cannot be incorporated by that date.

Payers and software vendors must begin their analysis of any changes to forms, instructions and other IRS guidance included in various publications in the first quarter of the applicable tax year to provide sufficient time to make programming changes, test output and communicate changes to taxpayers. Generally, all programming and print formatting changes must be tested and finalized before the final months of the year when information systems are "locked down" and no more changes can be made because of the fact any change to one system can impact many other linked systems.

Revisions to forms, instructions and publications made after January 1 result in significant additional costs and staffing burdens to payers and software vendors. Such delayed revisions also prevent being able to communicate changes to taxpayers who will receive the information for inclusion on their tax returns. Creating a deadline for revisions to or the creation of information returns ensures greater accuracy and efficiency with the tax reporting process.

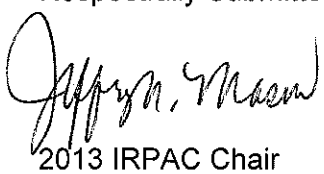
7. Revision of Form 8949 and Schedule D to include unique reporting requirements for contingent payment debt and other instruments. Taxpayers are generally unaware of the fact that a contingent payment debt instrument is not eligible for capital gain/loss treatment, as explained in Reg. §1.1275-4(b)(8). The primary reason for that is the Form 8949 and Schedule D do not have any provisions for reporting these securities separately and in a different manner from the disposition of other types of securities that are eligible for capital gain/loss treatment. Instruments known as currency shares are similarly treated and are also not addressed in the current versions of the applicable returns and schedules. Therefore, the IRS should revise these documents and their instructions accordingly to ensure accurate reporting by taxpayers of contingent payment debt instruments, currency shares or other instruments that are reported on Form 1099-B, but whose gains and losses are not considered capital.

8. Production of Form 2439 not currently filed electronically.
Each year, firms that produce Forms 1099-DIV are frequently required to also produce Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains. Unlike all the forms in the 1099 series, there is no provision to file the Form 2439 with the IRS electronically. This prompts financial services firms to literally pack boxes of paper Forms 2439 for delivery to the IRS. Mandatory paper Forms 2439 do not comport with the IRS' goal of moving to an electronic filing process for all taxpayer forms and returns where it is possible to do so. IRPAC recommends that the Service make a priority of creating electronic filing provisions for the Form 2439 and any other forms that are still filed on paper.

9. Reporting of OID accruals for stripped tax credit bonds. Brokers and other payers have found IRS Notice 2010-28 to be unworkable for reporting the correct amount for stripped tax credit bonds. At the time of the Notice, there were no stripped tax credits trading in the marketplace. That situation has now changed and IRPAC is pleased to see the IRS is seeking comments from the public regarding the effectiveness of the Notice. As part of that process, the IRS may wish to review IRPAC's analysis and recommendations found in its letter of July 26, 2012 (attached) covering these issues. In particular, a model is required for handling situations in which the acquisition cost is not known by the broker and the documented approach of aggregating multiple credits stripped from a single instrument must be eliminated in favor of an approach that considers each stripped credit as a stand alone instrument.

IRPAC thanks the IRS for requesting our recommendations for inclusion of items to include in the 2013-2014 Guidance Priority List. We look forward to working with you in creating a more efficient and sound tax administration system.

Respectfully Submitted,



2013 IRPAC Chair

Attachment: Stripped tax credit bonds analysis