LINE OF
SIGHT

FATCA

FREQUENTLY ASKED QUESTIONS FOR HEDGE FUND MANAGERS

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OVERVIEW

1. What is the objective of the Foreign Account Tax Compliance Act?

The objective of the Foreign Account Tax Compliance Act (FATCA) is to reduce tax evasion by U.S. individuals with respect to income from financial assets held outside the United States, by inducing "foreign financial institutions" (FFIs) to report U.S. owners to the U.S. Internal Revenue Service (IRS). FATCA imposes a 30% U.S. withholding tax on certain payments to FFIs (including banks, brokers, custodians **and investment funds**) that fail to comply with FATCA, as well as other noncompliant entities and individuals.

2. Have the FATCA rules been finalized?

The FATCA rules have not been finalized. FATCA is a component of the Hiring Incentives to Restore Employment Act (the HIRE Act), which was enacted by the U.S. Congress and signed into law by President Obama on March 18, 2010, and added Chapter 4 of Subtitle A to the U.S. Internal Revenue Code. Such laws are implemented through detailed regulations and other guidance issued by the U.S. Treasury Department (Treasury) and the IRS. Following a series of Notices issued in 2010 and 2011, detailed proposed regulations were released on February 8, 2012 (the proposed regulations). These proposed rules are subject to a public comment period and are expected to be finalized later in 2012 or the beginning of 2013. On October 24, 2012, the IRS issued a statement, IRS Announcement 2012-42 (the IRS Announcement), announcing its intention to modify FATCA implementation timelines. Preliminary drafts of certain Forms W-8 have been published, and a draft model FFI agreement is expected to be released later in 2012.

On July 26, 2012, Treasury released a Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA (Model I), developed in consultation with France, Germany, Italy, Spain and the United Kingdom (the G5). The Model I Intergovernmental Agreement (IGA) establishes a framework for FFIs to report directly to their own tax authorities, followed by an automatic exchange of such information under existing tax treaties or Tax Information Exchange Agreements (TIEAs). A joint communiqué released the same day by the G5 and the United States indicated hope for a "speedy conclusion of bilateral agreements based on this Model, including by other jurisdictions." Indeed, on September 14, 2012, the United States and the United Kingdom signed the first bilateral agreement based on the Model I IGA (the U.K. agreement).

A "Model II" IGA, discussed in the "Update on Intergovernmental Agreements" section, has not yet been released, but is anticipated to be published soon and adopted by Japan and Switzerland. The obligations imposed on FFIs under the IGAs vary in important respects from those described in the proposed regulations. As such, the IGAs are discussed in detail in a separate section below.

3. When will FATCA come into effect?

FATCA is generally effective January 1, 2013, under the proposed regulations which reflect a phased implementation schedule addressing four key areas, as discussed below. However, it is important to note that certain aspects of this timeline may shift as a result of the final regulations and IGAs.

- **Account documentation and due diligence**
  - FATCA will require changes to account opening and investor on-boarding procedures for new accounts. The current guidance requires U.S. withholding agents (USWAs) to treat any account opened on or after January 1, 2014, as a new account. FFIs that enter into an FFI agreement with the IRS (called participating FFIs or PFFIs) are required to treat any account opened after January 1, 2014, (or the effective date of the FFI agreement, if later) as a new account. Accounts opened prior to these dates are treated as pre-existing accounts.
  - Documentation and due diligence requirements are more stringent for new accounts than for pre-existing accounts. (See question 23 for further explanation of documentation and due diligence rules.)
  - Due diligence procedures for the review of a PFFI's pre-existing accounts are required to be completed in stages, with high value accounts and accounts held by entities that are obviously FFIs requiring a detailed review within one year, and other pre-existing accounts requiring review within two years. A USWA must obtain FATCA documentation for all pre-existing obvious FFI accounts by July 1, 2014, and all other pre-existing entity accounts by December 31, 2015.
- **Withholding**
  - The tax withholding provisions of FATCA first come into effect on January 1, 2014, when certain U.S. source income payments become subject to FATCA withholding; and under the IRS Announcement, FATCA withholding on gross proceeds from the sale of a U.S. security has been delayed until January 1, 2017. Withholding by FFIs on foreign passthru payments (defined in question 7) has been delayed and will not be required prior to January 1, 2017.
- **FFI Agreements**
  - The IRS will begin accepting applications for FFI agreements beginning January 1, 2013, although it is not clear whether this date will stand in light of the IRS Announcement. The IRS Announcement indicates that the effective date of an FFI agreement entered into on or before January 1, 2014, will be January 1, 2014. Agreements entered into after January 1, 2014, will be effective on the date of the agreement.
  - To prevent the imposition of FATCA withholding on income payments received on or after January 1, 2014, an FFI must enter into an FFI agreement no later than January 1, 2014. Any FFI that enters into an FFI agreement after that date may not be identified as a participating FFI in time to prevent withholding.
- **Reporting**
  - For a PFFI, FATCA reporting will first be required to be filed in March 2015 (for 2013 activity), and will be less detailed for 2013 and 2014 activity. More detailed requirements will be phased in for 2015 and later years.

Additional key regulatory dates may be found in Appendix A.

4. What entities are treated as FFIs under FATCA?

An FFI is a "financial institution" organized outside the United States. In general, under the proposed regulations, a financial institution is:

- An entity that accepts deposits in the ordinary course of a banking or similar business;
- An entity that holds financial assets for the account of others as a substantial portion of its business (e.g., broker-dealers, custody banks);

- An entity engaged (or holding itself out as being engaged) primarily in investing, reinvesting or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts, or any interest (including futures, forward contracts or options) in any of these types of assets (e.g., foreign investment funds, certain foreign retirement plans and certain charities); or
- An insurance company that issues, or is obligated to make payments with respect to, any cash value insurance contract, annuity contract or other "financial account" or the holding company of such an insurance company. The definition of financial institution does not include an insurance company that issues only contracts without cash value.

For a discussion of how the Model I IGA has modified the definition of "financial institution," please see question 39.

5. How will FATCA withholding apply to non-U.S. investment funds or FFIs?

All investment funds domiciled outside the United States will be treated as FFIs under FATCA. As such, they will be subject to 30% FATCA withholding on all "withholdable payments" (as defined in question 7) and "foreign passthru payments" (as defined in question 7) they receive unless they become a PFFI by entering into an FFI agreement with the IRS, or establish their qualification for one of the very narrow categories of FFIs treated as deemed compliant or exempt from FATCA, as discussed further in questions 13 and 15. Maintaining PFFI status will require extensive due diligence reviews of investors and compliance with FATCA withholding and reporting requirements.

PFFIs will also be required to apply FATCA withholding to individual investors that fail to provide adequate documentation of their own FATCA compliance.

PFFIs that are flow-through entities will also be required to pass information regarding the FATCA status of their underlying investors to their withholding agents. See question 6 and Appendix B.

6. What are "flow-through" entities?

Entities such as partnerships, grantor trusts, and simple trusts that pass through tax characteristics of original transactions to their underlying investors or beneficial owners are flow-through entities and may be referred to as "opaque." Conversely, traditional mutual funds such as SICAVs, corporations, and complex trusts are not flow-through entities. Documentation and withholding requirements vary for FATCA purposes depending on whether an entity is a flow-through or opaque.

7. What are "withholdable payments" and "foreign passthru payments"?

A withholdable payment includes:

- U.S.-source fixed or determinable annual or periodical income (FDAP) (e.g., interest paid on a U.S. bank account, interest received on a U.S. bond or dividends from a U.S. security); and
- Gross proceeds from the sale or disposition of any property that can produce U.S. source interest or dividends.

The proposed regulations exclude certain types of U.S.-source FDAP from the definition of withholdable payment, including:

- Interest or original issue discount on short-term obligations;
- Income that is effectively connected to a U.S. trade or business; and
- Payments made in the ordinary course of business for the acquisition of goods, the use of property and for "nonfinancial services."[1]

FATCA requires PFFIs to withhold on passthru payments to noncompliant account holders or investors. The legislation defines a passthru payment as "any withholdable payment or other payment to the extent attributable to a withholdable payment." The proposed regulations further define a passthru payment as any withholdable payment and any "foreign passthru payment." FFIs will not be required to withhold on foreign passthru payments earlier than January 1, 2017. Foreign passthru payments are not defined in the proposed regulations, and the requirements for withholding on such payments are reserved.

Based on prior guidance, the foreign passthru payment withholding rules are intended to pick up income that would not ordinarily be treated as U.S.-source FDAP or gross proceeds, but may be generated by investments in U.S. assets. For example, when an investment fund organized as a Cayman Islands corporation pays a dividend to its investors (treated as its account holders under FATCA), that dividend is treated as Cayman source under U.S. laws governing the sourcing of income for tax purposes, even if the fund holds U.S. debt instruments and stock in U.S. companies. Foreign passthru payment withholding, as it has been described to date, would apply to any dividend paid by the fund to a noncompliant individual or nonparticipating FFI investor, and such withholding would be calculated by multiplying the dividend amount by the fund's passthru payment percentage. Based on prior guidance, the fund's passthru payment percentage would be calculated based on the percentage of asset value derived from U.S. securities.

The Treasury and IRS have indicated that they are "considering ways to ease the compliance burdens associated with passthru payment withholding," and have requested comments on this issue. Morever, the Model I IGA relieves FFIs from withholding on foreign passthru payments for the time being, instead expressing the commitment of the respective governments to develop "a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden." Northern Trust is working with industry groups to provide input to the IRS and Treasury on how to make the passthru payment rules workable in practice. Funds should contact their own tax or legal advisors regarding how the passthru payment rules will apply to them once these rules are clarified.

8. How is FATCA withholding different from the Section 1441 or Nonresident Alien withholding that is currently deducted from U.S. dividends and certain interest paid to non-U.S. funds?

FATCA withholding applies to all withholdable payments, as described above, including certain types of FDAP income that are excluded from withholding under Section 1441 of

1. The proposed regulations do not define "nonfinancial services" for the purposes of the exception. Northern Trust is working with industry groups to seek clarity around the types of services that would be considered financial services and thus potentially subject to FATCA withholding – and, if possible, revise the final rules such that payments made in the ordinary course of business for all services are excluded from the definition of "withholdable payment."

the U.S. Internal Revenue Code applicable to nonresident aliens (NRA withholding) (e.g., portfolio interest and interest paid by foreign branches of U.S. banks). FATCA withholding also applies to gross proceeds from the sale of U.S. securities, which are excluded from NRA withholding. In addition, FATCA withholding may not be reduced or eliminated by making a treaty claim on a Form W-8. Where an FFI is not FATCA-compliant, full 30% FATCA withholding will apply. When FATCA withholding is required, the withholding agent does not impose withholding under the existing NRA rules. Conversely, where an FFI is FATCA-compliant, FATCA withholding will not apply, and withholding under the existing NRA withholding rules will apply (subject to treaty rates).

NORTHERN TRUST HEDGE FUND SERVICES' (HFS') ROLES AND RESPONSIBILITIES

9. What is HFS doing to prepare for FATCA?

FATCA will have major effects on financial institutions worldwide. HFS has organized a cross-disciplinary team to identify our legal responsibilities under FATCA and to explore how we can help our clients meet their own FATCA compliance objectives. Under this initiative we have committed to:

- Form enterprise-wide FATCA implementation teams that report to the HFS FATCA Leadership Committee
- Conduct current and future state assessments and identify required enhancements related to:
  - — Collecting and validating client account information
  - — Withholding
  - — Reporting
- Help Northern Trust respond to the IRS's and Treasury's request for comments on the proposed guidance
- Inform clients about FATCA compliance requirements

10. What are HFS' responsibilities as a fund administrator?

As a fund administrator, HFS is preparing to assist funds in fulfilling their FATCA responsibilities for due diligence, withholding and reporting. For more information on what services may be delegated, see question 32.

PREVENTING FATCA WITHHOLDING

11. What does an FFI (including an FFI that is an investment fund) need to do to be treated as FATCA-compliant and prevent FATCA withholding?

Investment funds domiciled outside the U.S. will be treated as FFIs, and all FFIs will need to provide documentation to withholding agents certifying their FATCA compliance to prevent FATCA withholding. FFIs will have five pathways available to comply with FATCA and prevent FATCA withholding:

1. Enter into a full FFI agreement with the IRS to become a PFFI (see questions 22 through 29);

2. Satisfy one of the sets of requirements to be treated as FATCA compliant without entering into a full FFI agreement (see "deemed-compliant FFIs" in question 13);
3. Fall into one of the categories of entities excluded from the definition of financial institution (see "excepted FFIs" in question 20); or
4. Fall into one of the categories of beneficial owners exempt from FATCA withholding (see "exempt beneficial owners" in question 21).
5. Comply with local registration requirements in partner jurisdiction (see question 46).

The documentation that an FFI will need to provide to a withholding agent to establish its FATCA compliant status will vary, depending on its classification. FFIs that invest in other FFIs, either directly or as a nominee or other intermediary, will also need to classify themselves and provide documentation to the FFIs that they are investing into to prevent FATCA withholding. See Appendix B for detailed documentation requirements. As very few investment funds will qualify as an excepted FFI or exempt beneficial owner, this FAQ document will address the categories of deemed-compliant FFIs and the requirements of participating FFIs first. The categories for exemption from entering into a full FFI agreement, as provided in the proposed regulations, are very narrow and most foreign investment funds will not qualify for one of them.

12. What documentation will funds need to provide to demonstrate that they are FATCA compliant?

Funds generally will be required to provide a valid withholding certificate (Form W-8 or W-9) to their withholding agents, for example custodians and prime brokers. In addition, funds that are PFFIs or registered deemed-compliant FFIs will need to provide an FFI-EIN. The withholding agent will be required to verify that the FFI-EIN provided is on the list of FFI-EINs maintained by the IRS. The IRS released preliminary drafts of a Form W-8BEN (for individuals) and a Form W-8BEN-E (for entities) on June 6, 2012. Preliminary drafts of the Form W-8IMY (for intermediaries and flow-through entities), and W-8EXP (for exempt beneficial owners) were released in August 2012. A new version of Form W-9 (for U.S. persons) is being developed. Additional documentation requirements will depend on the fund's FATCA classification. See Appendix B for additional information regarding documentation requirements.

FFIs resident in FATCA partner countries likely will be required to obtain an FFI-EIN and either register with the IRS or enter into a full FFI agreement; however, the documentation requirements for FATCA partner FFIs will not be settled until final rules are issued.

13. What are the categories of "deemed-compliant FFIs"?

The proposed regulations have expanded the categories of deemed-compliant FFIs, creating three categories: (1) registered deemed-compliant FFIs, (2) certified deemed-compliant FFIs, and (3) owner documented FFIs. Please note that the bilateral agreements entered into with FATCA partner countries based on the Model I IGA will set forth categories of entities in a particular jurisdiction that are considered deemed-compliant.

- **Registered Deemed-Compliant FFIs.** The proposed regulations provide for certain categories of FFIs which, though exempt from the full FFI agreement requirements imposed on PFFIs, are nonetheless required to: register with the IRS and obtain FFI-EINs;

agree to publish a passthru payment percentage in accordance with the regulations; renew their certification every three years; and agree to notify the IRS if there is a change in circumstances that would make the FFI ineligible for deemed-compliant status. (See Appendix C for further discussion of deemed-compliant FFIs.)

- **Certified Deemed-Compliant FFIs.** Certified deemed-compliant FFIs are required to certify to a withholding agent that they meet the requirements of a particular certified deemed-compliant status (and, in some cases, provide documentary evidence), but are not required to register with the IRS or obtain an FFI-EIN.
- **Owner-Documented FFIs.** An owner-documented FFI is an FFI that has reached agreement with a withholding agent to report any direct or indirect owners of the FFI that are "specified U.S. persons" based on documentation regarding the underlying owners provided to the withholding agent. An FFI that seeks this status must get the consent and agreement of each withholding agent from which it receives payments. The FFI will be treated as a nonparticipating FFI, subject to FATCA withholding, by any withholding agent that does not agree to treat it as an owner-documented FFI. In addition, only certain types of FFIs are eligible for this status. Investment funds, including investment trusts may be eligible, but banks, nominees, custodians, insurance companies and FFIs associated with them are not. To be eligible for this status, the FFI also must not maintain a financial account for any nonparticipating FFI or issue debt (unless regularly traded on an established securities market) over US$50,000. Certain trusts may be considered owner-documented FFIs.

For further details regarding the categories of deemed-compliant FFIs, see Appendix C.

14. What is a "specified U.S. person"?

A "specified U.S. person" includes any U.S. individual or entity other than:

- Corporations whose stock is regularly traded on an established securities market or an affiliate of such;
- Any tax-exempt organization or an individual retirement plan;
- The United States or any wholly owned agency or instrumentality thereof;
- Any state, the District of Columbia, any possession of the United States or any political subdivision, wholly owned agency or instrumentality thereof;
- Any bank;
- Any real estate investment trust;
- Any regulated investment company;
- Any common trust fund;
- Certain charitable trusts;
- Dealers in securities, commodities, or derivatives registered as such under federal or state law; or
- A "broker," including an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock.

15. Which of the deemed-compliant categories are most likely to apply to an investment fund?

Investment funds are expected to primarily use the following two categories of deemed-compliant FFIs:

- **Registered Deemed-Compliant Qualified Collective Investment Vehicle.** To be a qualified collective investment vehicle:
  - — A fund must be regulated in its country of incorporation or organization as an investment fund;
  - — Each account holder or investor must be a participating FFI, a registered deemed-compliant FFI or an "exempt beneficial owner" (including certain entities generally exempt from FATCA, such as foreign governments and their controlled entities, and certain retirement funds); and
  - — All other FFIs in the fund's affiliated group must be either participating or registered deemed-compliant FFIs.
- **Registered Deemed-Compliant Restricted Fund.** To qualify as a "restricted fund," the fund must be regulated as an investment fund and investments in the fund may only be sold through certain qualified distributors or redeemed directly by the fund. Each of the fund's distributors must be a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank or a "restricted distributor," and the FFI must ensure that each distribution agreement prohibits sales of interests in the fund to U.S. persons, NPFFIs or passive nonfinancial foreign entities (NFFEs) with substantial U.S. owners (except through a participating FFI). The fund's prospectus and marketing materials also must indicate that sales of interests to these investors are prohibited (except through a participating FFI). To qualify as a "restricted distributor," a distributor must satisfy several criteria, including that it provides investment services to at least 30 unrelated customers, it operates solely in its country of organization, it is required to perform anti-money laundering (AML) due diligence under the AML laws of its country of organization, it cannot solicit customers outside of its home jurisdiction and it cannot have more than US$175 million in assets under management or US$7 million in gross revenue. (Its affiliated group is limited to US$500 million in assets and US$20 million in gross revenue).

  A restricted fund also has to agree to perform a review of its pre-existing direct accounts to identify any U.S. accounts (unless its distribution agreements and marketing materials prohibited U.S. investors at the time of investment). A restricted fund also must agree to implement the due diligence procedures applicable to participating FFIs to ensure that it does not open accounts for any specified U.S. persons, nonparticipating FFIs, or passive NFFEs with U.S. owners, and closes any accounts for such persons. All other FFIs in a restricted fund's expanded affiliated group must be either participating or registered deemed-compliant FFIs.

The categories of registered deemed-compliant FFIs are rather narrow and have limited application to funds. Most hedge funds and private equity funds likely will not satisfy any of the categories. Accordingly, many funds will be required to become participating FFIs to avoid FATCA withholding.

16. Are regularly traded funds treated as deemed-compliant FFIs?

No. While preliminary guidance had indicated that Treasury and IRS were considering the possibility that FFIs with regularly traded interests, such as exchange-traded funds, would be treated as deemed-compliant FFIs, the proposed regulations do not include any such carve out.

17. What documentation will a fund need to provide to a withholding agent to show that it is a registered deemed-compliant FFI?

Registered deemed-compliant FFIs (including qualified investment vehicles or restricted funds) generally will be required to provide a valid withholding certificate (Form W-8) and an FFI-EIN. The withholding agent will be required to verify that the FFI-EIN provided is on the list of FFI-EINs maintained by the IRS. The IRS released preliminary drafts of a Form W-8BEN (for individuals) and a Form W-8BEN-E (for entities) on June 6, 2012. Preliminary drafts of a Form W-8IMY (for intermediaries and flow-through entities) and Form W-8EXP (for exempt beneficial owners) were released in August 2012. A new version of Form W-9 (for U.S. persons) is being developed. See Appendix B for additional information regarding documentation requirements.

FFIs resident in FATCA partner countries likely will be required to obtain an FFI-EIN and either register with the IRS or enter into a full FFI agreement; however, the documentation requirements for FATCA partner FFIs will not be settled until final rules are issued.

18. What is generally required for a fund to be treated as a PFFI?

To be treated as a PFFI, a fund will need to enter into an FFI agreement with the IRS whereby it agrees to undertake a number of obligations, discussed in questions 22 through 29.

19. What documentation will a fund need to provide to a withholding agent to show that it is a PFFI?

A PFFI generally will be required to provide a valid withholding certificate (Form W-8) and an FFI-EIN. The withholding agent will be required to verify that the FFI-EIN provided is on the list of FFI-EINs maintained by the IRS. See Appendix B for additional information regarding documentation requirements.

20. What are the categories of "excepted FFIs"?

Under the proposed regulations, certain entities are excluded from the definition of FFI (and are also considered exempted NFFEs). Therefore, they are exempt from FATCA withholding. These include:

1. Certain nonfinancial holding companies;
2. Certain start-up companies;
3. Certain nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy;
4. Hedging/financial centers of a nonfinancial affiliated group; and
5. Foreign nonprofit organizations (such as charities or foundations) that satisfy all of the requirements of U.S. Internal Revenue Code Section 501(c) for treatment as exempt from U.S. federal income taxes, and that provide either a determination letter from the IRS or a written opinion from a U.S. law firm confirming such treatment.

An investment fund may not qualify for (1) or (2) above.

21. What are the categories of "exempt beneficial owners"?

Some FFIs will be exempt from FATCA withholding if they are considered exempt beneficial owners. Under the proposed regulations, exempt beneficial owners include foreign governmental entities; international organizations; foreign central banks of issue; governments of U.S. possessions; certain foreign retirement plans; and certain entities wholly owned by one or more other exempt beneficial owners. Under the proposed regulations, a payment to a nonparticipating FFI that is a flow-through entity owned by exempt beneficial owners or that is acting as an intermediary for exempt beneficial owners, and that provides documentation for the underlying exempt beneficial owners to the FFI's withholding agent, will also be treated as a payment to an exempt beneficial owner.

Bilateral agreements entered into with FATCA partner countries based on the Model I IGA will set forth categories of organizations in that particular jurisdiction that are considered exempt beneficial owners.

A PARTICIPATING FFI'S RESPONSIBILITIES UNDER ITS FFI AGREEMENT

22. What are a PFFI's general requirements under its FFI agreement?

To be treated as a PFFI, an FFI that is not in a partner country will need to enter into an FFI agreement with the IRS whereby it agrees to do the following:

- Undertake due diligence procedures to document, identify, verify and classify each of its investors, including investors that are individuals or entities that are themselves FFIs or NFFEs;
- Apply FATCA withholding on withholdable payments and foreign passthru payments to noncompliant FFIs and recalcitrant individuals;
- Report to the IRS all U.S. investors that are "specified U.S. persons" and the U.S. ownership, if any, of investors that are passive NFFEs, and report certain aggregate information regarding noncompliant FFIs;
- Obtain waivers where required by local law to comply with reporting requirements, and where such waivers are not obtained, close accounts; and
- Periodically certify to the IRS its compliance with obligations of the FFI agreement.

Participating FFIs will also be required to "register" with the IRS and obtain a special U.S. tax identification number (FFI-EIN). The IRS is developing an online system for participating FFIs to complete their registrations.

23. How will a participating FFI be required to identify and classify its investors?

The proposed regulations describe detailed due diligence procedures that a PFFI will be required to complete within specified time frames to classify each of its investors for FATCA purposes. Despite provisions that are intended to reduce the due diligence burdens from those that had been described in prior Notices under FATCA, particularly with respect to "pre-existing accounts" (accounts maintained by the PFFI prior to the effective date of its PFFI agreement) and "offshore accounts" (accounts maintained and executed by the PFFI outside the United States), the process of sorting investors and collecting appropriate certifications and other documentation where required is likely to be burdensome, time-consuming and expensive. In addition, the proposed regulations require FFIs to validate tax certifications collected from investors by checking for any inconsistencies with other account information, and in some cases, through review of additional documentation.

There are separate due diligence procedures applicable to institutional (entity) investors and individual investors, and for pre-existing and new accounts.

- **New Accounts – Individual.** For new individual accounts, a PFFI must generally obtain government-issued identification.[2] In addition, a PFFI will be required to review all the information it collects (itself and through its agents) with respect to a new individual account, including information gathered for non-FATCA purposes, such as AML/Know-Your-Customer (KYC) rules, to determine whether such information contains any "U.S. indicia," such as U.S. place of birth or a U.S. resident address or U.S. mailing address. Where U.S. indicia are found, additional documentation will be required to either: (1) support reporting of the investors as U.S., or (2) verify that the investor is not in fact a U.S. person. See Appendix D for more detailed information regarding U.S. indicia and related documentation requirements for individuals.
- **Pre-Existing Accounts – Individual.** For pre-existing offshore accounts held by an individual, a PFFI will generally be required to conduct an electronic search of accounts above the stated threshold amount of US$50,000 to determine the individual's status and identify any U.S. indicia. If a PFFI does not locate any U.S. indicia for an individual account holder through its electronic search, it will not be required to review the customer's entire account file, unless the account is a "high value" account, and any information in such files would not be treated as giving the PFFI reason to know that an account holder is a U.S. individual. For example, a PFFI would not be required to treat an individual account holder as a U.S. individual, even if it had on file a copy of a passport showing a U.S. place of birth, provided the information was not captured electronically, the account was not a high value account requiring enhanced due diligence, and the PFFI did not review the paper file as part of its due diligence procedures. However, more extensive searches of account information files will be required for high value accounts (valued in excess of US$1 million). If any U.S. indicia is found, the PFFI will be required to obtain additional documentation (see Appendix D). PFFIs will be required to complete due diligence for high value pre-existing individual accounts within one year of the effective date of their PFFI agreement, and for other individual accounts within two years of such date.
- **New Accounts – Entity.** For new entity accounts, a PFFI must generally obtain a FATCA-related certification (in most cases a new IRS Form W-8), and additional documentation determined by entity type. In addition, a PFFI must validate the certification and review the documentation to ensure there are no inconsistencies (such as U.S. address or telephone number) on the face of the documentation provided or in the PFFI's records with respect to the FATCA status claimed. When U.S. indicia or other inconsistencies are found, additional documentation may be required to validate the Form W-8. See Appendix E for more detailed information regarding U.S. indicia and related documentation requirements for entities.
- **Pre-Existing Accounts – Entity.** For pre-existing accounts held by an entity, a PFFI will generally be required to conduct an electronic search of accounts above the stated threshold of US$250,000 to determine the entity's status and identify "Prima Facie

2. For purposes of this FAQ document, we have presumed that PFFI funds maintain and execute their investor accounts outside the U.S., and are therefore able to apply "offshore account" exceptions to general rules where available.

FFIs."[3] PFFIs will be required to complete due diligence reviews and obtain required documentation within one year of the effective date of their PFFI agreements for accounts identified as Prima Facie FFIs; and within two years of such date for all other entity accounts.

For additional details regarding the documentation and due diligence requirements by entity type, see Appendix B.

24. How are fund investors that are nominees treated for purposes of FATCA?

Certain of a fund's investors may invest via an intermediary,[4] such as a nominee. Many nominees will be considered FFIs because they hold financial assets for the account of others as a substantial portion of their business and therefore will need to demonstrate compliance with FATCA to avoid withholding.

It is also possible that some nominees may be required to be treated as "Prima Facie FFIs," depending on the electronically searchable information in the fund's database, and consequently subject to more stringent deadlines for completion of due diligence and documentation reviews as discussed in question 23.

As discussed in question 27, a withholding agent will be required to look through certain intermediaries when paying U.S.-source FDAP income. However, a traditional offshore fund is not likely to be paying U.S.-source FDAP income to its investors and thus would not be required to look through a nominee investor.

25. For calculating account balance thresholds, will an FFI be required to aggregate multiple accounts held by the same account holder?

If an FFI's computerized system already links accounts (maintained by the FFI or its affiliates) by references to a data element such as client number or taxpayer identification number and allows account balances to be aggregated, those aggregate balances must be taken into account. An FFI is also required to aggregate accounts when the relationship manager knows or has reason to know that such accounts are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person.

26. How does FATCA withholding apply to payments to an FFI?

- Payments to a foreign fund that is an NPFFI will be subject to FATCA withholding regardless of whether or not it is a flow-through entity (see question 6).
- Payments to a foreign fund that is a PFFI or deemed-compliant FFI and is not a flow-through entity will not be subject to FATCA withholding.
- Payments to a foreign fund that is a PFFI or deemed-compliant FFI and a flow-through entity may be subject to FATCA withholding if it has underlying noncompliant investors (to the extent of the payments allocable to such noncompliant investors).
- Payments to a foreign fund that is resident in a partner country and is compliant with local law may be subject to FATCA withholding if it is a flow-through entity.

3. In general, an entity will be treated as a "Prima Facie FFI" if the withholding agent has available as part of its electronically searchable information: (i) an indication that the account holder is a qualified intermediary (QI) or nonqualified intermediary (NQI) or (ii) for an account maintained in the U.S., a standard industry code that indicates that the non-U.S. account holder is a financial institution.

4. For FATCA, an "intermediary" is defined as, "with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary."

Under the proposed regulations, withholding agents paying U.S.-source FDAP income to a PFFI that is an intermediary or a flow-through entity may not treat the entity as the payee and are required to look through the PFFI to its underlying partners/owners (unless the PFFI is a "withholding qualified intermediary," "withholding partnership" or "withholding trust"). As such, a PFFI that is treated as an intermediary or a flow-through entity will be required to provide a withholding statement (allocating the portion of U.S.-source FDAP payments attributable to recalcitrant account holders and NPFFIs and to each class of payees that is not subject to FATCA withholding) to any withholding agent that pays U.S.-source FDAP income. That withholding agent will apply withholding at the time payments are made to the entity in accordance with the allocation information provided. Income allocated to recalcitrant account holders and NPFFIs will be subject to 30% FATCA withholding. Income allocated to FATCA compliant account holders will not be subject to FATCA withholding, but may be subject to withholding under the existing NRA rules (subject to treaty rates) in accordance with the tax documentation passed up to the withholding agent for such accounts. If a PFFI that is an intermediary or flow-through entity fails to provide allocation information, 100% of the U.S.-source FDAP income it receives will be subject to FATCA withholding.

The proposed regulations require a withholding agent to treat an intermediary or a flow-through entity as the payee when paying anything other than U.S.-source FDAP income. As a result, a PFFI will not be subject to FATCA withholding on gross proceeds or passthru payments that it receives, even if it has underlying recalcitrant investors. However, PFFIs do have withholding obligations with respect to passthru payments they make to their investors (account holders), as discussed in question 27. Passthru payments include U.S.-source FDAP and gross proceeds, as well as foreign passthru payments.

27. How will FATCA withholding apply to payments a PFFI makes to its investors?

PFFIs will be required to withhold on passthru payments to investors that are noncompliant individuals or nonparticipating FFIs. As discussed at question 7, passthru payments include withholdable payments and foreign passthru payments. When a foreign investment fund that is treated as a corporation for U.S. tax purposes (e.g., a traditional mutual fund such as a SICAV, opaque fund or complex trust) pays dividends to its investors, such dividends are not U.S.-source FDAP payments, and are, therefore, not withholdable payments. In addition, the sale of an interest in a foreign investment fund would not trigger a withholdable payment. As a result, a non-U.S. investment fund that is not a flow-through will, in practice, only withhold on foreign passthru payments, which as discussed in question 7 are not defined in the proposed regulations and will not be subject to FATCA withholding before January 1, 2017.

The proposed regulations reserve direction on the issue of how a PFFI that is a flow-through entity determines the amount of gross proceeds allocable to a partner, beneficiary or owner, and on the definition of a foreign passthru payment. Therefore, further guidance is needed to understand how funds that are partnerships and other flow-through entities will be expected to apply FATCA withholding to noncompliant investors.

28. What information will a participating FFI be required to report with respect to its investors?

Under the terms of the FFI agreement, a participating FFI must annually report the following information regarding its U.S. investors:

- The identity of each U.S. investor, including the name, address and tax identification number (TIN) of each account holder that is a specified U.S. person; or, in the case of an investor that is a U.S.-owned entity, the name, address and TIN of each substantial U.S. owner[5];
- The account number;
- The account balance or value[6]; and
- The gross amounts paid or credited to the account holder during the year, including the aggregate amount of redemption payments.

PFFIs will also be required to report the above information with respect to the U.S. owners of accounts held by U.S.-owned NFFEs.

The proposed regulations provide for a phase-in of these reporting obligations. The PFFI may elect, for calendar years 2013 and 2014, to report only the name and identifying information of each account holder (and, in the case of an NFFE, its substantial U.S. owners), the account balance or value, and the account number. For 2015, the PFFI would also be required to report the gross amounts paid or credited to the account holder during the year.

Under the proposed regulations, PFFIs will also be required to report the aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year, specifying the numbers of such accounts that have U.S. indicia. Finally, the proposed regulations contemplate full-blown Form 1042-S reporting for payments of U.S.-source FDAP, as well as proceeds where FATCA withholding was required.

29. How will an FFI certify to the IRS it is complying with its FFI agreement?

The proposed regulations provide that PFFIs will not be required to submit to periodic third-party audits. The IRS intends to rely on detailed periodic certifications, and the proposed regulations provide that a responsible officer of every PFFI will be required to certify to the IRS the completion of customer due diligence procedures by established deadlines and the ongoing compliance with all requirements of its FFI agreements. The responsible officer would generally be required to certify, as of the effective date of its FFI agreement, that the FFI had written policies and procedures in place and that based on the results of periodic internal reviews, the PFFI is in compliance with those policies and procedures.

The proposed regulations also would require the responsible officer to certify that between August 6, 2011, and the date of certification (within one year of the effective date of the FFI agreement), the FFI did not engage in any activities or have any formal or informal procedures in place assisting investors in avoiding the account identification requirements.

5. Substantial U.S. owners' are specified U.S. persons (defined in question 14) directly or indirectly owning: >10% of a corporation by vote or value; >10% of a partnership by profits or capital interest; or >10% of the beneficial interests of a trust. These percentages drop to zero for entities that serve as investment vehicles.

6. The account balance or value may be reported in U.S. dollars or in the currency in which the account is denominated.

APPLICATION OF FATCA TO U.S. FUNDS

30. How will FATCA apply to U.S. domiciled investment funds?

U.S. financial institutions are withholding agents (USWAs) under FATCA and will be required to withhold the 30% FATCA withholding tax on withholdable payments they make to any foreign entity investors, including any FFI or NFFE, that fail to provide adequate documentation of their FATCA compliance. As a result, U.S. funds also will be required to perform extensive due diligence reviews to classify their foreign entity investors (account holders) for FATCA purposes, in the same manner that FFIs will be required to do so. In addition, due diligence rules that U.S. funds are currently required to apply to determine whether an individual investor is a U.S. person or a nonresident alien are expected to be modified to reflect the U.S. indicia tests that FFIs will be required to apply under FATCA. U.S. funds will be required to apply these rules for new individual accounts.

31. What are the primary differences between the obligations of a USWA and an FFI?

To prevent FATCA withholding, an FFI must enter into an agreement to become a PFFI, or satisfy the requirements to be treated as a deemed-compliant FFI, excepted FFI or exempt beneficial owner. USWAs are not required to enter into FATCA agreements, and FATCA withholding will not apply to payments made to or received by USWAs. However, USWAs are withholding agents and will be required to apply FATCA withholding to any withholdable payment made to any FFI that fails to provide adequate documentation of its FATCA compliant status. As a result, both USWAs and FFIs will have increased due diligence, reporting and withholding responsibilities under FATCA. For a USWA, the new requirements are limited to accounts that received a withholdable payment. For a PFFI, on the other hand, the new requirements must be implemented for all accounts, regardless of payment type. While USWAs will retain reporting responsibilities with respect to U.S. investors (Form 1099) under existing rules, FFIs will have new reporting requirements under FATCA with respect to U.S. individuals and entities. We expect these to be similar to, but less burdensome than, the existing Form 1099 reporting requirements.

There are also differences in the FATCA implementation timelines applicable to USWAs and FFIs (see Appendix A). Under the proposed regulations, USWAs and PFFIs are required to apply enhanced due diligence to new accounts opened on or after January 1, 2014 (or later for FFIs with a later FFI agreement effective date). The one- and two-year periods during which due diligence steps must be completed for pre-existing accounts also are triggered by the above new account cut-off date. Please note that it is possible that these timelines may change under final regulations.

It should also be noted that USWAs will be required to apply FATCA withholding to any portion of a U.S.-source FDAP payment made to a PFFI that is a nonwithholding qualified intermediary, nonqualified intermediary, nonwithholding partnership or nonwithholding trust in accordance with allocation information provided by such PFFI.

A FUND'S RELATIONSHIP WITH SERVICE PROVIDERS

32. Can a fund expect that its service providers (custodian, clearing firm, fund administrator) will take care of its FATCA compliance?

All foreign investment funds will be considered FFIs and will be responsible for compliance with their obligations under FATCA. As such, it is important a fund understand what its responsibilities under FATCA will entail. Under the proposed regulations, FFIs will be permitted to contract with their fund administrator or other agents to perform certain due diligence and other FATCA obligations on their behalf. However, funds will retain ultimate responsibility and liability for FATCA compliance, and the actions of an agent will be imputed to the fund on whose behalf it is acting. In addition, participating FFIs will have to agree to verification procedures or reviews (e.g., internal audits) to ensure their compliance with the FFI agreement requirements.

While the need for a fund to comply with FATCA is obvious, an investment manager may have additional FATCA obligations beyond those of the fund; for example, other legal entities (such as a management company) or FATCA compliance in trade execution.

As a fund services provider, we anticipate fund manager clients will choose to delegate some of their FATCA operations to HFS. The fund administrator may be asked to perform due diligence on all investors listed in the investor record, report on U.S. individuals and institutions investing in the fund, and withhold on passthru payments (defined in question 7) made to noncompliant investors. The fund administrator also may be asked to calculate passthru payment withholding for the fund. We are analyzing the required changes to our systems to support these functions.

33. What should a fund be doing to prepare for FATCA implementation?

Because of the particular impact of FATCA provisions on investment funds, HFS recommends fund clients take steps to:

- **Understand the fund's own obligations under FATCA**

  Funds will first need to understand their own obligations and responsibilities under FATCA. Funds should contact their legal, compliance and tax advisors as soon as possible to discuss the new law's potential impact on their specific situations. In particular, funds should not presume they will be exempt from FATCA, as exemptions appear to be extremely limited, and even funds without direct investment in U.S. securities could suffer FATCA withholding on passthru payments.

  Questions a fund manager may want to investigate include:

  — How many FFIs will you have responsibility for? You may wish to document all the FFIs.

  — Do you expect all these FFIs will be PFFIs?

  — Can any of your FFIs qualify as deemed-compliant, excepted or exempt?

  — How will your distributors be treated under FATCA – for example, will they be PFFIs or restricted distributors?

— Would you prefer to sign a group FFI agreement with the IRS? The IRS and Treasury have suggested this may be an option for a foreign fund manager. However, the FFI agreement has not yet been published, so the details of any centralized compliance option for fund families are not yet clear.
— What fund documents will need to be modified? For example, changes to a prospectus or offering memorandum and subscription agreements will be likely.
— Who will the FFI's "responsible officer(s)" be? The proposed regulations require that a responsible officer must certify to the IRS the FFI is compliant with certain FATCA requirements. A fund manager may wish to identify the responsible officer who will take on this responsibility for each FFI. Moreover, the responsible officer will need to certify that between August 6, 2011, and the date of certification (within one year of the effective date of the FFI agreement), the FFI did not engage in any activities or have any formal or informal procedures in place assisting investors in avoiding the account identification requirements. The fund manager may wish to consider whether any immediate action, such as applying for a FATCA Individual Identification Number (FIIN), is required to comply with that requirement. These responsible officer certification requirements have been the subject of debate in the industry and may change.
— Does your FFI want to use an authorized third party (ATP) for assistance with the FFI registration process? FFIs that outsource compliance functions may wish to submit a Form 2848, Power of Attorney and Declaration of Representative, and have the ATP register on their behalf. Using an ATP may avoid the need to obtain a FIIN.
— Do you have FFIs resident in FATCA partner jurisdictions? If not, will your funds face any conflict of law issues in complying with FATCA? For example, are there privacy laws in the FFI's jurisdiction that would prevent reporting, closing accounts or withholding U.S. tax? How will you address potential conflict of law issues?

- **Understand whether your foreign institutional investors are preparing for FATCA**

— FATCA-compliant funds will want to reduce the likelihood of having to apply FATCA withholding on their payments to non-FATCA compliant foreign institutional investors. As such, it will be important to make certain that non-U.S. institutional investors (including fund distributors or nominees) know their obligations under FATCA and intend to comply in order to minimize the FATCA withholding tax.
— Each fund will want to understand its investor mix, as that will determine its due diligence and reporting responsibilities, as well as whether it will need to withhold.
— Funds wishing to take advantage of the registered deemed-compliant fund categories, in particular, will wish to understand how their investors and distributors will be treated for FATCA purposes, and in some cases, may need to revise their legal agreements with distributors to restrict ways in which the fund's interests can be sold. Fund managers may wish to identify all relationships with local distributors and seek clarification from those distributors on what preparations, if any, they are making for FATCA.
— Nominees will usually be regarded as FFIs. A fund manager may wish to seek clarification from all nominees listed as investors on what their FATCA preparations are.

- **Understand whether FFIs into which your fund invests will be ready for FATCA, and whether they will require their FFI investors (your fund) to be FATCA-compliant**
  - — If your fund invests in other investment funds domiciled outside the United States, you should be aware the investment performance of such funds could be adversely affected if they are not FATCA-compliant. Even if such funds do not invest directly in U.S. securities, they could suffer FATCA withholding on passthru payments. As such, it will be important to ascertain whether any non-U.S. funds into which your fund invests intend to become PFFIs or register with partner-country jurisdictions to avoid the 30% FATCA withholding. In addition, some funds may require all their investors to be FATCA-compliant, and it is possible your fund's ability to invest in other funds may be hindered if your fund is not FATCA-compliant.
- **Understand what the fund's service providers are doing to prepare for FATCA**
  - — As noted earlier, it is possible many funds will contract with service providers to perform certain FATCA obligations (although each fund will remain primarily responsible for its own compliance). Funds should contact their service providers regarding their FATCA compliance initiatives.
  - — We anticipate many funds may choose to contract with their fund administrators to perform certain FATCA obligations. As an administrator, HFS is currently analyzing best practices to verify investor compliance. However, the absence of final regulations and FFI agreements limits our ability to do so definitively. We further anticipate fund administration agreements will need to be modified to take into account these new responsibilities.
  - — Entities providing fund accounting services to funds may be asked to calculate a fund's passthru payment withholding on passthru payments paid to noncompliant investors. HFS is awaiting further definitive guidance on how to apply the passthru payment rules so that we may assist our clients in this matter.

A FUND'S RELATIONSHIP WITH INVESTORS

34. What should a fund tell its investors about FATCA?

FATCA withholding, whether applied to a noncompliant fund or to a noncompliant investor in a fund, can have a major effect on performance. Avoiding these negative consequences requires cooperation between the fund and its investors. Addressing your investors' concerns will depend on the type of investors you have.

Non-U.S. nominees and distributors will usually be FFIs under FATCA and may need to take steps to become FATCA-compliant. Nominees and distributors (and any other investors that have underlying account holders) will likely require a long lead time to prepare for FATCA. Engaging them early could prevent the need to apply withholding.

Nonexempt NFFEs (referred to as "passive NFFEs" under the proposed regulations) will need to provide information on U.S. ownership, if any. Alerting these investors early could prevent the need to apply withholding.

Investors aware of FATCA will want to understand what steps the fund is taking to prepare for compliance. We expect some investors will not want to invest in any non-FATCA compliant FFI. You may want to be prepared to respond to investor inquiries on your FATCA compliance preparations.

You may wish to alert investors that additional documentation may be required from them in order to evaluate their FATCA compliance status (see Appendix B).

FATCA also requires an FFI report to the IRS on U.S. persons (institutions and individuals) and U.S. owners of NFFEs. You may wish to alert these investors to this new requirement and that their personal data will be used for this purpose and provided to the IRS (or, if you are in a FATCA partner country, to your local tax authority).

35. Does a fund with no U.S. investors need to do anything to comply with FATCA?

To prevent being subject to FATCA withholding on certain payments of U.S.-source income, FFIs will need to satisfy the requirements of one of the deemed-compliant FFI categories or enter into an FFI agreement with the IRS, agree to identify U.S. accounts, perform annual reporting to the IRS and withhold on passthru payments to noncompliant investors. This is true even if the FFI does not have any direct U.S. investors. Therefore, even if a fund has no direct U.S. investors, under FATCA it will be required to perform due diligence on all foreign entity investors to confirm they are FATCA-compliant FFIs, and that any nonexempt NFFEs provide information regarding their U.S. owners (or certify that they do not have any). The possible FATCA obligations of FFIs in FATCA partner countries are discussed in question 39.

It is possible certain funds without U.S. investors may meet the requirements for a registered deemed-compliant FFI (i.e., either as a qualified investment vehicle or a restricted fund [discussed in question 15]). However, as noted above, registered deemed-compliant FFIs generally are still required to certify to the IRS that all of the requirements for deemed-compliant status have been satisfied, register with the IRS and obtain an FFI-EIN, agree to publish a passthru payment percentage in accordance with the regulations, renew their certification every three years, and agree to notify the IRS if there is a change in circumstances which would make the FFI ineligible for deemed-compliant status.

In addition, final rules have yet to be published. There can be no assurance that funds meeting requirements indicated in the proposed regulations will be deemed compliant.

36. Does a fund with no U.S. investments need to do anything to comply with FATCA?

A noncompliant fund that does not invest in U.S. securities may still be subject to U.S. FATCA withholding. If a fund holds securities issued by an entity that is itself an FFI, the passthru payment portion of distributions from that FFI to the fund may be subject to withholding if the fund is not FATCA-compliant. Under preliminary IRS guidance, which was the subject of much controversy, if a fund owns stock of a non-U.S. bank and receives dividends from the bank, those dividends would be subject to withholding to the extent they are passthru payments in accordance with the bank's passthru payment percentage. However, the proposed regulations are reserved on the issue of passthru payments, and it is not yet certain how the passthru payment rules will apply in practice (see question 7).

FFIs holding no U.S. assets may also need to comply with FATCA rules if they are part of an "expanded affiliated group" of FFIs, and other FFIs in the group hold U.S. assets and wish to avoid FATCA withholding.[7]

7. An FFI that is a member of an "expanded affiliated group" cannot enter into an agreement to become a PFFI unless all members of such group are FATCA compliant. In general, an "expanded affiliated group" means a group of corporations that are related under U.S. tax principles as a result of their common ownership. However, the U.S. tax regulations governing the definition of an affiliated group are complex and beyond the scope of this document. FFIs should consult their tax advisors regarding the impact of these rules on their FATCA status.

The possible FATCA obligations of FFIs in FATCA partner countries are discussed beginning at question 39.

Institutional investors may wish to verify that any funds in which they invest will be immune from FATCA withholding. Some institutional investors will likely invest only in FATCA-compliant funds, even if those funds do not have U.S. investments.

37. Are compliant investors in a fund harmed by the presence of noncompliant investors?

FATCA withholding will apply (if required) to payments (distributions and redemptions) made by a fund to its investors. The fund (or its fund administrator on its behalf) must apply FATCA withholding to the amounts allocable to those account holders or investors who are not compliant. As a result, noncompliant investors will suffer withholding; compliant investors in a compliant fund will not.

Of course, it is possible that the presence of noncompliant investors may prevent a fund from taking advantage of the lower compliance burdens available to deemed-compliant FFIs, such as qualified collective investment vehicles or restricted funds.

38. What if privacy laws prevent an FFI from reporting on account holders or investors?

FATCA reporting rules (requiring FFIs to report account holder information to the IRS) directly conflict with data protection and privacy laws in many jurisdictions. In addition, some local laws may not permit the withholding that compliant FFIs may have to impose on payments to their recalcitrant and noncompliant account holders or investors. The incompatibility between FATCA and local laws applying to FFIs has been the subject of much analysis and commentary throughout the industry.

The joint statements (discussed in the next section) address these potential conflict-of-law issues in jurisdictions that sign on by having FFIs report directly to their local tax authority or provide an exception from local law provisions to allow direct reporting to the IRS. So far, the United Kingdom has entered into a FATCA partnership with the United States, while France, Germany, Italy, Japan, Spain and Switzerland have expressed the intent to do the same. However, while a number of other foreign governments have already expressed interest in signing on to the Joint Statement, how tensions are resolved with local laws in jurisdictions that do NOT sign on to be FATCA partners will be critical to the administration of FATCA.

UPDATE ON INTERGOVERNMENTAL AGREEMENTS

FATCA reporting rules (requiring FFIs to report account holder information to the IRS) directly conflict with data protection and privacy laws in many jurisdictions. In addition, some local laws may not permit the withholding that compliant FFIs may have to impose on payments to their recalcitrant and noncompliant account holders or investors. The incompatibility between FATCA and local laws applying to FFIs has been the subject of much analysis and commentary throughout the industry.

To this end, the United States has issued multiple joint statements with other countries announcing that they have agreed to explore an intergovernmental approach to FATCA implementation to "address these legal impediments to compliance, simplify practical implementation and reduce FFI costs." As noted earlier, on July 26, 2012, the Treasury released the Model I IGA developed in consultation with the G5. The Model I IGA establishes a framework for FFIs to report directly to their own tax authorities, followed by an automatic exchange of such information under existing tax treaties or tax information exchange agreements (TIEAs). The United States and United Kingdom have already signed a bilateral agreement, and the Joint Communiqué indicates that France, Germany, Italy and Spain intend to conclude an agreement based on the Model I IGA as well.

The Model I IGA is organized in three sections:

1. The main body of the agreement;
2. Annex I, which sets forth the due diligence obligations for FFIs in the IGA country; and
3. Annex II, which would describe certain categories of institutions to be treated as exempt beneficial owners; certain categories of institutions to be treated as deemed-compliant FFIs; and certain categories of accounts or products to be carved out of the definition of reportable "financial accounts," and thus exempt from FATCA.

   It appears that Annex II could vary significantly among IGA countries; it is not clear how much the due diligence obligations described in Annex I will differ. In the U.S.-U.K. Agreement, the due diligence provisions of Annex I vary little from those set forth in the Model I IGA, and the categories listed in Annex II appear to clarify the types of entities that meet the requirements for deemed-compliant or exempt treatment under the proposed regulations, but do not provide new carve-outs from the rules. "Reciprocal" and "non-reciprocal" versions of the Model I IGA have been released, as discussed in question 41.

A Model II IGA has not yet been released, but is expected to be published soon. Under Model II, which is expected to be adopted by Japan and Switzerland, FFIs would register with the IRS and directly report information to the U.S. government. The FATCA IGA countries under Model II agreements would supplement information exchanged upon request, as opposed to automatically.

As discussed further in question 40, an FFI in an IGA jurisdiction will be governed by that country's IGA, which may provide FATCA rules that differ from the proposed regulations. While the Model IGAs also extend timelines as discussed in question 39 and Appendix A, and the U.S. Treasury Department is working to get IGAs in place as soon as possible, there is no way of knowing at this time what countries will enter into IGAs before key FATCA effective dates. Appendix A provides a summary of key regulatory dates as they apply to U.S. financial institutions, IGA FFIs, and FFIs in non-IGA countries. Release of the model IGAs has brought additional uncertainty into the FATCA implementation plans of FFIs.

39. What are the major differences between the obligations imposed on FFIs under the Model I IGA and the proposed regulations?

The obligations imposed on FFIs under the Model I IGA differ in some important respects from those set forth in the proposed regulations. Certain of these differences are summarized in the chart located in Appendix F and explained in greater detail below.

Modified Definition of Financial Institution.

The definition of "financial institution" in the proposed regulations includes four types of entities:

1. An entity that accepts deposits in the ordinary course of a banking or similar business;
2. An entity that holds financial assets for the account of others as a substantial portion of its business (e.g., broker-dealers, custody banks, nominees);
3. An entity engaged (or holding itself out as being engaged) primarily in investing, reinvesting or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts or any interest (including futures, forward contracts or options) in any of these types of assets (e.g., foreign investment funds, certain foreign retirement plans and certain charities); or
4. An insurance company that issues, or is obligated to make payments with respect to, any cash value insurance contract, annuity contract or other "financial account" or the holding company of such an insurance company. The definition of "financial in situation" does not include an insurance company that issues only contracts without cash value.

The Model I IGA changes the definition of the third type of financial institution, defining an "investment entity" as any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer: (1) trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading, (2) individual and collective portfolio management, or (3) otherwise investing, administering, or managing funds or money on behalf of other persons. The Model I IGA provides that this definition of investment entity is to be interpreted consistently with the definition of "financial institution" in the Financial Action Task Force Recommendations.

The Model I IGA definition of investment entity thus excludes from the definition of financial institution certain investment vehicles that are not being professionally managed (e.g., personal investment companies or personal trusts); such entities instead would be treated as NFFEs. However, the investment entity definition also appears to capture entities that are engaged in the business of "managing funds" on behalf of others (e.g., investment managers), which may not be FFIs under the definition in the proposed regulations.

Delayed effective dates for due diligence.

The new date for new account due diligence under the Model I IGA is January 1, 2014. The deadline for completing the review of a "preexisting account," defined as a financial account maintained as of December 31, 2013, under the Model I IGA are as follows:

- High value individual accounts review must be completed by December 31, 2014.
- All other accounts must be reviewed by December 31, 2015. There is no requirement in the IGA to identify "prima facie" FFIs within one year of entering into an FFI agreement, as there was in the proposed regulations. "Prima facie" FFIs are entities that must be treated as FFIs because they have certain defined characteristics.

Due diligence relief, with increased reliance on self-certification and existing AML/KYC processes.

Annex I of the Model I IGA sets forth the due diligence procedures applicable to financial institutions in the IGA country, providing relief in a number of areas from some of the more onerous requirements of the proposed regulations:

- Under the Model I IGA, the FFI would identify the controlling persons, which is based on AML/KYC standards, and may be a 25% ownership threshold. This differs from the proposed regulations, under which an FFI had to identify "substantial U.S. owners" (i.e., those with a 10% or greater ownership interest) of NFFE. The Model I IGA relieves FFIs of having to obtain either a Form W-8 or government-issued identification from each new individual account holder. Instead, FFIs have to obtain a self-certification from individuals opening new accounts as to whether the account holder is a resident of the United States for tax purposes (even if the account holder is also a resident of another country) and confirm the "reasonableness" of such self-certification based on other information obtained in connection with account opening and AML/KYC. The Model I IGA does not prescribe a particular form for this certification, although it acknowledges that FFIs could use a Form W-8 or Form W-9 for this purpose. It is unclear what local law requirements there will be, if any, around these self-certifications and how an FFI would demonstrate the "reasonableness" of any determination it made about an account holder's self-certification.
- An FFI in an IGA country can determine if an account holder is an active NFFE or an IGA FFI based on "publicly available" information or information in the IGA FFI's possession. For all other entities, the IGA FFI would have to get a self-certification to establish the account holder's status. This is a shift from the proposed regulations' requirement that FFIs collect and validate Forms W-8; however, it is still unclear how the self-certification process will work and if it will vary by IGA country.

- The Model I IGA sets forth procedures for due diligence on preexisting accounts held by individuals and entities:
  - Pre-existing individual accounts with a value of less than US$50,000 and pre-existing entity accounts under US$250,000 are excluded from the FATCA review.
  - Pre-existing individual accounts of US$50,000 or more are subject to an electronic search for any U.S. indicia.
  - Pre-existing accounts of more than US$1 million are subject to a more stringent paper search and also includes a relationship manager inquiry. However, the paper search required for "high value accounts" of more than US$1 million is not required to the extent that the FFI captures certain specified information in an electronically searchable database (although the relationship manager inquiry must still be performed).

Relaxed withholding requirements for IGA FFIs.
As expected, the Model I IGA provides for relaxed requirements related to withholding. Please see question 48 for a discussion of the withholding obligations for FFIs under the Model I IGA.

Similar reporting requirements for IGA FFIs.
FFIs in IGA countries are required to report annually on NPFFIs and accounts held or controlled by specified U.S. persons under rules similar to those under the FFI agreement. As noted above, the "reciprocal" version of the Model I IGA also imposes reporting responsibilities on U.S. financial institutions for residents of the IGA country.

40. Do the provisions of the IGAs replace the rules set forth in the proposed or final regulations?

Yes. For FFIs located in jurisdictions that have entered into an IGA with the United States, the terms of the IGA, rather than the final regulations, will govern. However, Annex I, which sets forth the due diligence obligations under the IGA, notes that an IGA country may allow its FFIs to rely on the procedures set forth in the final regulations as an alternative to the Annex I provisions.

41. What are the differences between the "reciprocal" and "non-reciprocal" versions of the Model I IGA?

The "reciprocal" version of the Model I IGA provides for reciprocal reporting by the United States for residents of the IGA country holding U.S. accounts. The United States is required to obtain and exchange annually, automatically, information on accounts in U.S. financial institutions held by residents of that IGA country (either individual residents with depositary accounts where more than US$10 of interest is paid in a given calendar year, or other financial accounts that have U.S.-source income already subject to U.S. tax reporting). The Model I IGA also expresses the commitment by the United States to pursue the adoption of regulations and relevant legislation to achieve equivalent levels of reciprocal automatic exchange of information.

The “non-reciprocal” version does not provide for this reciprocity, and the United States is not required to provide information with respect to accounts in the United States. A press release issued by the U.S. Department of the Treasury indicates that the reciprocal version will only be available to jurisdictions with whom the United States has a tax treaty or TIEA and where the IRS and Treasury have determined that the IGA country government has in place “robust protections and practices” to ensure that any information exchanged remains confidential and used solely for tax purposes.

42. What are the impacts of a particular IGA to the financial institutions outside of that IGA country?

An IGA will affect not only financial institutions in the country that signs on to the agreement, but also U.S. withholding agents and FFIs in other jurisdictions. For example:

- Withholding agents will be required to monitor an IRS list of IGA FFIs that are treated as NPFFIs due to their significant noncompliance with the IGA’s terms, as discussed in question 53.
- The ability to obtain FATCA compliance status of account holders in IGA jurisdictions may be affected by the delayed effective dates and any delays in IGA country legislation.
- Beginning no later than January 1, 2017, U.S. financial institutions will be required to obtain and report the foreign TIN (or date of birth, if the IGA country does not issue TINs) of account holders from IGA countries.[8]
- Documentation requirements will depend on whether the account holder or investor is resident in a country that has entered into an IGA with the United States.

43. Under what circumstances will an individual be considered a U.S. “resident” for purposes of the Model I IGA?

Under the due diligence procedures outlined in Annex I of the Model I IGA, FFIs must obtain a self-certification from individuals opening new accounts as to whether the account holder is a U.S. resident for tax purposes. The Model I IGA notes that for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, “even if the account holder is also a tax resident of another country.” Accordingly, an individual could be treated as a U.S. resident for IGA purposes, even if he or she is also a tax resident in another jurisdiction.

44. How will an FFI determine whether it is covered by a particular IGA?

The terms of a particular IGA will apply to any financial institution resident in that country, but excluding any branches of such institution that are located outside the IGA country, and to any branch of a financial institution that is located in the IGA country, even if it is not considered a resident there. For example, the U.K. branch of a U.S. financial institution, even though for U.S. tax purposes considered a division of a U.S. company, would be considered a local U.K. FFI subject to the terms of the U.S.-U.K. Agreement. A branch of a U.K. headquartered bank located in the Netherlands, however, would not be subject to the terms of such an agreement.

8 *The U.S.-U.K. Agreement provides for reporting of date of birth, rather than TIN.*

The criteria for determining an FFI's country of residence for ascertaining whether the FFI is governed by a particular IGA is unclear at this time.

45. Will an FFI in an IGA country be required to register with the local country authority or with the IRS?

The Model I IGA simply states that a financial institution in an IGA country will be required to comply with certain "registration requirements," and the U.S.-U.K. Agreement does not provide further details on the registration requirements for U.K. FFIs. Thus, it is unclear whether the FFI will be required to register with its local tax authority or with the IRS (or both) and what such registration will entail. In this sense, it appears the Model I IGA is attempting to provide IGA jurisdictions with additional flexibility to implement the FATCA requirements.

46. What documentation will an FFI in an IGA country be required to provide to a withholding agent to prove it is FATCA compliant?

The Model I IGA does not provide any details regarding the documentation that an FFI in an IGA country would be required to provide to a withholding agent and as stated above, it is unclear at this time whether such an FFI will be required to register with the IRS. It is expected that the final regulations will address these issues.

47. What form will the self-certifications permitted under the IGAs take?

As discussed in question 39, the Model I IGA allows FFIs to accept self-certifications of FATCA status from account holders in lieu of a Form W-8 or other documentation. However, it is unclear what form such self-certifications will take. The Model I IGA indicates only that the certification would be made on an IRS Form W-8 or W-9, or "similar agreed form." For entity account holders in particular, these certifications may be extensive, much like those that appear on the new IRS Form W-8BEN-E, which has been released in draft form.

48. What are the withholding obligations of FFIs in IGA countries?

As expected, the Model I IGA provides withholding relief for FFIs located in the IGA jurisdiction, eliminating the requirement to withhold on recalcitrant account holders (or to close accounts held by recalcitrant account holders). Under the Model I IGA, FFIs that are withholding qualified intermediaries, partnerships or trusts could still be required to withhold 30% of any U.S. source income paid or allocated to an NPFFI or pass up information on underlying account holders, if the FFI is not a withholding partnership, QI or trust, to allow a U.S. withholding agent to withhold tax. However, FFIs that are "look-at" or "opaque" funds (see question 6) would not be paying U.S. source income to their investors, and thus would not have withholding obligations for payments to NPFFIs. Moreover, the Model I IGA relieves FFIs from withholding on gross proceeds and foreign passthru payments for the time being, instead expressing the commitment of the respective governments to develop "a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden."

49. What needs to happen before the IGA takes effect?

The Model I IGA that has been published is not yet in effect. In order for the terms to be implemented, the United States and the FATCA party would need to enter into a bilateral agreement following the terms of the Model, adopting country-specific provisions in Annex II. As noted above, the United States and the United Kingdom have already signed a bilateral agreement based on the Model I IGA. It is expected that IGA countries will implement local law changes incorporating requirements of the Model I IGA, including removing any local law hurdles to compliance. As a result, the due diligence requirements as specified in the bilateral agreement would become the obligation of all FFIs located in that IGA country.

50. What happens if the IGA has not taken effect by January 1, 2014, when withholding is expected to apply?

While it would appear that the governments will try to conclude bilateral agreements prior to the effective date for FATCA withholding, uncertainty remains as to which countries will enter into an agreement before that time. As such, it is prudent to take into account the possibility that some countries may not have entered into an agreement by January 1, 2014. However, Treasury officials have recently stated that withholding will not be required for FFIs in any jurisdiction that has signed an IGA before the effective date, even if such agreement is not yet fully implemented under local law.

51. Which countries are expected to enter into IGAs?

The United States and the United Kingdom have already signed a bilateral agreement based on the Model I IGA. By signing the Joint Communiqué, France, Germany, Italy and Spain have also indicated their intent to sign an IGA based on the published model. Japan and Switzerland have announced plans to sign onto a Model II agreement. A number of other jurisdictions appear to be considering either Model I or Model II; however, until bilateral agreements are actually signed, we cannot know with certainty which jurisdictions will be under IGAs.

52. What should an FFI in a FATCA partner country be doing now to prepare for FATCA?

The proposed regulations introduce a category of registered deemed-compliant FFI that includes any FFI that is deemed to comply with FATCA through an agreement between the government of the United States and a foreign government. As discussed above, under the proposed regulations, an FFI in a FATCA partner country would need to register with the IRS and obtain an FFI-EIN. However it appears that the IRS may be considering alternative approaches to the documentation and registration requirements for partner-country FFIs, including requiring FFIs in a FATCA partner country to enter into an FFI agreement with the IRS.

As noted above, the joint statements suggest that FFIs in FATCA partner countries will still be required to perform the due diligence on their account holders applicable to participating FFIs. In addition, it remains to be seen whether each of the FATCA partner countries will have enacted the necessary legislation in time to meet the FATCA effective date, or whether additional transitional relief will be possible if the legislation is not implemented. Accordingly, many FFIs in FATCA partner countries have indicated their intent to begin preparing for FATCA implementation under the rules set forth in the proposed regulations for PFFIs. Each FFI in one of the joint statement jurisdictions will need to consult with its tax and legal advisors to decide how to approach FATCA preparation in light of these uncertainties.

53. What happens if an FFI in an IGA country does not comply? To which tax authority is an IGA FFI responsible – the IRS or the local tax authority?

FFIs in an IGA country will be answerable to their local tax authority for any noncompliance with the terms of an IGA. Unlike the proposed regulations, the Model I IGA does not contain a requirement for a responsible officer of an FFI to certify to the IRS as to its compliance. The Model I IGA provides that a competent authority from either of the signatory countries (in the case of the United States, the Secretary of Treasury, or, for the IGA country, as designated in the IGA) can question an IGA FFI directly if it has reason to think that administrative or other minor errors have led to gaps in reporting or other failures under the agreement. In cases of "significant" noncompliance, the competent authority where the FFI is located may apply its domestic law (including any applicable penalties) to address such noncompliance. If enforcement actions do not resolve a situation of noncompliance within an 18-month period, the Model I IGA provides for the United States to treat the FFI as nonparticipating.

54. Can FFIs use agents to perform their obligations under the IGA?

Like the proposed regulations, the Model I IGA provides that FFIs may use third-party service providers to fulfill obligations under an IGA, although the obligations ultimately remain those of the FFI. Please see question 32 for a more detailed discussion about the use of agents under the proposed regulations.

55. How many versions of an IGA will there be?

At this time, there appear to be a number of possible models for FATCA compliance:

- The Model I IGA, either reciprocal or nonreciprocal;
- The Model II IGA; and
- For FFIs in a non-IGA country, the requirements set forth in the final regulations and the FFI agreement (which have not yet been published).

In addition, the deemed-compliant FFIs, exempt FFIs and categories of exempt accounts set forth in Annex II of the Model I IGA will be country-specific, and thus will vary from jurisdiction to jurisdiction.

Whether the United States will develop other models for FATCA intergovernmental agreements (a Model III?) is not known. In addition, the Model I IGA notes the commitment to work with the Organisation for Economic Co-operation and Development (OECD) and the European Union or other partners on adopting common reporting and due diligence standards.

As a result, it appears that multinational institutions with operations in both IGA and non-IGA countries could be required to comply with a number of different regimes.

56. Will the changes in the Model I IGA (e.g., to the definitions and timelines) be reflected in the final regulations?

It is unclear whether the different approaches taken in the Model I IGA and the relief provided in terms of timelines will be reflected in the final regulations and FFI agreement. There has been some speculation that the Model I IGA indicates the direction in which the IRS and Treasury are headed with the final rules. However, some practitioners have taken the view that the final regulations will not reflect all of the more welcome modifications of the Model I IGA, so that there will be an incentive for countries to sign on to a bilateral agreement.

APPENDIX A: SUMMARY OF KEY REGULATORY DATES

	US Financial Institutions	Non-IGA FFIs	IGA FFIs
FFI signs FFI agreement and registers with IRS	N/A	Registration must be completed by January 1, 2014	Signature of FFI agreement will not be required. Registration requirement is expected; timing and details unclear
Start collecting evidence of compliance from new clients	January 1, 2014	January 1, 2014	January 1, 2014 (provided agreement and any required legislation are in place)
Complete due diligence on pre-existing clients	July 1, 2014, for prima facie FFIs January 1, 2016, for all remaining account holders	July 1, 2014, for prima facie FFIs January 1, 2015, for high value individual accounts January 1, 2016, for all remaining account holders	January 1, 2015, for high value individual accounts January 1, 2016, for all other accounts
Evidence required	W8/W9 and additional documentation as required in the regulations	W8/W9 or other similar agreed form and additional documentation as required in the regulations	W8/W9 or self-certification on a similar agreed form. The requirements for self-certification may be specified by the local regulator and may differ from one IGA country to another.
Withholding on non-compliant investors	January 1, 2014, for FDAP (U.S.-source interest and dividends) January 1, 2017, for gross proceeds	For U.S.-source dividends and interest (FDAP) paid to nonparticipating FFIs beginning January 1, 2014, provide information to withholding agent[1] January 1, 2017, for gross proceeds January 1, 2017, for passthru payments	No withholding on foreign passthru payments and gross proceeds – governments commit to pursue an alternative approach No withholding on recalcitrant individual investors For U.S.-source dividends and interest (FDAP) paid to nonparticipating FFIs beginning January 1, 2014, provide information to withholding agent[2]

1 Or the effective date of the FFI's agreement with the IRS, if later.

2 Note that withholding QIs, withholding foreign partnerships and withholding trusts may have withholding obligations.

APPENDIX A: SUMMARY OF KEY REGULATORY DATES

	US Financial Institutions	Non-IGA FFIs	IGA FFIs
Reporting **(Note that reporting requirements are unclear)**	Continue Form 1099 reporting for U.S. accountholders Continue Form 1042-S reporting for non-U.S. account holders (due every March 15 for prior calendar year). Begin aggregate reporting on number and value of accounts held by noncompliant FFIs (first reporting due March 2015 for 2014)	For 2013 and 2014 calendar years, report name, address, TIN, account number and account balance or value of each U.S. account (by March 31, 2015, for 2013 and 2014) For 2015 calendar year, add reporting of payments with respect to accounts, except for gross proceeds (by March 31, 2016) For 2016 (and years thereafter) add gross proceeds reporting (by March 31 of following year) Report number and value of recalcitrant accounts in aggregate pools of (1) those with U.S. indicia (2) those without U.S. indicia and (3) dormant accounts (begin for 2013 calendar year with same due dates as U.S. account reporting)	For 2013 and 2014 calendar years, report name, address, TIN, account number and account balance or value of each U.S. account (by September 30, 2015, for both years) For 2015 calendar year, add reporting of payments with respect to account, except for gross proceeds (by September 30, 2016) For 2016 (and years thereafter), add gross proceeds reporting (by September 30 of following year)

Source: Standard & Poor's, Russell, Dow Jones, MSCI, FTSE, Barclays

APPENDIX B: PAYEE CLASSIFICATION AND DOCUMENT REQUIREMENTS

Payee /Investor/Account Holder Classification	General Documentation Required (Onshore Account; U.S. Withholding Agent)	Exception for Offshore Account (Including for Investor in Non-U.S. Fund)
Individuals		
U.S. Individual Person	Form W-9	Form W-9 and waiver of privacy (where required)
Foreign Individual Person	New W-8BEN and must confirm no U.S. indicia	W-8 not required. May provide government issued ID, as long as no U.S. indicia
U.S. Entity		
U.S. Entity	Form W-9	None
Foreign Financial Institutions (FFIs)		
Participating FFIs (PFFIs)[1]		
Not acting as flow through or intermediary	New W-8	None
Acting as withholding qualified intermediary (QI)	New W-8IMY[2]	None
Acting as nonwithholding QI	New W-8IMY and FATCA withholding statement[3]	None. However, not applicable if PFFI is not receiving U.S.-source FDAP payment.
Acting as nonqualified intermediary (NQI)		
Acting as nonwithholding foreign partnership or nonwithholding foreign trust		
Acting as withholding partnership or withholding trust	New W-8IMY[4]	None
Registered Deemed-Compliant FFIs[1]		
Local FFIs	New W-8	None
Nonreporting members of participating FFI groups		
Qualified collective investment vehicles		
Restricted funds		
Partner country FFI	Unknown[5]	Unknown[5]

APPENDIX B: PAYEE CLASSIFICATION AND DOCUMENT REQUIREMENTS (continued)

Payee /Investor/Account Holder Classification	General Documentation Required (Onshore Account; U.S. Withholding Agent)	Exception for Offshore Account (Including for Investor in Non-U.S. Fund)
Certified Deemed-Compliant FFIs		
Nonregistering local banks	New W-8 plus current audited financial statements or similar documentation supporting claimed status	None
Retirement funds	New W-8 plus organizational documents supporting claimed status	May provide W-8 equivalent "written statement" in place of new W-8;
Nonprofit organizations	New W-8 and letter from counsel	May provide letter from counsel without new W-8
FFIs with only low-value accounts	New W-8 and organizational documents and current financial statements or similar	None
Owner-Documented Deemed-Compliant FFIs	New W-8 certifying owner-documented FFI is not acting as intermediary, plus: • Annual FFI owner reporting statement with documentation for underlying beneficial owners; or • Audit letter	None
Excepted FFIs (Including Flow-Through Entities)		
Nonfinancial holding companies	New W-8	May provide W-8 equivalent "written statement" in place of new W-8; other exceptions for alternative documentation requirements have also been proposed
Start-up companies (funds do not qualify)	New W-8 (with entity's date of formation less than 24 months prior)	May provide W-8 equivalent "written statement" in place of new W-8
Certain nonfinancial entities in liquidation or bankruptcy	New W-8 required and no contrary knowledge or reason to know. Must also monitor for claims of this status lasting more than three years, in which case must obtain additional documentary evidence, such as bankruptcy filing.	May provide one or more types of documentary evidence establishing status claimed, and establishing that payee was not formerly a financial institution.
Hedging/financing centers of nonfinancial groups	New W-8 required	May provide documentary evidence or 3rd party credit report that supports status claimed.
IRC section 501(c) organizations	New W-8EXP plus additional certifications	None
Exempt Beneficial Owners		
Foreign governments and governments of U.S. possessions	New W-8EXP	May provide W-8 equivalent "written statement" in place of New W-8EXP
International organizations	• New W-8EXP; or • Name is on IRS designated International organization list and not acting as intermediary	None
Foreign central banks of issue	New W-8EXP	May provide W-8 equivalent "written statement" in place of New W-8EXP if facts and circumstances "reasonably indicate" that the payee is a foreign central bank of issue, and that the payee is not acting as intermediary or is treated as the beneficial owner

APPENDIX B: PAYEE CLASSIFICATION AND DOCUMENT REQUIREMENTS (continued)

Payee /Investor/Account Holder Classification	General Documentation Required (Onshore Account; U.S. Withholding Agent)	Exception for Offshore Account (Including for Investor in Non-U.S. Fund)
Exempt Beneficial Owners (continued)		
Certain retirement funds	• New W-8 with treaty claim; or • New W-8 with organizational document supporting claimed FATCA status	May provide W-8 equivalent "written statement" in place of new W-8; organizational documents also are required
Entities wholly owned by exempt beneficial owners	• New W-8 from entity; • Owner reporting statement; and • Documentation for every underlying owner	None
Non-Financial Foreign Entities (NFFEs)		
NFFE acting as an agent or intermediary with respect to the payment	• New W-8IMY; • Withholding statement; and • Proper documentation from all underlying payees	None
Publicly, regularly traded corporations	New W-8 required	May provide W-8 equivalent "written statement" in place of new W-8; other exceptions for alternative documentation requirements have also been proposed
Affiliates of publicly, regularly traded corporations	Same as above	Same as above
Active Non-financial NFFE	New W-8 required	May provide certain documentary evidence if sufficient to support claimed status; if not sufficient, may rely on written statement
Passive NFFE	New W-8 required; plus (certify no substantial U.S. owners or provide documentation for substantial U.S. owners	May provide W-8 equivalent "written statement" and documentary evidence in lieu of new W-8, but must also certify no substantial U.S. owners or provide documentation for substantial U.S. owners
Non-Participating Foreign Financial Institution (NPFFI)		
NPFFI	New W-8BEN	None
Limited FFI		
Limited branch		
NPFFI owned by exempt beneficial owners	• New W-8 from NPFFI; • Withholding statement; and • Documentation from underlying beneficial owners	None

1. *All PFFIs and registered deemed-compliant FFIs will be required to provide an FFI-EIN, and the withholding agent will be required to verify that it is included on a list of registered FFIs to be published by the IRS.*
2. *A qualified intermediary (QI) that has not assumed primary responsibility for NRA withholding may not elect to be withheld upon for FATCA purposes. A QI that has assumed primary responsibility for NRA withholding (a withholding QI) is required to elect to be withheld upon for FATCA purposes.*
3. *The PFFI is required to provide a FATCA withholding statement with information regarding the portion of each payment it receives that should be allocated in accordance with the FATCA status of its underlying beneficial owners divided into the following pools: (1) recalcitrant individuals, (2) nonparticipating FFIs and (3) FATCA compliant. For underlying beneficial owners that are FATCA compliant, the PFFI is also required to provide NRA withholding rates and to pass up the documentation for such underlying beneficial owners that support NRA withholding rates.*
4. *Withholding foreign partnerships and withholding foreign trusts have entered into agreements with the IRS and are treated similar to QIs. They are treated as withholding QIs for FATCA purposes and, therefore, they cannot elect to be withheld upon for FATCA purposes.*
5. *Model intergovernmental agreements have yet to be completed, and the documentation requirements for FFIs covered by such agreements is unknown at this time.*

The above information is provided for general informational purposes only and is based on proposed regulations that are subject to change.

APPENDIX C: DEFINITIONS OF DEEMED-COMPLIANT FFIS

Procedural Requirements for:	Regulatory Definition
Registered Deemed-Compliant FFIs	Procedural requirements for registered deemed-compliant FFIs. Unless otherwise provided in this section, a registered deemed-compliant FFI will be required to: – Have its chief compliance officer or an individual of equivalent standing with the FFI certify to the IRS in such a manner as the IRS specifies that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied as of the date the FFI registers as a deemed-compliant FFI; – Obtain from the IRS a confirmation of its registration as a deemed-compliant FFI and an FFI-EIN; – Agree that if it chooses to publish a passthru payment percentage, it will do so in accordance with the procedures set forth in [the Proposed Regulations]; – Renew its certification every three years; and – Agree to notify the IRS if there is a change in circumstances which would make the FFI ineligible for the deemed-compliant status for which it has registered.
Local FFIs	1. The FFI must be licensed and regulated under the laws of its country of organization (which must be Financial Action Task Force ("FATF")-compliant at the time the FFI registers for deemed-compliant status) as a bank or similar organization authorized to accept deposits in the ordinary course of its business, a securities broker or dealer, or a financial planner or investment adviser, but must not qualify as an FFI solely because it is [a foreign investment entity]. 2. The FFI must have no fixed place of business outside its country of incorporation or organization. 3. The FFI must not solicit account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a website, provided that the website does not specifically state that nonresidents may hold deposit accounts with the FFI, does not advertise the availability of U.S. dollar denominated deposit accounts or other U.S. dollar denominated investments, and does not target U.S. customers. 4. The FFI must be required under the tax laws of the country in which the FFI is incorporated or organized to perform either information reporting or withholding of tax with respect to accounts held by residents. 5. At least 98 percent of the accounts maintained by the FFI must be held by residents (including residents that are entities) of the country in which the FFI is organized. An FFI which is organized in an EU member state may treat account holders that are residents (including corporate residents) of other EU member states as residents of the country in which the FFI is incorporated or organized for purposes of this calculation. 6. On or before the date it registers as a deemed-compliant FFI, the FFI must implement policies and procedures to ensure that it does not open or maintain accounts for any specified U.S. person who is not a resident of the country in which the FFI is organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), a nonparticipating FFI, or any entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by a specified U.S. person. 7. With respect to each account that is held by an individual who is not a resident of the country in which the FFI is organized or by an entity, and that is opened after December 31, 2011, and prior to the date that the FFI implements the policies and procedures described in [paragraph (6) above], the FFI must review those accounts in accordance with the [due diligence procedures for FFIs] applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI, and must certify to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified, or that it agrees to withhold and report on such accounts as would be required under [the FATCA withholding and reporting provisions] if it were a participating FFI. 8. In the case of an FFI that is a member of an expanded affiliated group, each member of the expanded affiliated group must be incorporated or organized in the same country, must meet the requirements set forth [above], and must meet the procedural requirements [for registered deemed-compliant FFIs].

APPENDIX C: DEFINITIONS OF DEEMED-COMPLIANT FFIS (continued)

Procedural Requirements for:	Regulatory Definition
Nonreporting members of participating FFI groups	1. The FFI must review its accounts that were opened prior to the date it implements the policies and procedures described in [paragraph (3) below], in accordance with the [due diligence procedures for FFIs] applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. 2. If any [U.S. account or account held by a nonparticipating FFI] is identified, the FFI must, within 90 days after identification of the account, enter into an FFI agreement, transfer the account to an affiliate that is a participating FFI or U.S. financial institution, or close the account. 3. On or before the date it registers with the IRS pursuant to [the procedural requirements applicable to registered deemed-compliant FFIs], the FFI must implement policies and procedures to ensure that if it opens any [U.S. accounts or account held by a nonparticipating FFI], it either transfers any such accounts to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days of having opened the account. 4. The FFI must implement policies and procedures to ensure that it identifies any account which becomes [a U.S. account or account held by a nonparticipating FFI] due to a change in circumstances and it either transfers such account to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days after the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status.
Qualified collective investment vehicles	1. The FFI must be an FFI solely because it is [a foreign investment fund[1], and must be regulated in its country of incorporation or organization as an investment fund. 2. Each holder of record of direct debt interests in excess of US$50,000 or equity interests in the FFI (for example the holders of its units or global certificates) or any other account holder of a financial account with the FFI must be a participating FFI, registered deemed-compliant FFI, U.S. entity that is not considered a "specified U.S. person" or exempt beneficial owner. See questions 14 and 21. 3. In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.
Restricted funds	1. The FFI must be an FFI solely because it is [a foreign investment fund[1], and must be regulated as an investment fund under the laws of its country of incorporation or organization (which must be FATF-compliant at the time the FFI registers for deemed-compliant status). In addition, interests in the FFI may only be sold through distributors described in [paragraph (2) below] or redeemed directly by the restricted fund. 2. Each distributor of the FFI's interests must be a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank described [above], or a Restricted Distributor [defined below]. For purposes of [these definitions], a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of securities. 3. The FFI must ensure that each agreement that governs the distribution of its debt or equity interests prohibits sales of debt or equity interests in the FFI to U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners (other than interests which are both distributed by and held through a participating FFI), and the FFI's prospectus and all marketing materials must indicate that sales of interests in the FFI to U.S. persons, nonparticipating FFIs, or NFFEs with one or more substantial U.S. owners (other than interests which are both distributed by and held through a participating FFI) are prohibited. 4. The FFI must ensure that each agreement that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must certify to the IRS that, with respect to any distributor that ceases to qualify as a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank [described below], or a restricted distributor [described below], the FFI will terminate its distribution agreement with the distributor within 90 days of notification of the distributor's change in status and will acquire or redeem all debt and equity interests of the FFI issued through that distributor within six months of the distributor's change in status.

Procedural Requirements for:	Regulatory Definition
Restricted funds (continued)	5. With respect to any of the FFI's preexisting direct accounts (that is, accounts that are held directly by the ultimate investors), the FFI must review those accounts in accordance with the [due diligence procedures applicable to FFIs] applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance of shares to U.S. entities and U.S. resident individuals. The FFI will be required to certify to the IRS either that it did not identify any such account as a result of its review or, if any such accounts were identified, that the FFI will either redeem any such account, or will withhold and report on such accounts as would be required under [the FATCA withholding and reporting provisions] if it were a participating FFI. 6. On or before the date that it registers as a deemed-compliant FFI, the FFI must implement the [due diligence policies and procedures for FFIs] for identifying account holders with respect to direct account holders to ensure that it either: (i) Does not open or maintain an account for any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners; or (ii) Closes any account for any [specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners] within 90 days of the date that the account was opened or the date that the FFI had reason to know the account holder became [such a person], or withholds and reports on such account as would be required under [the FATCA withholding and reporting provisions] if it were a participating FFI. 7. For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.
Restricted distributor	An entity is a restricted distributor [for purposes of the above] if it operates as a distributor with respect to debt or equity interests in an FFI and: 1. The distributor must provide investment services to at least 30 unrelated customers and no more than half of the distributor's customers can be related persons. 2. The distributor must be required to perform AML due diligence procedures under the anti-money laundering laws of its country of organization (which must be FATF-compliant). 3. The distributor must operate solely in its country of incorporation or organization, must not have a fixed place of business outside that country, and, if such distributor belongs to an affiliated group, must have the same country of incorporation or organization as all other members of its affiliated group. 4. The distributor must not solicit customers outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a website, provided that the website does not specifically state that nonresidents may acquire securities from the FFI or target U.S. customers. 5. The distributor must have no more than US$175 million in total assets under management and no more than US$7,000,000 in gross revenue on its income statement for the most recent accounting year and, if the distributor belongs to an affiliated group, the entire group must have no more than US$500 million in total assets under management and no more than US$20 million in gross revenue for its most recent accounting year on a combined or consolidated income statement. 6. The distributor must provide the FFI with a valid Form W-8 indicating that the distributor satisfies the requirements to be a restricted distributor. 7. The agreement governing the distributor's distribution of debt or equity interests of the FFI must prohibit the distributor from distributing any securities to specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs, and must require that if the distributor does distribute securities to any of the persons described in this paragraph, that it will redeem or cancel those interests within six months and the commission paid to the distributor will be forfeited to the FFI. 8. With respect to sales made on or after December 31, 2011, and prior to the time the restrictions [described above] were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant FFI must have contained a prohibition of the sale of securities to U.S. entities or U.S. resident individuals, or the distributor must review all accounts relating to such sales in accordance with the [due diligence procedures for FFIs] applicable to preexisting accounts and certify that it has redeemed all securities sold to any [specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs].

APPENDIX C: DEFINITIONS OF DEEMED-COMPLIANT FFIS (continued)

Procedural Requirements for:	Regulatory Definition
FATCA Partner FFIs	A registered deemed-compliant FFI also includes any FFI that is deemed to comply with the [participating FFI] requirements pursuant to an agreement between the government of the United States and a foreign government.
Certified Deemed-Compliant FFIs	A certified deemed-compliant FFI means an FFI described [below] that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with [required documentation] applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI is not required to register with the IRS.
Nonregistering local banks	1. The FFI must operate and be licensed solely as a bank (within the meaning of section 581 [of the Internal Revenue Code], determined as if the FFI were incorporated in the United States) in its country of incorporation or organization and engage primarily in the business of making loans and taking deposits from unrelated retail customers. 2. The FFI must be licensed to conduct business in its country of incorporation or organization and must have no fixed place of business outside such country. 3. The FFI must not solicit account holders outside its country of organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a website, provided that the website does not specifically state that nonresidents may hold deposit accounts with the FFI, advertise the availability of U.S. dollar denominated deposit accounts or other investments, or target U.S. customers. 4. The FFI must have no more than US$175 million in assets on its balance sheet and, if the FFI is a member of an expanded affiliated group, the group may have no more than US$500 million in total assets on its consolidated or combined balance sheets. 5. The FFI must be required under the tax laws of the country in which the FFI is organized to perform either information reporting or withholding of tax with respect to resident accounts. An FFI that is not subject to such information reporting or withholding requirements will be considered to meet this requirement if all of the accounts maintained by the FFI have a value or account balance of US$50,000 or less, taking into account the account aggregation rules set forth in [the Proposed Regulations]. 6. With respect to an FFI that is part of an expanded affiliated group, each FFI in the expanded affiliated group must be incorporated or organized in the same country and must meet the requirements set forth [above].
Retirement funds	An FFI is [a deemed-compliant Retirement Fund] if the FFI is organized for the provision of retirement or pension benefits under the law of the country in which it is established or in which it operates and meets the requirements described in paragraph (1) or (2) 1. An FFI meets the requirements of this [paragraph (1)] if: A. All contributions to the FFI (other than transfers of assets from [certain retirement and pension accounts] or other [deemed-compliant retirement funds or retirement funds that are exempt beneficial owners] are employer, government, or employee contributions that are limited by reference to earned income; B. No single beneficiary has a right to more than five percent of the FFI's assets; and C. Contributions to the FFI that would otherwise be subject to tax under the laws of the jurisdiction where the FFI is established or operates are deductible or excluded from gross income of the beneficiary, the taxation of investment income attributable to the beneficiary is deferred under the laws of such jurisdiction, or 50 percent or more of the total contributions to the FFI (other than transfers of assets from other plans [that are deemed-compliant retirement funds or retirement funds that are exempt beneficial owners) are from the government and the employer. 2. An FFI meets the requirements of this [paragraph (2)] if — A. The FFI has fewer than 20 participants; B. The FFI is sponsored by an employer that is not an FFI [that is an investment fund[1]] or passive NFFE; C. Contributions to the FFI (other than transfers of assets from other plans [that are deemed-compliant retirement funds or retirement funds that are exempt beneficial owners] are limited by reference to earned income; D. Participants that are not residents of the country in which the FFI is organized are not entitled to more than 20 percent of the FFI's assets; and E. No participant that is not a resident of the country in which the FFI is organized is entitled to more than US$250,000 of the FFI's assets.

APPENDIX C: DEFINITIONS OF DEEMED-COMPLIANT FFIS (continued)

Procedural Requirements for:	Regulatory Definition
Non-profit organizations	1. The FFI is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes; 2. The FFI is exempt from income tax in its country of residence; 3. The FFI has no shareholders or members who have a proprietary or beneficial interest in its income or assets; 4. The applicable laws of the FFI's country of residence or the FFI's formation documents do not permit any income or assets of the FFI to be distributed to, or applied for the benefit of, a private person or noncharitable FFI other than pursuant to the conduct of the FFI's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the FFI has purchased; and 5. The applicable laws of the FFI's country of residence or the FFI's formation documents require that, upon the FFI's liquidation or dissolution, all of its assets be distributed to an entity that is a foreign government or another nonprofit organization.
FFIs with only low-value accounts[2]	1. No financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of US$50,000. The balance or value of a financial account shall be determined by applying the rules described in paragraph (a)(4)(i) of this section, substituting the term financial account for the term depository account and the term person for the term individual. 2. The FFI must have no more than US$50 million in assets on its balance sheet as of the end of its most recent accounting year. In the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group must have no more than US$50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.
Owner-documented FFIs	An FFI that meets the requirements of this [section] is treated as a deemed-compliant FFI only with respect to payments received by and accounts held with a designated withholding agent. A designated withholding agent is a withholding agent that agrees to undertake [certain additional due diligence and reporting requirements] in order to treat the FFI as an owner-documented FFI. An FFI meeting [these requirements] will only be treated as a deemed-compliant FFI with respect to a payment or account for which it does not act as an intermediary. **Requirements of owner-documented FFI status.** 1. The FFI is not [an FFI that accepts deposits in the ordinary course of a banking or similar business; holds, as a substantial portion of its business, financial assets for the account of others; or is an insurance company]; 2. The FFI must not be affiliated with any other FFI excluded in (1) above; 3. The FFI must not maintain a financial account for any nonparticipating FFI or issue debt which constitutes a financial account to any person in excess of US$50,000; 4. The FFI must provide the designated withholding agent (that is either a U.S. financial institution or a participating FFI) with [certain specified documentation about the FFI and its owners]; and 5. The withholding agent must agree to report to the IRS [certain information] with respect to any of the owner-documented FFI's direct or indirect owners that are specified U.S. persons.

1. i.e., is engaged (or holding itself as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts, or any interest (including a futures or forward contract or option) in such security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract.

2. This category is only available to institutions that are FFIs because they accept deposits in the ordinary course of a banking or similar basis, or that hold, as a substantial portion of their business, financial assets for the account of others.

APPENDIX D: U.S. INDICIA FOR INDIVIDUAL ACCOUNT HOLDERS[1]

An individual account holder is treated as having U.S. indicia if the information required to be reviewed with respect to the account includes any of the following:

U.S. Indicia	Documentation Required[2]
Identification of account holder as U.S. citizen or U.S. resident	Form W-9 and valid and effective privacy waiver (if necessary under local law)
U.S. place of birth (unambiguous)	Form W-9 and valid and effective privacy waiver (if necessary under local law) or Form W-8BEN and a non-U.S. passport or other government-issued I.D. evidencing citizenship outside U.S.; and one of the following: a copy of Certificate of Loss of Nationality of the United States, Form I-407, or a reasonable explanation of renunciation of U.S. citizenship or the reason account holder did not obtain U.S. citizenship at birth
Residence or mailing address in the United States (including a U.S. P.O. Box)	W-9 and valid and effective privacy waiver (if necessary under local law); or Form W-8BEN and a non-U.S. passport or other government-issued I.D. evidencing citizenship outside the United States
U.S. telephone number	W-9 and valid and effective privacy waiver (if necessary under local law), or Form W-8BEN and a non-U.S. passport or other government-issued I.D. indicating citizenship outside the United States
Standing instructions to transfer funds to an account maintained in the United States	W-9 and valid and effective privacy waiver (if necessary under local law), Form W-8BEN and "documentary evidence" establishing foreign status
Power of attorney or signatory authority granted to a person with a U.S. address	W-9 and valid and effective privacy waiver (if necessary under local law), Form W-8BEN or "documentary evidence" establishing foreign status
An "in care of" address or "hold mail" address, if such address is the sole address on file for the account (whether such address is in the United States or outside the United States)	W-9 and valid and effective privacy waiver (if necessary under local law), Form W-8BEN or "documentary evidence" establishing foreign status

Source: Standard & Poor's, Russell, Dow Jones, MSCI, FTSE, Barclays Capital

1. "Documentary evidence" is only reliable if it contains sufficient information to support the FATCA status claimed by the individual. Acceptable documentary evidence for an individual may include the following:

- *A certificate of residence issued by an appropriate tax official of the person's country of residence that indicates the person has filed their most recent income tax returns as a resident of that country.*
- *Valid identification issued by an authorized government body (e.g., a government, an agency or a municipality) that includes the individual's name and address and is typically used for identification purposes.*
- *Any documentation acceptable for identifying individuals that has been approved by IRS for use by QIs.*

2. A withholding agent that is not a FFI (including a USFI) may have more flexibility regarding documentary evidence needed to cure certain U.S. indicia for an individual account, but may also need a reasonable written explanation of U.S. mailing address in addition to such documentary evidence. See 1.1471-3(e)(4)(i) and (ii).

APPENDIX E: U.S. INDICIA FOR ENTITY ACCOUNT HOLDERS

An entity account holder is treated as having U.S. indicia if the information required to be reviewed for the account includes any of the following:

U.S. Indicia	Documentation Required
Residence or mailing address in the United States (including a U.S. P.O. Box)	W-9 and valid and effective privacy waiver (if necessary under local law); or Form W-8 and documentary evidence[1] establishing foreign status
U.S. telephone number	
Standing instructions to transfer funds to an account maintained in the United States	
An "in care of" address, other financial institution address or "hold mail" address if such address is the sole address on file for the account	W-9 and valid and effective privacy waiver (if necessary under local law), Form W-8 or documentary evidence establishing foreign status

Source: Standard & Poor's, Russell, Dow Jones, MSCI, FTSE, Barclays Capital

1. "Documentary evidence" is only reliable if it contains sufficient information to support the FATCA status claimed by the entity. Acceptable documentary evidence for an entity may include the following:

- *A certificate of residence issued by an appropriate tax official of the person's country of residence that indicates the person has filed their most recent income tax returns as a resident of that country.*
- *Any official documentation issued by an authorized government body that includes the name of the entity and either the address of its principal office in the country where it claims to be resident or the country where the entity was incorporated or organized.*
- *Any documentation acceptable for identifying individuals that has been approved by IRS for use by QIs.*

APPENDIX F: SUMMARY OF KEY REGULATORY DIFFERENCES

Key differences between obligations imposed on FFIs under the Model I IGA and the proposed regulations

	FFI Under Proposed Regulations	Partner Country FI under Model I IGA
Client Due Diligence		
Due diligence required of all account holders?	Yes	Yes
Allows for client to provide self-certification?	No	Yes
Timeline extension for new and pre-existing account due diligence work?	No[1]	Yes
Identification of U.S. ownership in NFFEs required?	Substantial U.S. owners with 10% or greater ownership	Controlling persons based on AML/KYC (may be 25% ownership)
Withholding		
Withholding required on U.S.-sourced payments of FDAP by FFI to nonparticipating FFIs?	Yes, if a withholding QI, withholding partnership or withholding trust; otherwise pass withholding obligation up to U.S. withholding agent	Yes, if a withholding QI, withholding partnership or withholding trust, otherwise pass withholding obligation up to U.S. withholding agent
Withholding required on U.S.-sourced payments to recalcitrant individuals?	Yes	No, if in an IGA territory
Withholding required on foreign passthru payments?	Yes, but details reserved	Agreement to explore alternate solution
Withholding required on U.S.-sourced payments of gross proceeds?	Yes, but details reserved for flow-through (tax-transparent) entities	Agreement to explore alternate solution
Reporting		
Reporting required on U.S. reportable accounts?	Yes	Yes
Who does the financial institution provide required reportable data to?	U.S. IRS	Partner country tax authority
Reciprocal reporting required for U.S. financial institutions?	No	Yes for reciprocal model; no for nonreciprocal
Reporting required on recalcitrant individuals?	Yes	Yes, treated as U.S. reportable accounts
Reporting required on nonparticipating FFIs?	Yes	Yes

1. The IRS issued Announcement 2012-42 on October 24, 2012, which does extend various timelines, including those for due diligence and pre-existing accounts, to be more in line with the Model I IGA.

APPENDIX F – SUMMARY OF KEY REGULATORY DIFFERENCES

Key differences between obligations imposed on FFIs under the Model I IGA and the proposed regulations

	FFI Under Proposed Regulations	Partner Country FI under Model I IGA
Other Obligations		
FFI agreement with IRS required?	Yes	No
FFI registration (obtain FATCA ID)	Yes	Yes, but unclear if registration is required with IRS or local authorities
Termination of accounts of recalcitrant individuals?	Yes	No
Potential conflicts with local data privacy and other laws?	Yes	No
Certification of a responsible officer required?	Yes	No
Retirement plans treated as deemed-compliant or exempt?	Yes, if requirements met	Yes, if country-specific requirements of IGA Annex II met
Relief for FFIs with related entities that are nonparticipating FFIs	No	Yes, but additional requirements apply and the nonparticipating FFI will be subject to withholding

APPENDIX G: FATCA GLOSSARY

Term	Description
AML Anti-money Laundering	Anti-money laundering laws or regulations are designed to stop the practice of generating income through illegal actions by requiring financial institutions to follow certain due diligence procedures.
EIN Employer Identification Number	The employer identification number (for entities) is a unique identifier issued by the U.S. Internal Revenue Service.
FATCA Foreign Account Tax Compliance Act	The Foreign Account Tax Compliance Act enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act, is intended to combat tax evasion by U.S. persons holding investments in offshore accounts.
FDAP Fixed or Determinable Annual or Periodic Income	Fixed or determinable annual or periodic income can include interest, dividends, portfolio interest and interest paid by foreign branches of U.S. banks.
IGA Intergovernmental Agreement	An agreement between the United States and another country on their approach to FATCA implementation to address legal impediments and simplify burdens on FFIs.
IRS Internal Revenue Service	The U.S. government agency responsible for tax collection and tax law enforcement.
IRS Announcement Announcement 2012-42	On October 24, 2012, the IRS issued Announcement 2012-42, modifying certain of the FATCA implementation timelines.
KYC Know Your Customer	Know your customer refers to the bank regulations that require financial institutions and other regulated companies to perform adequate due diligence to identify their clients and ascertain information relevant to doing financial business with them.
NFFE Nonfinancial Foreign Entity	A foreign organized entity outside of the United States that is not engaged in business as a financial institution.
NRA Nonresident alien	A non-U.S. citizen who doesn't pass the green card test or the substantial presence test. If a noncitizen currently has a green card or has had a green card in the past calendar year, he or she would pass the green card test and would be classified as a resident alien. If the individual has resided in the United States for more than 31 days in the current year and has resided in the United States for more than 183 days over a three-year period, including the current year, he or she would pass the substantial presence test and also be classified as a resident alien.
PFFI Participating FFI	A foreign financial institution that has entered into an FFI agreement with the IRS for purposes of FATCA.
TIN Taxpayer Identification Number	An identification number used by the Internal Revenue Service in the administration of tax laws.
USWA U.S. Withholding Agent	Any U.S. entity making a "withholdable payment" to a non-U.S. legal entity will be a withholding agent and will have FATCA due diligence, reporting and withholding responsibilities. See question 26 for additional information on withholding agents.

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The proposed rules set forth in the IRS Notices discussed herein constitute preliminary guidance only, and may change significantly before they are finalised. Foreign financial institutions should engage their own tax and legal advisors regarding the applicability of FATCA to their individual facts and circumstances and their potential obligations under the FATCA rules.

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