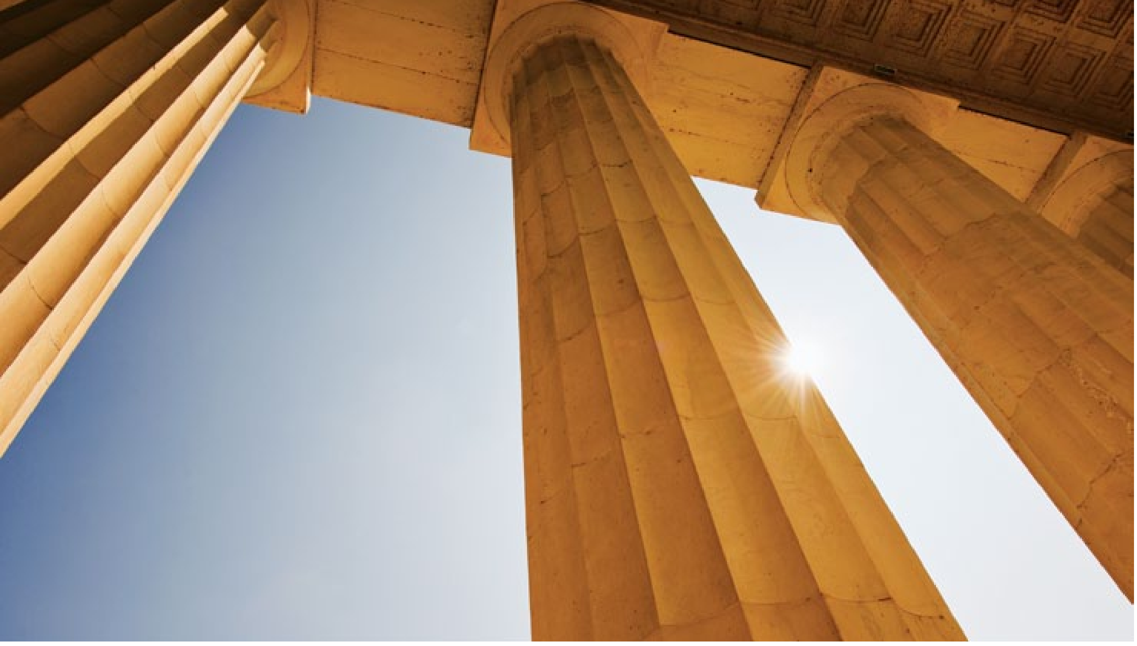

LINE OF
SIGHT

May 2013

FATCA

FREQUENTLY ASKED QUESTIONS FOR FUND MANAGERS

Northern Trust

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.

2. Have the FATCA rules been finalised?

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 18 March 2010, and added Chapter 4 of Subtitle A to the U.S. Internal Revenue Code. The U.S. Treasury Department (Treasury) and IRS issued final regulations under FATCA (the final regulations) on 17 January 2013. The final FATCA regulations generally follow the guidelines set forth in proposed regulations issued in February 2012 (proposed regulations), but include many changes that reflect comments on the proposed regulations submitted by industry group participants, bring the final rules in line with intergovernmental agreements (IGAs) signed to date, and incorporate some of the timeline changes announced by the IRS in October 2012. Preliminary drafts of certain Forms W-8 have been released, however updated forms incorporating changes from the final regulations have not yet been published. Complete details on registration and the FFI agreement are not yet known.

3. What is the status of the IGAs?

The final regulations will apply broadly to any withholding agent (including Northern Trust), as well as any FFI. However, an FFI in a country that has entered into an IGA based on the "Model 1" IGA, released on 26 July 2012, will be required to comply with its jurisdiction's own rules, which in some cases may vary from and override the FATCA regulations. The Model 1 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) with the IRS. Denmark, Germany, Ireland, Mexico, Norway, Spain and the United Kingdom have signed or initialled a Model 1 IGA with the United States; only the United Kingdom has issued draft regulations and guidance provisions implementing the terms of its IGA as of 1 March 2013 (the U.K. draft guidance).

FFIs located in jurisdictions that have entered into an IGA based on a second model of the IGA (Model 2), published on 14 November 2012, will be permitted under local law to comply with the terms of an FFI agreement with the IRS, including reporting directly to the U.S. government. Model 2 FFIs will therefore be required to implement FATCA by following the provisions of the FATCA regulations, except to the extent expressly modified by their IGA. Switzerland has adopted a Model 2 agreement, and Japan has also indicated its interest in adhering to this model.

The obligations imposed on FFIs under the IGAs vary in important respects from those described in the final regulations. The responses in this document generally focus on the final regulations, but also provide some highlights of the differences under the Model IGAs. However, the details of requirements for financial institutions in countries that have signed an IGA will be addressed in the local law implementing the IGA and may vary by jurisdiction. The publication by the U.K. tax authorities (HMRC) of draft FATCA regulations and guidance on 18 December 2012 provides insight into how the regulations will be applied in the United Kingdom, and may also provide a template for other jurisdictions concluding Model 1 IGAs with the United States. Note, however, that these provisions are not yet finalized and are subject to change. Accordingly, this document does not address the U.K. rules in great detail.

4. Now that the FATCA regulations have been finalised, do I have all the information I need to begin preparing for FATCA?

Final regulations under FATCA have been issued, however there are still many uncertainties making it difficult for global financial institutions to fully implement operational and systems changes to address FATCA. For example:

- The FFI agreement has not yet been published and the IRS's online FATCA registration site (discussed below) is not yet available. Thus, complete details on the FFI agreement and registration are not yet known.
- While many jurisdictions have expressed their intent to sign an IGA, only a handful have done so to date; which additional jurisdictions will enter an agreement (and the form of model adopted) are not yet known.
- Only the United Kingdom has published rules governing the implementation of its IGA; and such rules are only in draft form and subject to change. As such, details on FATCA compliance requirements in IGA jurisdictions will not be known for certain until local regulations come into effect.
- Many details on reporting (in particular for IGA FFIs) are not yet known.
- The preamble to the FATCA regulations indicates that guidance is forthcoming in several key areas and invites feedback on certain issues, including on qualified intermediaries (QIs), revised Forms W-8, introduction of the FFI Agreement and the FATCA registration portal (discussed below), gross proceeds and passthru payments, and coordination of the FATCA rules with other existing U.S. withholding and reporting rules. Clarification on these issues is needed to fully understand the FATCA compliance requirements for financial institutions.

5. When will FATCA come into effect?

FATCA is generally effective 1 January 2014. However, Treasury and the IRS have established a phased implementation schedule addressing four key areas:

Account documentation and due diligence

- FATCA will require changes to account opening and investor on-boarding procedures for new accounts. The final regulations require U.S. financial institutions to treat any account opened on or after 1 January 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 1 January 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 27 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 U.S. financial institution (USFI) or FFI in a non-IGA country must obtain FATCA documentation for all pre-existing "prima facie" FFI accounts by 30 June 2014 (or, in the case of a non-IGA FFI, by the later of six months after the effective date of the FFI agreement or 30 June 2014) and all other pre-existing entity accounts by 31 December 2015. The Model 1 IGA does not have a requirement to identify prima facie FFIs. (Prima facie FFIs are entities that must be treated as FFIs because they have certain defined characteristics.)

Withholding

- The tax withholding provisions of FATCA first come into effect on 1 January 2014 when certain U.S.-source income payments become subject to FATCA withholding; gross proceeds from the sale of a U.S. security will be subject to FATCA withholding no earlier than 1 January 2017. Withholding by FFIs on foreign passthru payments (defined in question 10) has been delayed and will not be required prior to 1 January 2017.

FFI Agreements and Registration

- FFIs required to register are expected to be able to begin registration by 15 July 2013 on an IRS web site, the "FATCA Registration Portal." FFIs must complete registration by 25 October 2013 to avoid withholding as of 1 January 2014.
- For participating FFIs that receive a special U.S. identification number, a global intermediary identification number (GIIN), prior to 31 December 2013, the FFI agreement's effective date is 31 December 2013. Agreements entered into after 31 December 2013 will be effective on the date of the agreement.

Reporting

- FATCA reporting will first be required in March 2015 (for 2013 and 2014 activities), and will be less detailed for 2013 and 2014 activity. More detailed requirements will be phased in for 2015 and later years. Appendix A includes a detailed timeline of key dates for FATCA implementation under the final regulations and IGAs.

6. What entities are treated as FFIs under FATCA?

An FFI is a "financial institution" resident outside the United States. In general, the final regulations define a financial institution as:

- 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 investment entity (as defined below);
- An insurance company (or a holding company in an expanded affiliated group that includes an insurance company) that issues, or is obligated to make payments with respect to, any cash value insurance or annuity contract; or
- An entity that is a holding company or treasury centre that is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company or investment entity; or that is formed in connection with or availed of by a collective investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets.

"Investment entity" is defined as one of three types of entities:

1. An entity that primarily conducts as a business on behalf of customers, either trading in financial instruments, individual or collective portfolio management, or otherwise investing, administering or managing funds, money or other financial assets on behalf of others (i.e., acts as an investment advisor);
2. An entity whose gross income is primarily attributable to investing, reinvesting or trading in financial assets <u>and</u> the entity is managed by an investment advisor, depository institution, custodial institution or insurance company; and
3. An entity that functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund or any similar investment vehicle.

Under the definition in the final regulations, passive investment entities such as trusts will be considered passive "non-financial foreign entities" (NFFEs) instead of FFIs, unless they are professionally managed. For investment entities like trusts that are professionally managed, the FATCA regulations indicate that the manager, which is an FFI, will manage the trust's FATCA compliance. As a result, investment managers, fund sponsors and professional trustees classified as investment entities under the modified definition in the final rules may be required to register as FFIs.

The definition of "financial institution" has been modified from the prior definition in the proposed regulations to be more closely aligned with the IGAs, which defines financial institution as a "custodial institution," a "depository institution," an "investment entity" and a "specified insurance company." Under the IGAs, "investment entity" generally means "any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following on behalf of a customer:

1. Trading in financial instruments;
2. Individual and collective portfolio management; or
3. Otherwise investing, administering or managing funds or money on behalf of other persons.

The Model IGAs provide that this definition is to be interpreted consistently with the definition of financial institution in the Financial Action Task Force (FATF) recommendations. Detailed definitions of financial institution in IGA countries are set forth in the text of the relevant IGA as well as the local regulations or other guidance. As such, institutions in an IGA jurisdiction should review the applicable definitions carefully to determine their FATCA classification.

7. How will FATCA withholding apply to a non-U.S. investment fund?

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 9) and "foreign passthru payments" (as defined question 10) they receive unless they become a PFFI by entering into an FFI agreement with the IRS, or establish their qualification for one of the categories of FFIs treated as deemed compliant or exempt from FATCA, including "reporting Model 1 IGA FFIs," as discussed further below. 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 U.S. or non-U.S. status, and to institutional 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 29.

The application of FATCA withholding to an FFI that is in a country that has signed an IGA with the United States is discussed in question 33.

8. 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. Conversely, traditional mutual funds such as SICAVs, unit trusts, 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.

9. What are "withholdable 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
- Beginning 1 January 2017, gross proceeds from the sale or disposition of any property that can produce U.S.-source interest or dividends.
- Financial payments such as investment advisory fees, custodial fees, and bank or brokerage fees.
- Note however, that payments of U.S.-source FDAP made outside the United States prior to 1 January 2017 are not treated as withholdable payments unless the payor is acting as an intermediary with respect to the payment.

The final 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;
- "Nonfinancial payments," i.e., payments for services, including wages and other forms of employee compensation (such as stock options), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services; and
- "Grandfathered obligations," including:
  - —Debt obligations issued before 1 January 2014.
  - —Derivatives transactions entered into under an ISDA Master Agreement that are outstanding on or before 1 January 2014. Grandfathering also extends to any agreement requiring collateral to be posted to secure a grandfathered obligation.
  - —Foreign passthru payments and dividend equivalent payments will be grandfathered if they are executed on or before the date that is six months after the date on which final regulations concerning such obligations are issued.

Under the final regulations, withholding agents may rely on a written statement of the issuer of an obligation as to whether the obligation is grandfathered or whether a "material modification" has occurred such that grandfathering no longer applies.

10. What are "passthru payments" and "foreign passthru payments"?

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

Based on prior guidance, the foreign passthru payment withholding rules are intended to capture 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, 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 the final regulations delayed passthru payment withholding to develop the appropriate system for implementing that withholding, and to assess the scope of the problem addressed by passthru payments. Northern Trust will continue to monitor guidance related to passthru payments.

11. How is FATCA withholding different from the Nonresident Alien (NRA) withholding that is currently deducted from U.S. dividends and from certain interest paid to non-U.S. funds?

FATCA withholding applies to all withholdable payments described above and includes types of FDAP income that are excluded from NRA withholding (as defined under Section 1441 of the U.S. Internal Revenue Code applicable to nonresident aliens), for example:

- Portfolio interest
- Interest paid by non-U.S. branches of U.S. banks (beginning 1 January 2017)
- Gross proceeds from the sale of U.S. securities (beginning 1 January 2017)
- Foreign passthru payments (no earlier than 1 January 2017)

Moreover, 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'S ROLES AND RESPONSIBILITIES

12. What is Northern Trust doing to prepare for FATCA?

FATCA imposes major requirements on financial institutions worldwide. Although many of the timelines have been extended, deadlines for FATCA implementation remain challenging. Northern Trust's cross-disciplinary team is identifying our legal responsibilities under FATCA and the IGAs and is exploring how we can help our clients meet their own FATCA compliance objectives. This initiative includes:

- Conduct future state assessments and identify required enhancements
  - —Evaluate FATCA's impact on Northern Trust legal entities
  - —Evaluate FATCA's impact on Northern Trust business lines
- Work with technology teams and vendors to implement FATCA changes to Northern Trust systems and operations, including fund accounting and tax form validation software
  - —Collecting and validating client account information
  - —Withholding
  - —Reporting
- Continue to respond to the IRS's and Treasury's request for comments on the existing guidance
  - —Participate with industry groups to submit comments
  - —Submit comments from Northern Trust
  - —Hold joint meetings with other global custodians, the IRS and Treasury regarding rules and regulations they are drafting to implement the law
- Join with industry groups to comment on guidance under consideration by jurisdictions that are adopting IGAs
- Inform clients about FATCA compliance requirements

Northern Trust fund manager clients who would like further detail on Northern Trust FATCA services for fund managers should contact their relationship manager.

13. Can you confirm Northern Trust will be fully FATCA compliant?

We fully intend to be compliant with FATCA when it is effective and are taking steps now to ensure our systems and operations are ready. Final FATCA regulations have been issued, however the IRS and Treasury have yet to issue guidance on a number of key issues. In addition, the extent to which IGAs may apply to Northern Trust and the rules implementing those agreements are not yet known. The IRS has also not yet established procedures to register participating and registered deemed-compliant FFIs and the FATCA registration portal is not yet available. Under these circumstances, we do not believe any USWA or FFI can categorically affirm that it will be fully FATCA compliant by the deadlines currently in place. That said, we are dedicating substantial resources to FATCA preparation, and we are working with other industry participants to understand and define best practices.

14. As custodian, how will Northern Trust address FATCA within the subcustodian network?

We expect all of Northern Trust's subcustodians will be FATCA compliant. Our legal team is working with the Subcustodian Network Team to confirm that all subcustodians understand their obligations and are planning to comply.

15. What are Northern Trust's responsibilities as a global custodian?

In its capacity as a custodian, Northern Trust and its global affiliates will have an obligation to withhold 30% on all withholdable payments and, beginning no earlier than 1 January 2017, foreign passthru payments paid to, or collected on behalf of, any legal entity domiciled outside the United States (including a fund) that is not FATCA-compliant.[1]

We are identifying transactions that qualify as withholdable payments and planning the requisite changes to our withholding systems and operations. We anticipate other custodians will need to make similar changes.

Certain Northern Trust affiliates domiciled outside the United States will be treated as FFIs, Model 1 IGA FFIs and possibly Model 2 IGA FFIs, and may have an obligation to ensure tax is withheld on withholdable payments and (beginning no earlier than 1 January 2017) foreign passthru payments paid to a client that is not FATCA-compliant. Foreign passthru payments are discussed in more detail in question 10.

PREVENTING FATCA WITHHOLDING

16. 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 four pathways available to comply with FATCA and prevent FATCA withholding:

1. Enter into a full FFI agreement with the IRS (see questions 27 through 33);
2. Satisfy one of the sets of requirements to be treated as FATCA compliant without entering into a full FFI agreement, including being a reporting Model 1 FFI or nonreporting Model 1 FFI (see questions 34 through 51);
3. Fall into one of the categories of entities excluded from the definition of financial institution (see question 25); or
4. Fall into one of the categories of beneficial owners exempt from FATCA withholding (see question 26).

As discussed further beginning in question 34, the Model 1 IGAs treat financial institutions as "reporting" FFIs (unless they qualify for an exception to these rules), subject to due diligence, documentation and reporting requirements. The Model 1 and Model 2 IGAs each provide for a category of "nonreporting [IGA] financial institution," defined as any IGA FFI that is identified in "Annex II" of the IGA as a nonreporting IGA FFI, or that otherwise qualifies as a certified deemed-compliant FFI, an exempt beneficial owner or an excepted FFI under the final regulations. Nonreporting Model 1 or Model 2 IGA FFIs therefore are relieved of the requirements to register with the IRS and comply with the due diligence requirements of the IGA.

The documentation an FFI will need to provide a withholding agent to establish its FATCA-compliant status will vary, depending on its classification and whether it is in a country that has entered into an IGA. FFIs that invest in other FFIs, either directly or as a nominee or other intermediary, also will need to classify themselves and provide documentation to the FFIs that they are investing into to prevent FATCA withholding. The documentation requirements are complex and beyond the scope of this FAQ document, however for further information, please contact your Northern Trust relationship manager.

Because 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. For FFIs outside IGA countries, the categories for exemption from entering into a full FFI agreement, as provided in the proposed regulations, are very narrow and most non-U.S. investment funds will not qualify for them.

1. FATCA withholding applies to payments to nonfinancial foreign entities (NFFEs) and recalcitrant individual account holders. However, the focus of this Q&A is on payments to funds, which are treated as FFIs.

17. What are the categories of "deemed-compliant FFIs"?
The proposed regulations have expanded the scope of entities to be treated as deemed-compliant FFIs under three categories: registered deemed-compliant FFIs, certified deemed-compliant FFIs and owner documented FFIs.

Registered Deemed-Compliant FFIs. The final regulations contain modifications and expansions of this category that take into account industry comments and include new categories for entities treated as a registered deemed-compliant FFI under a Model 2 IGA or any Model 1 FFI (or branch of an FFI) that complies with the Model 1 IGA registration categories. Certain categories of FFIs, though exempt from the full FFI agreement requirements imposed on PFFIs, are nonetheless required to: register with the IRS and obtain a GIIN number; have a responsible officer certify every three years that all of the requirements for deemed-compliant status have been satisfied; and agree to notify the IRS if there is a change in circumstances that would make the FFI ineligible for deemed-compliant status. These include:
- FFIs from Model 2 IGA countries that are treated as registered deemed-compliant FFIs under the IGAs;
- Certain local financial institutions;
- Certain "nonreporting" members of a group of participating FFIs (i.e., members of an affiliated group that agree to transfer any U.S. accounts or nonpartipating FFI accounts to participating FFIs, Model 1 FFIs, or U.S. financial institutions in their affiliated group);
- Qualified collective investment vehicles (further discussed below);
- Restricted funds (further discussed below); and
- "Qualified" credit card issuers.

Other deemed-compliant FFIs likely will be required to register with the IRS and obtain a GIIN number. These include:
- Reporting Model 1 FFIs (further discussed below). However, as noted in question 34, reporting Model 1 FFIs will retain numerous responsibilities under FATCA (including due diligence and reporting to the local tax office or the IRS), and it is unclear when Model 1 IGA countries will be able to put into place the necessary legislation to provide FFIs in these jurisdictions with certainty about how the FATCA rules will apply to them.
- Sponsored investment entities and controlled foreign corporations (further discussed below)

Certified Deemed-Compliant FFIs. Certified deemed-compliant FFIs are required to certify on Forms W-8 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 a GIIN. Certified deemed-compliant FFIs include:
— Certain "nonregistering" local banks;
— FFIs with only low-value accounts (i.e., accounts with balances of US$50,000 or less) and that have no more than US$50 million in assets on their balance sheets;
— Sponsored, closely held investment vehicles (further discussed below);
— Limited life debt investment entities. This is a new category in the final regulations that addresses comments from industry that certain securitization vehicles would not be legally able to comply with the requirements for PFFIs due to limitations in their terms. To provide time to address these limitations, these entities are treated as certified deemed-compliant FFIs until 1 January 2017; and
— Nonreporting IGA FFIs (discussed below).

Owner-Documented FFIs. An owner-documented FFI is an FFI that is an "investment entity" 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 "designated" withholding agent (U.S. financial institution, PFFI or reporting Model 1 FFI) 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. To be eligible for this status, the FFI cannot maintain a financial account for any nonparticipating FFI.

The Model 1 and Model 2 IGAs each provide for a category of "nonreporting [IGA] financial institution," which includes FFIs identified in Annex II or that otherwise qualify as deemed-compliant, exempt or excepted under the final regulations. It appears that Annex II may largely mirror the carve-outs in the final regulations, however with some clarification provided with respect to local requirements. In addition, regulations implementing the IGA in a particular jurisdiction may provide further guidance on how these carve-outs apply to local entities. For example, the U.K. draft guidance provides further details on these categories for U.K. institutions. Accordingly, FFIs considering whether they meet the requirements for deemed compliant status should consider the final regulations, the terms of the applicable IGA, as well as any local rules, in making that determination.

The requirements for each category of deemed-compliant FFI are complex and beyond the scope of this FAQ. For further details regarding the categories of deemed-compliant FFIs, please contact your Northern Trust relationship manager.

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

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

- A corporation the stock of which 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;
- 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 or tax-exempt 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.

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

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

- ***Sponsored Investment Entity.*** This new category is discussed in question 20.
- ***Registered Deemed-Compliant Qualified Collective Investment Vehicle.*** To be a qualified collective investment vehicle:

1. The fund must be regulated as an investment fund either in its country of incorporation or organization or in all of the countries in which it is registered or operates; or, the fund's manager must be regulated in all the countries in which the investment fund is registered or operates;
2. Each holder of record of direct debt interests in the fund in excess of $50,000, direct equity interests in the fund, and any other account holder is a PFFI, registered deemed-compliant FFI, retirement plan that is an exempt beneficial owner, nonprofit organization that is an excepted FFI, U.S. person that is not a specified U.S. person, nonreporting IGA FFI, or exempt beneficial owner;[2] and
3. All other FFIs in the fund's expanded affiliated group are PFFIs, registered deemed-compliant FFIs, sponsored FFIs, nonreporting IGA FFIs or exempt beneficial owners.

- ***Registered Deemed-Compliant Restricted Fund.*** To qualify as a "restricted fund":
  1. The fund must be regulated as an investment fund under the laws of its country of incorporation or organization (which must be a FATF-compliant jurisdiction) or in all countries in which it is registered or operates; or, its manager must be so regulated);
  2. Investments in the fund may only be sold through certain qualified distributors or redeemed directly by the fund;[3]
  3. Each of the fund's distributors must be a PFFI, a registered deemed-compliant FFI, a nonregistering local bank or a "restricted distributor";
  4. The FFI must ensure that by the later of 30 June 2014, or six months after the FFI registers as a deemed-compliant FFI, 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), and contains certain other restrictions.
  5. 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 more than 30 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 participating FFIs, registered deemed-compliant FFIs, sponsored FFIs, nonreporting IGA FFIs, or exempt beneficial owners.

The categories of qualified collective investment vehicle and restricted fund 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 that are not in jurisdictions that have signed an IGA based upon Model 1 will be required to become participating FFIs to avoid FATCA withholding.

Funds in IGA jurisdictions should consider the definitions in their particular IGA as well as any applicable local laws, in determining the applicability of these categories to their particular situations.

2. The final regulations permit the fund to have bearer interests issued prior to 31 December 2012 meeting certain requirements for a transitional period.

3. The final regulations permit the fund to have bearer interests under restrictions similar to those applicable to qualified collective investment vehicles.

20. What are "sponsored investment entities" and "sponsoring investment entities"?

The final regulations include a new category of deemed-compliant investment fund, a "sponsored investment entity", whereby a "sponsoring entity" undertakes the FATCA obligations on its behalf. The regulations identify three types of sponsored entities:

- Sponsored investment entity
  An FFI meets the requirements of a sponsored investment entity if:
  — It is an investment entity but not a QI, withholding partnership (WP) or withholding trust (WT); and
  — An entity has agreed to act as a sponsoring entity for the fund.
- Sponsored controlled foreign corporation (CFC)
  A CFC can qualify as a sponsored CFC if:
  — It is wholly owned, directly or indirectly, by a U.S. financial entity that agrees to act as a sponsoring entity for the FFI; and
  — The FFI shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all account holders and payees of the FFI and to access all account and customer information maintained by the FFI including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the account holder or payee.
- Sponsored closely held investment vehicle
  The final regulations also add a category of a sponsored, closely held investment vehicle which:
  — Meets the requirements set forth above;
  — Does not hold itself out as an investment vehicle for unrelated parties; and
  — 20 or fewer individuals own all of the debt and equity interests in the FFI.

A "sponsoring entity" must:

- Be authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a fund manager, trustee, corporate director or managing partner);
- Have registered with the IRS as a sponsoring entity;
- Have registered the FFI with the IRS;
- Agree to perform, on behalf of the FFI, all due diligence, withholding, reporting and the requirements that the FFI would have been required to perform if it were a participating FFI;
- Identify the sponsored fund in all reporting completed on the FFI's behalf to the extent required; and
- Have not had its status as a sponsor revoked.

A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations that the sponsoring entity has agreed to undertake on behalf of the FFI. The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored FFIs if there is a material failure by the sponsoring entity to comply with its obligations with respect to any sponsored FFI.[4]

Sponsoring FFIs will be able to register when the IRS registration portal becomes available 15 July 2013; however, it appears that sponsoring entities will not be required to provide information regarding their sponsored entities and obtain GIINs for each sponsored FFI until 15 October 2013. In addition, an FFI that is a sponsoring FFI may need to obtain two GIINs – one as a sponsoring entity, and a separate GIIN if required for its own FATCA or IGA reporting requirements and to establish its own FATCA status to withholding agents. For payments made prior to 1 January 2016, a sponsored FFI may provide the GIIN of its sponsoring entity on its withholding certificate if the sponsored FFI has not obtained a GIIN.

The sponsoring and sponsored FFI concept will likely streamline compliance for fund managers and fund sponsors with large fund structures. However, the FATCA registration portal is not yet available; how registration will work in practice for sponsored FFI groups and the level of detail required for each sponsored fund are not yet clear. Nor is it clear how registration will be managed for fund groups in countries that have entered into an IGA.

4. The final regulations also permit an FFI or withholding agent to treat a new account of a pre-existing customer as a pre-existing account provided that the FFI or withholding agent maintaining the account also treats the new account and the pre-existing account as one account for purposes of applying AML due diligence, aggregating balances, and applying the standards of knowledge for purposes of FATCA. The final regulations allow this treatment on a group basis for sponsored FFI groups that share documentation within the group (i.e., treat the accounts as "consolidated obligations," as discussed further in question 28).

21. 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 final regulations and IGAs do not include any such carve out.

22. 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 collective investment vehicles, restricted funds, sponsored entities, and Model 1 IGA FFIs) generally will be required to provide a valid withholding certificate (Form W-8) and a GIIN. The withholding agent will be required to verify that the GIIN provided is on the list of GIINs maintained by the IRS. The IRS has released preliminary drafts of a Form W-8BEN (for individuals), Form W-8BEN-E (for entities), Form W-8IMY (for intermediaries and flow-through entities), and Form W-8EXP (for exempt beneficial owners). New versions of the Form W-9 (for U.S. persons) and updated versions of the Forms W-8 (incorporating changes from the final regulations) are being developed. The documentation requirements are complex and beyond the scope of this FAQ document. For further information, please contact your Northern Trust relationship manager.

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

To be treated as a PFFI, a fund that is in a Model 2 IGA country or a non-IGA jurisdiction will need to enter into an FFI agreement with the IRS whereby it agrees to undertake a number of obligations, discussed in questions 27 through 33.

24. 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 a GIIN. The withholding agent will be required to verify that the GIIN provided is on the list of GIINs maintained by the IRS. However, details about the list and how the verification process will work are not yet known. See Appendix B for additional information regarding documentation requirements.

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

Under the final 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 group entities (i.e., holding companies, treasury centres, captive financial companies of a nonfinancial affiliated group);
2. Certain start-up companies or companies entering a new line of business;
3. Certain nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy;
4. Certain inter-affiliate FFIs, such as dormant entities or other entities that do not maintain financial accounts or make withholdable payments (except within an affiliated group) (a new category in the final regulations);
5. Non-U.S. nonprofit organizations 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 (other than insurance companies described in section 501(c)(15)); and
6. Certain nonprofit organizations (such as religious organizations and charities) that meet certain requirements. In the proposed regulations, these entities were considered "deemed-compliant FFIs;" the IRS changed their status to excepted entities because they could be considered FFIs or NFFEs.

An investment fund may not qualify for (1) or (2) above. The Model IGAs may identify certain types of deemed compliant FFIs in Annex II, which appear to generally follow the carve-outs in the final regulations, however with some clarification provided based on requirements of local law. As such, the final regulations, the terms of the applicable IGA, as well as any local rules, should be considered with respect to determinations about exempt beneficial owner status in a particular jurisdiction.

26. 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 final regulations, exempt beneficial owners include foreign governmental entities; international organisations; non-U.S. central banks of issue; governments of U.S. possessions; certain non-U.S. retirement plans (discussed further in question 65); and certain entities wholly owned, directly or indirectly, by one or more other exempt beneficial owners. Under the final 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.

As noted above, the Model 1 and Model 2 IGAs each identify certain exempt beneficial owners in Annex II, which appear to generally follow the carve-outs in the final regulations, however with some clarification provided based on requirements of local law. As such, the final regulations, the terms of the applicable IGA, as well as any local rules, should be considered with respect to determinations about exempt beneficial owner status in a particular jurisdiction.

A PARTICIPATING FFI'S RESPONSIBILITIES UNDER ITS FFI AGREEMENT

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

To be treated as a PFFI, a fund 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 (GIIN). The IRS is developing an online FATCA registration portal for participating FFIs to complete their registrations.

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

The final 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 guidance under FATCA, particularly for "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 final regulations require FFIs to review 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.[5] 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 non-electronic records 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). However, a paper search for "high value accounts" of more than US$1 million is not required if the FFI captures certain specified information in an electronically searchable database (although it must still perform the relationship manager inquiry). 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 review the certification and 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 inconsistencies with claimed FATCA classification are found, additional documentation may be required to validate the Form W-8. See Appendix D 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 FFIs."[6] PFFIs will be required to complete due diligence reviews and obtain required documentation within six months 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.

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

6. In general, an entity will be treated as a "prima facie FFI" if the PFFI has available as part of its electronically searchable information: (i) an indication that the account holder is a QI or nonqualified intermediary (NQI) or (ii) for an account maintained in the United States, a standard industry code that indicates that the non-U.S. account holder is a financial institution (and the entity is presumed foreign under the presumption rules or is documented as foreign for purposes of chapters 3 or 61 of the U.S. Internal Revenue Code).

29. 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 the balance of accounts treated as "consolidated obligations." Consolidated obligations are multiple obligations that a withholding agent or FFI has chosen to treat as a single obligation to treat the obligations as pre-existing obligations or to share documentation between the accounts. 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, as well as accounts that the relationship manager has associated with one another through a relationship code, customer identification number, taxpayer identification number (TIN) or similar indicator, or that he/she would typically associate with each other under the procedures of the financial institution. Whilst the aggregation rules set for the Model IGAs generally follow those in the final regulations, the U.K. draft guidance provides significant details on these rules, and other jurisdictions may as well. Accordingly, FFIs in an IGA country should carefully review the relevant rules in its home country to determine which accounts it is required to aggregate.

30. How does FATCA withholding apply to payments to a non-U.S. fund?

- Payments to a non-U.S. fund that is an NPFFI will be subject to FATCA withholding regardless of whether or not it is a flow-through entity (see question 8).
- Payments to a non-U.S. 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 non-U.S. fund that is a PFFI or deemed-compliant FFI (including a reporting Model 1 IGA 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).

Under the final regulations, withholding agents paying U.S.-source FDAP income to a PFFI or reporting Model 1 FFI that is a flow-through entity may not treat the flow-through entity as the payee and are required to look through the PFFI to its underlying partners/owners (unless the PFFI is a "withholding partnership" or "withholding trust"). As such, a PFFI fund that is treated as 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 flow-through 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 flow-through PFFI fails to provide allocation information, 100% of the U.S.-source FDAP income it receives will be subject to FATCA withholding. In addition, under the final regulations, a flow-through entity or intermediary has a residual withholding responsibility if it has not provided a valid withholding certificate and required information or it knows that a withholding agent did not withhold.

A withholding statement submitted by a participating FFI or registered deemed-compliant FFI can consist of pooled information for each class of payees (i.e., NPFFI, recalcitrant account holders and compliant account holders) unless payee-specific information is provided NRA withholding, in which case a FATCA status must be provided for each payee that is identified on the withholding statement.

The final regulations require a withholding agent to treat 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 it receives, even if it has underlying recalcitrant investors. However, PFFIs do have withholding obligations for passthru payments they make to their investors/account holders, as discussed in question 10. Passthru payments include U.S.-source FDAP and gross proceeds, as well as foreign passthru payments. However, the IRS and Treasury continue to reserve on the treatment of gross proceeds and foreign passthru payments, and withholding on these payments has been deferred until 1 January 2017, at the earliest. As such, the treatment of passthru payments and gross proceeds when made to a flow-through entity is not yet clear.

31. How will FATCA withholding apply to payments a PFFI fund 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 10, passthru payments include withholdable payments and foreign passthru payments. When a non-US investment fund that is treated as a corporation for U.S. tax purposes (e.g., a traditional mutual fund such as a SICAV, corporation 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 non-U.S. 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 10 are not defined in the final regulations and will not be subject to FATCA withholding before 1 January 2017. As noted in question 34 below, the Model 1 IGAs eliminate the requirement for withholding on passthru payments and gross proceeds, indicating the commitment to work together to develop a "practical and effective alternative."

The final 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.

32. What information will a participating FFI fund be required to report about its investors?

Under the terms of the FFI agreement, a participating FFI must report on a new IRS Form 8966, annually, the following information regarding its U.S. investors:

- The identity of each U.S. investor, including the name, address and 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;[7]
- The account number;
- The account balance or value;[8] 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 final 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 final regulations, PFFIs will also be required to report on IRS Form 1042-S the aggregate number and aggregate year-end value of accounts held by individual recalcitrant account holders as well as the aggregate number and aggregate year-end value of accounts held by NPFFIs. Finally, the final regulations require full-blown Form 1042-S reporting for payments of U.S.-source FDAP, as well as proceeds where FATCA withholding was required.

The rules for reporting are complex, and a detailed description of such requirements is beyond the scope of this document.

7. Substantial U.S. owners' are specified U.S. persons (defined in question 17) 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 an investment vehicle.

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

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

The final regulations require each PFFI to appoint a "responsible officer" to oversee the PFFI's FATCA compliance and establish a compliance program (either personally or through designees) that includes policies, procedures and processes sufficient for the FFI to comply with the FFI agreement. The responsible officer is required to make periodic certifications that it has established a compliance program and is maintaining effective controls and certify to the completion of customer due diligence procedures by established deadlines. Further, the final regulations require the responsible officer to certify that between 6 August 2011 and the date of certification (within two years 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.

FFIs that are registered deemed-compliant FFIs are also required to appoint a responsible officer who must certify every three years to the IRS that all of the requirements for the deemed-compliant category have been satisfied. This requirement does not appear to apply to registered deemed-compliant FFIs that are Model 1 FFIs, and the Model 1 IGAs do not include the concept of a responsible officer. The final regulations permit an expanded affiliated group to establish a "consolidated compliance program" under the authority of a PFFI, reporting Model 1 FFI or USFI (compliance FI). The compliance FI would establish and maintain a consolidated compliance program and perform a consolidated periodic review on behalf of the FFIs in the compliance group. A sponsoring entity is required to act as the compliance FI for the sponsored FFI group.

The responsible officer for a PFFI must be an officer of any PFFI or reporting Model 1 FFI in the PFFI's expanded affiliated group with sufficient authority to fulfil the duties of a responsible officer, including the periodic certifications. If a PFFI elects to be part of a consolidated compliance program, the responsible officer must be an officer of the compliance FI with sufficient authority to fulfil the responsible officer's duties on behalf of each FFI in the compliance group.

APPLICATION OF FATCA TO FUNDS IN IGA JURIDICTIONS

34. How will FATCA apply to an FFI in a country that has signed an IGA with the United States?

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.

As noted above, on 26 July 2012, Treasury released the Model 1 IGA developed in consultation with France, Germany, Ireland, Spain and the United Kingdom. The Model 1 IGA establishes a framework for FFIs to report directly to their own tax authorities, followed by an automatic exchange of information under existing tax treaties or TIEAs.

The Model 1 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 describes categories of institutions to be treated as exempt beneficial owners; categories of institutions to be treated as deemed-compliant FFIs; and categories of accounts or products to be carved out of the definition of reportable "financial accounts," and thus exempt from FATCA.

It is not clear how much Annex I and Annex II will vary from jurisdiction to jurisdiction. 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 broad new carve-outs from the rules. "Reciprocal" and "non-reciprocal" versions of the Model 1 IGA have been released, as discussed in question 37.

FFIs located in jurisdictions that have entered into an IGA based on the Model 2 IGA, which was published on 14 November 2012, will be permitted under local law to comply with the terms of an FFI agreement with the IRS, including reporting directly to the U.S. government. Model 2 FFIs will therefore be required to implement FATCA by following the provisions of the FATCA regulations, except to the extent expressly modified by their IGA. Switzerland has signed a Model 2 agreement, and Japan has also indicated its interest in adhering to this model. The format of the Model 2 IGA generally follows Model 1, including Annex I and II. The Model 2 IGA (and many IGAs based upon Model 1) includes a "most favoured nation" provision, which generally permits the FATCA partner to benefit of any more favourable terms afforded to another FATCA partner under a signed IGA. The FATCA IGA countries under Model 2 agreements would exchange information on request, as opposed to automatically.

The Model IGAs treat most financial institutions as "reporting" FFIs, subject to due diligence, documentation and reporting requirements as further discussed below. The Model 1 and Model 2 IGAs each provide for a category of "nonreporting [IGA] financial institution," defined as any IGA FFI that is identified in "Annex II" of the IGA as a nonreporting IGA FFI or that otherwise qualifies as a deemed-compliant FFI, an exempt beneficial owner or an excepted FFI under the final regulations. Nonreporting Model 1 or Model 2 IGA FFIs therefore are likely relieved of the requirements to register with the IRS and comply with the due diligence requirements of the IGA.

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

The Model 1 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 1 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. FFIs that are not withholding partnerships, qualified intermediaries or trusts may be required to or provide information on underlying account holders to allow a U.S. withholding agent to withhold tax. However, FFIs that are "look-at" or "opaque" funds 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 1 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."

The Model 2 IGA also relieves FFIs from the requirement to withhold tax or close accounts provided that the reporting Model 2 IGA FFI complies with the reporting requirements and the terms of the FFI agreement and the Competent Authority exchanges the information with the United States. However, the Model 2 IGA provides that if the IGA country cannot comply with a group request for information about recalcitrant accounts, presumably because the FFI did not report sufficiently, within six months of the request for information the reporting Model 2 IGA FFI must treat the account as held by a recalcitrant account holder and withhold tax.

36. What due diligence procedures apply to IGA FFIs?

Annex I of the Model 1 and 2 IGAs 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 final regulations:

- Under the Model IGAs, the FFI would identify the controlling persons of an NFFE, which is based on AML/KYC standards, and may be based on a 25% ownership threshold. This differs from the final regulations, under which an FFI has to identify "substantial U.S. owners" (i.e., those with a 10% or greater ownership interest) of an 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 citizen or 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 1 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 institutional account holder is an active NFFE or an IGA FFI based on "publicly available" information or information in the IGA FFI's possession. The IGA FFI would have to get a self-certification from all institutions outside an IGA country to establish the account holder's status. This is a shift from the final regulations' general requirement that FFIs collect and validate Forms W-8; however, it is still unclear how the self-certification process will work and whether it will vary by IGA country.

The Model IGAs set forth procedures for due diligence on pre-existing 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 (unless the FFI elects otherwise).

— 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, as well as a relationship manager inquiry. However, as with the final regulations, a paper search for "high value accounts" of more than US$1 million is not required if the FFI captures certain specified information in an electronically searchable database (although it must still perform the relationship manager inquiry).

— Pre-existing entity accounts with a value of more than US$250,000 or that were less than US$250,000, but later exceed US$1 million, are subject to review related to information maintained for regulatory or customer relationship purposes (including for AML/KYC) to determine whether the account holder is a U.S. person.

37. What are the differences between the "reciprocal" and "non-reciprocal" versions of the Model 1 IGA?

The "reciprocal" version of the Model 1 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 for which 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 1 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.

The Model 2 IGA is not reciprocal; however, it provides that, when and to the extent a Model 2 IGA country seeks to collaborate with the United States to implement FATCA based on direct reporting to the local government (along the lines of Model 1), the United States is willing to negotiate such an agreement on a reciprocal basis on similar terms as with other FATCA partners.

38. What reporting requirements apply to IGA FFIs?

Under the Model 1 IGA, reporting FFIs will be required to report, for U.S. accounts:

- The name, address and U.S. TIN of each specified U.S. person or "controlling person" that is an account holder;
- The account number (or its functional equivalent);
- The name and identifying number of the reporting FFI;
- The account balance or value as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
- In the case of any custodial account, the total gross amount of interest, dividends and other income paid or credited to the account; and the total gross proceeds from the sale or redemption of property paid or credited to the account;
- In the case of any depository account, the total gross amount of interest paid or credited to the account; and
- In the case of any account that is not a depository or custodial account, the total gross amount paid or credited to the account holder with respect to the account, including the aggregate amount of any redemption payments.

Model 1 IGA FFIs will also be required to report annually to the local tax authorities the name of, and aggregate amount of payments made in 2015 and 2016 to, NPFFI account holders. This reporting obligation is viewed as a temporary solution to the requirement to withhold on passthru payments. Where the FFI makes a payment of, or acts as an intermediary with respect to, a U.S.-source withholdable payment to any NPFFI, the FFI must provide information to an immediate payor to enable that payor to perform any withholding or reporting.

As noted in question 37, under the reciprocal version of Model 1, U.S. financial institutions will have reporting obligations related to residents of the FATCA partner.

The Model 2 IGA requires FFIs to report U.S. accounts directly to the IRS in accordance with the final regulations, and generally requires reporting information on "nonconsenting" U.S. or NPFFI accounts on an aggregate basis. Amounts reported on an aggregate basis may give rise to a group request by the IRS for specific information about the account, which would then be transmitted to the local tax authority for exchange with the IRS. The reporting requirements are complex and are beyond the scope of this discussion. In addition, local laws implementing the terms of a particular IGA will include further details about reporting in that jurisdiction. It is also possible that reporting under FATCA and IGAs may be coordinated with other tax reporting regimes, such as the Organisation for Economic Co-operation and Development (OECD) in the future.

39. How does a particular IGA affect financial institutions outside 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 50.

— 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 1 January 2017, U.S. financial institutions will be required to obtain and report the non-U.S. TIN (or date of birth, if the IGA country does not issue TINs) of account holders from Model 1 IGA countries.[9]

— Documentation requirements may depend on whether the account holder or investor is resident in a country that has entered into an IGA with the United States.

9. The U.K. agreement provides for reporting of date of birth, rather than TIN.

40. Under what circumstances will an individual be considered a U.S. "resident" for the Model IGAs?

Under the due diligence procedures outlined in Annex I of the Model IGAs, 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 IGAs note 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.

41. 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, 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 it is considered a division of a U.S. company, would be considered a local U.K. FFI subject to the terms of the 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.

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

42. What are the major differences between the obligations imposed on FFIs under the Model 1 IGA and the final regulations?

The obligations imposed on FFIs under the Model 1 IGA differ in some important respects from those set forth in the final regulations, including modified definitions; due diligence relief, with increased reliance on self-certification and existing AML/KYC processes; and relaxed withholding requirements. Certain of these differences are highlighted in this document and summarized in the chart in Appendix C. However, because the rules in IGA countries are not yet clear, what differences will in practice apply are not yet known.

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

For FFIs located in jurisdictions that have entered into an IGA with the United States based on Model 1, 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.

Model 2 FFIs will be "directed and enabled" to comply with the terms of the FFI agreement and required to implement FATCA by following the final regulations, except to the extent expressly modified by their IGA (including, for example, the due diligence procedures set forth in Annex I).

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

The Model 1 IGA simply states that a financial institution in an IGA country will be required to comply with certain "registration requirements," and the U.S. final regulations indicate that reporting Model 1 IGA FFIs will be required to register with the IRS. Model 2 IGA FFIs will be required to agree to comply with the requirements of an FFI agreement and register with the IRS. However, many details about registration are not yet known and thus the requirements for FFIs in IGA jurisdictions remain unclear.

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

Under the final regulations, reporting Model 1 FFIs and Model 2 FFIs will be required to register with the IRS and obtain a GIIN, which will be provided to withholding agents to establish their status for FATCA purposes; however this registration requirement is currently the subject of negotiation and may change.

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

As discussed in question 36, the Model IGAs provide for the ability 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 IGAs indicate 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.

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

To implement the terms of an IGA, the United States and the FATCA party would need to enter into a bilateral agreement following the terms of either Model 1 or Model 2, adopting country-specific provisions in Annex II. IGA countries are expected to implement local law changes incorporating requirements of the IGA, including removing any local legal 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.

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

While it appears 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 agreements 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 1 January 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.

49. Which countries are expected to enter into IGAs?

As noted above, Denmark, Germany, Ireland, Mexico, Norway, Spain and the United Kingdom have signed or initialled a Model 1 IGA with the United States; only the United Kingdom has issued draft regulations and guidance provisions implementing the terms of its IGA. The Cayman Islands has also announced its intent to adopt a Model 1 agreement. Switzerland has adopted a Model 2 agreement, and Japan has also indicated its interest in adhering to this model. Treasury has announced that it is engaged with more than 50 jurisdictions around IGAs, and that it expects to sign additional agreements in the near future. However, until bilateral agreements are actually signed, we cannot know with certainty which jurisdictions will be under IGAs – and which Model IGA those jurisdictions will adopt.

50. 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. The Model 1 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 in the FFI's location may apply its domestic law (including any applicable penalties) to address such noncompliance. If enforcement actions do not resolve a situation of noncompliance within 18 months, the Model 1 IGA provides for the United States to treat the FFI as nonparticipating. The Model 2 IGA provides that consistent with the terms of the FFI agreement, the U.S. competent authority can question a reporting 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 United States may treat the Model 2 IGA FFI as a NPFFI if the noncompliance is not resolved within 12 months after notification of such noncompliance.

Unlike the final regulations, the Model 1 IGA does not contain a requirement for a responsible officer of an FFI to certify its compliance to the IRS. It is not clear whether FFIs in Model 1 IGA countries will be required to designate a responsible officer.

51. 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 1 IGA, either reciprocal or nonreciprocal;
- The Model 2 IGA; and
- For FFIs in a non-IGA country, the requirements set forth in the final regulations and the FFI agreement (which has not yet been published).

In addition, the deemed-compliant FFIs, exempt FFIs and categories of exempt accounts set forth in Annex II of the IGAs will be country-specific, and thus will vary from jurisdiction to jurisdiction. The Model IGAs also note the commitment to work with the OECD (and in the case of the Model 1 IGA, 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.

APPLICATION OF FATCA TO U.S. FUNDS

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

Investment funds domiciled in the United States will be required to withhold the 30% FATCA withholding tax on withholdable payments they make to any non-U.S. entity investors, including FFIs and NFFEs, 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 non-U.S. entity investors for FATCA purposes, in the same manner that FFIs will be required to do so. In addition, due diligence rules that U.S. funds currently are 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 may be required to apply these rules for new accounts.

53. 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 (including a reporting Model 1 IGA 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. Reporting Model 1 FFIs will have to report directly to their local tax authority, and such requirements may vary from jurisdiction to jurisdiction. We expect these reporting requirements to be similar to, but less burdensome than, the existing Form 1099 reporting requirements; however, until guidance is issued implementing Model 1 IGAs in each jurisdiction, details about this local reporting will not be known.

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 or reporting Model 1 IGA FFI that is a nonwithholding qualified intermediary, nonqualified intermediary, nonwithholding partnership or nonwithholding trust in accordance with allocation information provided by such FFI.

A FUND'S RELATIONSHIP WITH SERVICE PROVIDERS

54. Can a fund expect that its service provider s (custodian, fund accountant, transfer agency) will take care of its FATCA compliance?

All non-U.S. investment funds will be considered FFIs and will be responsible for compliance with their obligations under FATCA. As such, it is important a fund understands what its responsibilities under FATCA (or an IGA) will entail. Under the final regulations and the Model IGAs, FFIs will be permitted to contract with their transfer agents 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.

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. In addition, some fund managers may choose to become a "sponsoring entity" and centralize the FATCA compliance on behalf of its "sponsored" FFI funds.

As a fund services provider, we anticipate many fund manager clients will choose to delegate some of their FATCA operations to Northern Trust. The transfer agent or 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, if required, withhold on payments made to noncompliant investors. We are implementing the required changes to our transfer agency systems and operations to support these functions, and will continue to analyse the requirements as further guidance is made available.

55. Will Northern Trust impose additional charges for FATCA services?

FATCA compliance will entail additional on-going operating costs and operational risks. These additional costs will need to be built into fee structures. Northern Trust is currently reviewing these considerations based on the final regulations and the IGAs signed to date, in order to finalise the size and structure of such fees. A fund management company will have to consider how these additional charges may affect their business.

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

Because of the particular impact of FATCA provisions on investment funds, Northern Trust 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 may be required to comply with FATCA under the terms of an IGA.
  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.
  — Are your FFIs in jurisdictions with a Model 1 or Model 2 IGA?
  — Do you expect all these FFIs will be PFFIs or reporting Model 1 IGA FFIs?
  — Can any of your funds qualify as a registered deemed-compliant FFI (e.g., as a qualified collective investment vehicle or restricted fund)?

- How will your distributors be treated under FATCA – for example, will they be PFFIs or restricted distributors?
- Would you prefer to establish a consolidated compliance program, and designate a sponsoring entity and sponsored FFIs? If a sponsoring entity is designated, which FFIs would it sponsor?
- 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 fund's "responsible officer" be, if required? The final regulations require that a responsible officer must certify to the IRS the FFI is compliant with certain FATCA requirements. Moreover, the responsible officer will need to certify that between 6 August 2011 and the date of certification (within two years 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 is required to comply with that requirement.
- If any of your funds are not in a jurisdiction that has or is likely to enter into an IGA, will your funds face any conflict of law issues in complying with FATCA? For example, are there privacy laws in the fund's jurisdiction that would prevent reporting, closing accounts or withholding U.S. tax? How will you address potential conflict of law issues?
- Do any of your FFIs receive or make any payments such as investment advisory fees that are not carved out of the definition of "withholdable payments"?

- Understand whether your non-U.S. 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 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 want 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. It will be important to ascertain whether any non-U.S. funds into which your fund invests intend to become PFFIs to avoid the 30% FATCA withholding or are in jurisdictions that have signed or are likely to sign an IGA with the United States. 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 the 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 transfer agents or fund administrators to perform certain FATCA obligations. As a transfer agent, Northern Trust is developing best practices to verify investor compliance and modifying transfer agent and fund administration agreements to take into account these new responsibilities.

A FUND'S RELATIONSHIP WITH INVESTORS AND DISTRIBUTORS

57. 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 final 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 Model 1 IGA country, to your local tax authority).

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

Certain of a fund's investors may invest via an intermediary,[10] 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 28.

As discussed in question 30, 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.

59. Will fund distributors be considered FFIs and therefore need to be FATCA-compliant?

In general, fund distributors will be considered FFIs and generally will be subject to withholding if they are not compliant, either by becoming a PFFI, meeting the requirements for deemed-compliant status, or fulfilling the requirements for a reporting or non-reporting Model 1 FFI. However, certain funds may meet the requirements to be a "restricted fund" (and therefore deemed-compliant and exempt from FATCA withholding) if, among other requirements, interests in the fund may only be sold through PFFIs, registered deemed-compliant FFIs, nonregistering local banks or local distributors that meet the requirements for "restricted distributors" (defined in question 19). A deemed-compliant FFI would not be required to withhold on payments to a nonparticipating distributor that qualifies as a restricted distributor.

10. 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."

60. 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; satisfy the requirements under an IGA; or enter into an FFI agreement with the IRS, agree to identify U.S. accounts, perform annual reporting to the IRS and, beginning earliest 1 January 2017, 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 non-U.S. 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 FATCA obligations of FFIs in countries that have entered into an IGA are discussed in more detail in questions 34 through 36.

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 collective investment vehicle or a restricted fund [discussed in question 19]). 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 a GIIN, 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.

Funds should consult with their tax or legal advisor regarding the possible applicability of the deemed-compliant categories to their particular circumstances.

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

Funds holding no U.S. assets may 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.[11] The FATCA obligations of FFIs in FATCA partner countries are discussed in questions 34 through 36.

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.

62. 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 transfer agent 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[12] 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.

63. What if privacy laws prevent a fund 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 IGAs address these potential conflict-of-law issues in jurisdictions that sign on by having FFIs report directly to their local tax authority (Model 1) or provide an exception from local law provisions to allow direct reporting to the IRS (Model 2). So far, Denmark, Germany, Ireland, Mexico, Norway,

11. 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.

12. FATCA withholding on foreign passthru payments begins no earlier than 1 January 2017.

Spain and the United Kingdom have signed or initialled a Model 1 IGA with the United States; Switzerland has signed a Model 2 IGA, and Japan has announced its intention to do so. However, while a number of other non-U.S. governments have already expressed interest in signing on to an IGA, 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.

64. What should an FFI in an IGA country be doing now to prepare for FATCA?

An FFI in a Model 1 IGA that is considered a "reporting" FFI (and not exempt from the due diligence and reporting requirements) may be required to register with the IRS and obtain a GIIN. Model 1 IGAs also will need to undertake the due diligence, documentation, reporting and other requirements set forth in the IGA and clarified in the regulations of that local jurisdiction implementing the IGA. In many ways, these requirements differ from those set forth in the final regulations. However, to date, only the United Kingdom has issued comprehensive guidance under the IGA, and such guidance is still only proposed. FFIs in Model 1 IGA jurisdictions will need to understand the terms of the IGA and the local rules that apply to them.

FFIs in Model 2 IGA countries will be required to enter into an FFI agreement with the IRS and follow the provisions of the final regulations (including the documentation, due diligence and reporting obligations), except to the extent expressly modified by their IGA.

Accordingly, FFIs in FATCA partner countries will still be required to perform due diligence on and document their account holders. In addition, it remains to be seen whether each of the IGA 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 countries that have not yet signed an agreement may begin preparing for FATCA implementation under the rules set forth in the final regulations for PFFIs. Each FFI in one of the IGA jurisdictions will need to consult with its tax and legal advisors to decide how to approach FATCA preparation in light of these uncertainties.

APPLICATION TO CATEGORIES OF INSTITUTIONAL INVESTORS

65. How does FATCA apply to retirement plans?

Under the proposed regulations, retirement plans could be treated either as deemed-compliant FFIs or as exempt beneficial owners, depending on their characteristics. The final regulations simplify the treatment of retirement plans by expanding the categories of exempt beneficial owners, and eliminating the category of retirement funds treated as deemed-compliant FFIs.

The final regulations broaden the classes of pension funds qualifying as exempt beneficial owners:

- **Treaty-qualified retirement funds.** A pension fund operated principally to administer or provide pension or retirement benefits, regardless of whether it is generally exempt from tax in its home country.
- **Broad participation retirement funds**. A fund established by one or more employers to provide retirement, disability or death benefits to current or former employees provided that the fund (i) does not have a single beneficiary with a right to more than 5% of the fund's assets; (ii) is subject to government regulation and provides annual tax information reporting to its local tax authority and (iii) at least one of the following requirements are satisfied: the plan (a) is generally exempt from local tax on investment income due to its status as a retirement or pension plan, (b) receives at least 50% of total contributions (other than certain rollovers) from the sponsoring employers, (c) distributions or withdrawals are only allowed upon retirement, disability or death, or penalties apply to early distributions or withdrawals, (d) or annual contributions by employees are limited by reference to earned income of the employee or may not exceed US$50,000.

- **Narrow participation retirement funds.** A fund established by one or more employers to provide retirement, disability or death benefits to current or former employees provided that (i) the fund has fewer than 50 participants; (ii) the fund is sponsored by one or more employers that are not investment entities or passive NFFEs; (iii) employee and employer contributions (other than certain rollovers) are limited by reference to earned income and compensation of the employee, respectively; (iv) participants that are not residents of the fund's jurisdiction are not entitled to more than 20% of the fund's assets; and (v) the fund is subject to government regulation and provides annual reporting about its beneficiaries to its local tax authorities.
- **Fund formed pursuant to a plan similar to a section 401(a) plan** (new category). A fund formed pursuant to a pension plan that would qualify under section 401(a) of the U.S. Internal Revenue Code, other than that it be funded by a U.S. trust.
- **Investment vehicles exclusively for retirement funds.** A fund established exclusively to earn income for the benefit of one of the retirement funds described above or a retirement or pension savings account excluded from the definition of financial account.
- **Pension fund of an exempt beneficial owner** (new category for pension funds established by non-U.S. governments). A fund established and sponsored by a non-U.S. government, international organization, non-U.S. central bank of issue, or government of a U.S. territory, to provide retirement, disability or death benefits to current or former employees (or the benefits are in consideration of personal services performed for the exempt beneficial owner).

An FFI that is an investment entity that is wholly owned (directly or indirectly) by one or more other exempt beneficial owners would also be considered exempt.

The categories of retirement plans treated as exempt beneficial owners reflect industry input; for example, providing rules allowing for alternative sources of contributions apart from employer or employee contributions and allowing in some cases plans to provide death or disability benefits. In addition, a pension fund can now qualify for this status regardless of whether the pension fund is the beneficial owner of the income.

In addition to the special classifications for retirement funds under the final regulations, Annex II of an IGA may specify additional carve-outs for retirement funds in that particular jurisdiction.

66. How does FATCA apply to non-U.S. governments and international organizations?

FATCA withholding does not apply to any payment where the beneficial owner is a non-U.S. government, political subdivision of a non-U.S. government or a wholly owned agency or instrumentality of either. International organizations and their wholly owned agencies, as well as independent non-U.S. central banks and governments of U.S. territories, are also considered exempt beneficial owners under the final regulations.

As noted in question 65, pension funds of a non-U.S. government, international organization, non-U.S. central bank or U.S. territory, may be considered exempt beneficial owners under these rules.

67. How does FATCA apply to non-U.S. corporations, partnerships or trusts that are not foreign financial institutions?

FATCA imposes a 30% withholding tax on U.S.-source payments to foreign entities such as corporations, partnerships or trusts that are not FFIs (i.e., NFFEs) unless certain requirements are met. To avoid withholding, an NFFE must either:

- Provide a certification that it does not have any substantial U.S. owners; or
- Provide the name, address and TIN of each substantial U.S. owner.

A substantial U.S. owner includes any "specified U.S. person" (defined in question 18) who holds more than 10% interest in the entity or any interest in a grantor trust. However, in the case of an investment fund, a "specified U.S. person" is a person with ANY interest in the entity. Under the Model IGAs, the FFI would identify the controlling persons, which is based on AML/KYC standards, and may be based on a 25% ownership threshold.

Entities excepted from these documentation requirements ("excepted NFFEs") under the final regulations include:

- Corporations whose stock is regularly traded on an established securities market or an affiliate of such;
- Corporations organized in U.S. possessions and directly or indirectly wholly owned by bona fide residents of that possession;
- Exempt beneficial owners (defined in question 26), including entities wholly owned by exempt beneficial owners; and
- "Active NFFEs." An NFFE is considered an "active NFFE" if less than 50% of its gross income is passive and less than 50% of its assets produce, or are held for the production of passive income. Passive income is defined in the final regulations to include dividends, interest, rents and royalties (other than those derived from the active conduct of a trade or business), annuities, and similar types of income.

68. Does FATCA apply to non-U.S. charitable organizations and other nonprofit organizations?

The final regulations treat as excluded from the definition of "financial institution," and as "excepted NFFEs":

- **Section 501(c) entities.** A foreign entity described in section 501(c) of the U.S. Internal Revenue Code, other than a section 501(c)(15) insurance company; and
- **Nonprofit organizations.** A non-U.S. entity that is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes if:

a. The FFI is exempt from income tax in its country of residence;
b. The FFI has no shareholders or members with a proprietary or beneficial interest in its income or assets;
c. The applicable local laws or the FFI's formation documents do not permit the income or assets to be distributed to, or applied for the benefit of, a private person or noncharitable FFI (other than pursuant to the conduct of charitable activities as payment for services or for the fair market value purchase of property); and
d. Applicable local laws or formation documents require that all assets be distributed to another nonprofit organization or non-U.S. government upon liquidation or dissolution.

As noted previously, Annex II of a relevant IGA may specify certain charities that are exempt that meet requirements under local rules. See Appendix B for documentation charitable organizations are required to provide.

69. Will FATCA apply to insurance companies?

Under the final regulations, certain cash value insurance contracts and annuity contracts are considered "financial accounts" and therefore subject to FATCA. The final regulations expand the scope of insurance products that are excluded – for example, insurance contracts that do not generate a cash value on surrender or termination; personal injury or sickness benefit contracts; certain term life insurance and certain non-investment linked, non-transferable, immediate life annuity contracts that monetize a retirement or pension account. In addition, the final regulations provide a de minimis rule for cash value insurance contracts of US$50,000 or less.

The final regulations (as well as the IGAs) also provide some relief to insurance company FFIs with respect to the due diligence procedures they are required to perform on their policyholders. Under the final rules, PFFIs are not required to document pre-existing individual accounts with a value of US$250,000 or less.

The application of FATCA to insurance products is complex, and the rules for insurance companies in IGA jurisdictions will not be entirely clear until IGAs are finalized and any local rules are published. Entities in the insurance industry should consult with their tax or legal advisors regarding any questions about the practical implications of the final regulations and the IGAs for insurance companies.

70. How will FATCA apply to U.S. branches of FFIs?

Branches of FFIs located in the United States are treated like U.S. financial institutions for FATCA withholding purposes, and such branches that comply with backup withholding obligations will be treated as satisfying their FATCA withholding responsibilities for accounts owned by U.S. nonexempt recipients. A U.S. branch of an FFI also is permitted to satisfy its FATCA reporting obligations by reporting under rules applicable to U.S. payors.

APPENDIX A – SUMMARY OF KEY REGULATORY DATES

	U.S. Financial Institutions	Non-IGA FFIs	IGA FFIs
FFI signs FFI agreement and registers with IRS	N/A	25 October 2013 Deadline for FFIs to register in the Portal to ensure inclusion on the first IRS FFI list 31 December 2013 Initial FFI agreement effective date	Signature of FFI agreement will not be required. Registration requirement is expected; timing and details unclear
Due Diligence for new accounts onboarding	1 January 2014 Deadline to implement procedures for onboarding of new accounts	1 January 2014[1] Deadline to implement procedures for onboarding of new accounts	1 January 2014 (Provided agreement and any required legislation is in place)
Complete due diligence on pre-existing clients	■ 30 June 2014 Deadline for documenting prima facie FFIs ■ 31 December 2015 Deadline to complete due diligence for all remaining account holders	■ 30 June 2014 Deadline for documenting prima facie FFIs ■ 31 December 2014 Deadline to complete due diligence for high value individual accounts ■ 31 December 2015 Deadline to complete due diligence for all remaining account holders	■ 31 December 2014 Deadline to complete due diligence and document high value individual accounts ■ 31 December 2015 Deadline to complete due diligence for all other accounts
Withholding on non-compliant investors	■ 1 January 2014 Withholding on U.S.-source FDAP for new accounts ■ 1 July 2014 Begin withholding on U.S. FDAP payments to NPFFIs ■ 1 January 2015 Begin withholding on payments to certain passive NFFEs for pre-existing obligations ■ 1 January 2016 Begin withholding on all U.S. FDAP payments to all other pre-existing accounts ■ 1 January 2017 Begin withholding on gross proceeds for pre-existing and new accounts	■ 1 January 2014 Begin withholding on U.S. source FDAP for new accounts ■ 1 July 2014 Begin withholding on U.S. FDAP payments to NPFFIs ■ 1 January 2015 Begin withholding on U.S. FDAP payments to high value accounts for pre-existing accounts ■ 1 January 2015 Begin withholding on payments to certain passive NFFEs for pre-existing obligations ■ 1 January 2016 Begin withholding on all U.S. FDAP payments to all other pre-existing accounts ■ 1 January 2017 Begin withholding on gross proceeds and foreign 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 1 January 2014, providing 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 (continued)

	U.S. Financial Institutions	Non-IGA FFIs	IGA FFIs
Reporting	■ Continue Form 1099 reporting for U.S. account holders ■ 15 March 2015 Initial FATCA 1042- S filings ■ 31 March 2015 Deadline for U.S. annual reporting with respect to 2013 and 2014 calendar years- Form 8966 ■ In some cases, USWHAs begin reporting on NFEEs with substantial U.S owners ■ Report on owner-documented FFIs ■ 15 March 2018 Begin reporting on gross proceeds on 1042-S	■ 15 March 2015 Initial FATCA Form 1042-S filings ■ 31 March 2015 Begin annual reporting of account balances and identifying information for 2013 and 2014 calendar years ■ Report on owner-documented FFIs ■ 31 March 2017 Reporting for U.S. accounts includes gross proceeds beginning in 2016 ■ 15 March 2018 Begin reporting on gross proceeds on 1042-S	■ For 2013 and 2014 calendar years, report name, address, TIN, account number, and account balance or value of each U.S. account **(by 30 September 2015 for both years)** ■ For 2015 calendar year, add reporting of payments with respect to account, except for gross proceeds (by 30 September 2016) ■ For 2016 (and years thereafter) add gross proceeds reporting (by 30 September of following year)

APPENDIX B: 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. Indica can be cured by obtaining the documentation listed below. Where no such documentation can be obtained to cure the indicia, a Form W-9 and a valid and effective privacy waiver (if necessary under local law) must be obtained, otherwise the account holder must be treated as recalcitrant.

U.S. Indicia	Documentation Required to Cure[2]
Identification of account holder as U.S. citizen or U.S. resident	Form W-8 and non-U.S. passport or other government-issued ID evidencing a non-U.S. citizenship
U.S. place of birth (unambiguous)	Non-U.S. passport or other government-issued I.D. evidencing citizenship outside United States; and one of the following: • A copy of Certificate of Loss of Nationality of the United States, or • Form W-8BEN and 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)	Form W-8BEN and "documentary evidence" establishing foreign status
U.S. telephone number(s)	If only U.S. numbers: Form W-8BEN and "documentary evidence" establishing foreign status If U.S. and non-U.S. numbers: Form W-8BEN or "documentary evidence" establishing foreign status
Standing instructions to transfer funds to an account maintained in the United States	Form W-8BEN and "documentary evidence" establishing foreign status
Power of attorney or signatory authority granted to a person with a U.S. address	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)	Form W-8BEN or "documentary evidence" establishing foreign status

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, on a country-specific basis.*

2. A withholding agent that is not a FFI (including a USWA) 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 B: U.S. INDICIA FOR INDIVIDUAL ACCOUNT HOLDERS[1] (continued)

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. Indica can be cured by obtaining the documentation listed below. Where no such documentation can be obtained to cure the indicia, a Form W-9 and a valid and effective privacy waiver (if necessary under local law) must be obtained, otherwise the account holder must be treated as recalcitrant.

U.S. Indicia	Documentation Required
Residence or mailing address in the United States (including a U.S. P.O. Box)	Form W-8 and documentary evidence[1] establishing foreign status
U.S. telephone number(s)	If U.S. numbers only: Form W-8 and documentary evidence[1] establishing foreign status If U.S. and non U.S. numbers: Form W-8 or documentary evidence[1] establishing foreign status
Standing instructions to transfer funds to an account maintained in the United States	Form W-8 and documentary evidence[1] establishing foreign status
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	Form W-8 or documentary evidence establishing foreign status

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 entities that has been approved by IRS for use by QIs on a country-specific basis.*

APPENDIX C: SUMMARY OF KEY DIFFERENCES BETWEEN AN FFI'S OBLIGATIONS UNDER THE FINAL REGULATIONS, THE MODEL 1 IGA AND THE MODEL 2 IGA

	FFI Under Final Regulations	FFI Under Model 1 IGA	FFI Under Model 2 IGA
Client Due Diligence			
Due diligence required of all account holders?	Yes	Yes	Yes
Timeline extension for new and pre-existing account due diligence work?	Yes	Yes	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)	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, foreign partnership or foreign trust; otherwise pass withholding obligation up to U.S. withholding agent	Yes, if a withholding QI, foreign partnership of foreign trust; otherwise pass withholding obligation up to U.S. withholding agent	Yes, if a withholding QI, foreign partnership of foreign trust; otherwise pass withholding obligation up to U.S. withholding agent
Withholding required on U.S.-sourced payments to recalcitrant individuals?	Yes	No	No (if the FFI complies with the reporting requirements and the terms of the FFI agreement, and the Competent Authority exchanges the information with the United States)
Withholding required on foreign passthru payments?	Yes, but not before 1 January 2017 and details reserved	Agreement to explore alternate solution	Agreement to explore alternate solution
Withholding required on U.S.-sourced payments of gross proceeds?	Yes, but not before 1 January 2017 and detailed reserved for flow-through (tax-transparent) entities	Agreement to explore alternate solution	Agreement to explore alternate solution

APPENDIX C: SUMMARY OF KEY DIFFERENCES BETWEEN AN FFI'S OBLIGATIONS UNDER THE FINAL REGULATIONS, THE MODEL 1 IGA AND THE MODEL 2 IGA (continued)

	FFI Under Final Regulations	FFI Under Model 1 IGA	FFI Under Model 2 IGA
Reporting			
Reporting required on U.S. reportable accounts?	Yes	Yes	Yes
To whom does the financial institution provide required reportable data?	U.S. IRS	Partner country tax authority	U.S. IRS
Reciprocal reporting required for U.S. financial institutions?	No	Yes for reciprocal model; no for nonreciprocal	No
Reporting required on recalcitrant individuals?	Yes	Yes, treated as U.S. reportable accounts	Yes
Reporting required on nonparticipating FFIs?	Yes	Yes	Yes
Other Obligations			
FFI agreement with IRS required?	Yes	No	Yes
FFI registration (obtain FATCA GIIN)?	Yes	Yes, but unclear if registration is required with IRS or local authorities; this may vary from one IGA country to the other	Yes
Termination of accounts of recalcitrant individuals?	Yes	No	No
Potential conflicts with local data privacy and other laws?	Yes	No	No
Certification of a responsible officer required?	Yes	No	Yes
Retirement plans treated as exempt?	Yes, if requirements met	Yes, if country-specific requirements of IGA Annex II or final regulations are met	Yes, if country-specific requirements of IGA Annex II or final regulations are 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	Yes, but additional requirements apply and the nonparticipating FFI will be subject to withholding

APPENDIX D: 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	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.
FATCA Registration Portal	Foreign financial institutions required to register with the IRS are expected to be able to begin registration by 15 July 2013 on an IRS web site, the FATCA Registration Portal.
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.
FFI Foreign Financial Institution	Any "financial institution" that is not a U.S. entity (i.e., organized outside of the United States for U.S. federal income tax purposes). See question 4 for additional details on what constitutes a financial institution.
GIIN Global Intermediary Identification Number	Participating foreign financial institutions will be required to obtain a special U.S. identification number, a global intermediary identification number, by registering with the Internal Revenue Service.
IGA Intergovernmental Agreement	An agreement established between the United States and another country that outlines a common approach to implementing FATCA.
IGA Country	A country that has established an intergovernmental agreement with the United States. Also referred to as a partner country.
IRS Internal Revenue Service	The U.S. government agency responsible for tax collection and tax law enforcement.
IRS Announcement	On 24 October 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.
Model 1 IGA	On 26 July 2012, the U.S. government released the first Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA. This model agreement establishes a framework for FFIs to report directly to their own tax authorities, followed by an automatic exchange of such information with the IRS. Denmark, Germany, Ireland, Mexico, Norway, Spain and the United Kingdom have signed or initialed a Model 1 IGA with the United States.

APPENDIX D: FATCA GLOSSARY (continued)

Term	Description
Model 2 IGA	The Model 2 IGA, which was published on 14 November 2012, will permit FFIs under local law to comply with the terms of an FFI agreement with the IRS, including reporting directly to the U.S. government. Switzerland has adopted a Model 2 agreement, and Japan has also indicated its interest in adhering to this model.
NFFE Nonfinancial Foreign Entity	A foreign organised 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.
U.K. Draft Guidance	The United Kingdom has issued draft regulations and guidance provisions implementing the terms of its IGA with the United States.
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 27 for additional information on withholding agents.

Northern Trust