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June 7, 2011

Internal Revenue Service
CC:PA:LPD:PR (NOT-121556-10)
Room 5203
P. O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Comments on Foreign Account Tax Compliance Act Provisions

Dear Sir/Madam:

I. Introduction

Japan Securities Dealers Association ("JSDA") appreciates the opportunity to provide these comments in response to Notice 2011-34 (the "Notice") published on April 8, 2011 by the Internal Revenue Service ("IRS"), concerning regulatory and administrative interpretation and implementation of the Foreign Account Tax Compliance Act ("FATCA").

JSDA is a hybrid association functioning as a self-regulatory organization and as a trade association in the Japanese securities market. Its legal status is a Financial Instruments Firms Association authorized by the Prime Minister pursuant to Article 67-2, Paragraph 2 of the Financial Instruments and Exchange Law. The purposes of JSDA are to contribute to the protection of investors by ensuring fair and smooth trading in securities or other transactions by Association Members and promoting the sound development of the Japanese financial instruments business. Its functions include a variety of activities such as rule-making, enforcement, disciplinary actions, and various policy proposals. Today JSDA comprises more than 500 members consisting of securities firms and other financial institutions operating securities businesses in Japan.

JSDA understands the background of the enactment of FATCA in the United States and the importance of international cooperation to prevent and eradicate tax evasion. We appreciate that the Notice provides various considerations to alleviate the burden on financial institutions. However, we are seriously concerned about the requirements of FATCA as currently proposed, since some of the requirements seem to be impossible for us to comply with because of legal and practical limits (e.g. treatment of passthru payments) and that the cost and burden on the foreign financial institutions ("FFI") appears to far exceed the benefit enjoyed by the IRS.

Not to mention, cooperation of FFIs around the world is imperative in order to accomplish the ultimate purposes of FATCA, and it should be more important than anything for FFIs to secure the practical feasibility of the FATCA's requirements such as due diligence procedures performed on U.S. accounts. If FATCA were to be implemented without such feasibility, not only would it be unable to accomplish its purposes but it would also discourage FFIs' investment in the U.S. assets or even give no choice but to withdraw from investment in the U.S. assets. In order to avoid such consequences, JSDA strongly requests that the IRS seriously consider the comments and requests submitted by industry associations and financial institutions of each country including JSDA.

Currently, OECD has recognized the needs for international cooperation to prevent tax evasion, and such needs should be realized through the processes that each country establishes its own domestic laws cooperatively with other countries, with the international consensus made through discussion among the governments. Accordingly, we would like to request that the IRS utilizes not only discussions between the IRS and each country's private financial institutions, but also discussions among leading countries' financial authorities under frameworks such as OECD and Financial Stability Board (FSB) of G20.

We will describe our detailed comments in the following sections, and among other comments and requests the items with highest priority for the Japanese securities industry are the following:

- II. 5. Passthru Payments
- II. 1. Private Banking
- II. 2. Procedures for Identification by Participating FFIs of Preexisting Individual Accounts (7)&(8)

We would greatly appreciate your special attention to these matters to alleviate the administrative burden on securities firms and financial institutions in Japan.

## II. Detailed Comments and Requests

In this section, we make comments and requests on each topic in the order discussed in Notice 2011-34.

### 1. Private Banking

We understand that the purposes of FATCA are to prevent tax evasion committed by wealthy U.S. persons. The definition of "private banking" provided in the Notice (e.g. the definition of *investment advisory* "not generally provided to account holders" in Section I.A.1.(3)(D) and *information* "in addition to the information ordinarily gathered") could encompass ordinary brokerage services, which securities firms in

Japan routinely provide to many customers through specifically assigned sales staff, and thus may subject most of the accounts to the identification procedures for private banking accounts. This is clearly inappropriate considering the intent of FATCA, and therefore we suggest the following criteria to be used when determining whether an account is a private banking account.

(1) Include a requirement for account balances to be US$ 1,000,000 or more in the definition of “private banking accounts” of Section I.A.1(2)

(2) Replace “or” with “and” in Section I.A.1(3) so that all four conditions (A) through (D) must be satisfied for an account to be treated as a private banking account

(3) As for Section I.A.1(3)(A), the mere fact that the term “private banking” or “wealth management” is used should not be a determining factor when determining if an account is classified as a private banking account

(4) As for Section I.A.1(3)(B), certification by account holders should be deemed sufficient for their income and assets, and each securities firm’s definition of “high-net-worth individuals” should be respected

(5) Consider Section I.A.1(3)(D) satisfied when an account satisfies both (i) and (ii) PLUS a new criteria: “the specifically designated employee serves a customer permanently (except for extenuating circumstances), and provides investment advice on financial products even if they are not offered by the FFI and its affiliated FFIs, and the fees for private banking services are based, entirely or in part, on the value of the customer’s assets managed by the FFI.”

(6) Consider Section I.A.1(4) satisfied when an FFI meets the criteria of both (i) and (ii) in (3)(D) AND the additional criteria proposed in the (5) above.

Among above mentioned requests, JSDA strongly requests that the IRS gives serious consideration to (1) to make it consistent with the definition of “private banking account” under USA Patriot Act, which defines it as “account with the balance of $1,000,000 or more.”

2. Procedures for Identification by Participating FFIs of Preexisting Individual Accounts

We appreciate the improvement in the procedures for identification by participating FFIs of preexisting individual accounts, compared to the ones in the previous Notice. However, we make the following requests since the procedures still impose an excessive administrative burden on FFIs.

(1) Documents to be used for identification of preexisting individual accounts

(i)Documentary Evidence

Section I.A.2 describes that "a participating FFI may rely on documentation that is collected pursuant to these procedures or that is otherwise maintained in an account holder's files, unless it knows or has reason to know that such documentation is unreliable." We request clarification that the meaning of the preceding provision be interpreted as " a determination of whether a customer is a specified U.S. person shall be made based on documents the FFI obtains in its ordinary course of business and that the FFI needs not to separately obtain an additional documentation from the customer for this purposes.

Also, in each step in the procedures of identifying preexisting individual accounts, due dates for the FFI to obtain requisite documentary evidence are set forth in terms of a fixed period of time from the date FFI agreement became effective. We request, however, that the due dates should be determined from the date the customer could be reached, because it is likely that it takes some time to reach a customer especially if the customer is a nonresident account holder.

(ii) Consolidation of accounts by each account holder

Section I.A.2 indicates that for purposes of determining the balances of accounts, an FFI will be required to treat all accounts maintained by the FFI or its affiliates that are associated with one another due to partial or complete common ownership of the accounts under the FFI's existing computerized systems as a single account. However, in securities firms in Japan, even within a company or between affiliated companies, this may not be permissible completely in some cases where laws of the jurisdiction in which a branch is located and limitation of the computer systems prevent the FFI from consolidating accounts. Therefore, we request clarification that consolidation of accounts is unnecessary if accounts are recognized as different accounts for various reasons (even within affiliated companies, branches, and the same branch), and it does not force securities firms in Japan to build a new computer system only to perform consolidation of accounts.

(2) Implementation of residency provisions

Considering the fact that wealthy U.S. persons who reside in the U.S. committed tax evasion by using FFIs in the UBS incident triggered the enactment of FATCA, we believe that FATCA should focus on those who invest in or through FFIs located outside the U.S. while physically residing in the U.S., rather than U.S. persons who reside outside the U.S. and use locally located FFIs as part of their daily lives.

Therefore, we suggest that the IRS take a step further on the "risk-based approach" that reasonably focuses on people who pose higher risk of tax evasion while avoiding placing excessive burden on participating FFIs at the same time. To this end, we recommend that only nonresident aliens in the country in which the FFI is established (limited to nonresidents that the FFI classifies as nonresidents based on existing local criteria) should be subject to Step 3 through 5 that require more strict verification, and residents in the country should only be subject to electronic search in Step 4.

We also think that it is reasonable to limit the countries eligible to take advantage of the risk-based approach described above to those countries that have an appropriate reciprocal relationship and a tax framework through generic criteria, such as the following:

1) There is an income tax treaty in force between the U.S. and the country in which the FFI is established, and the treaty includes the Information Exchange Article and the Limitation of Benefits Article, and
2) The FFI strictly categorizes accounts into resident accounts and nonresidents accounts in compliance with the local tax law of the country in which the FFI is established.

(3) Step 1: Documented U.S. accounts

As for Step 1, it is a meaningless criterion for securities firms if securities accounts are not included in the definition of "depository account." We believe that Step 1 is a rule to exclude customers, who have already submitted Form W-9, from annual reporting. However, it does not matter how the wealthy U.S. persons FATCA is trying to capture possess their assets, therefore we request that the value of securities be included in "depository account." Moreover, in order to alleviate a significant burden on securities firms in Japan and to keep the right balance between the cost incurred by FFIs and the benefit enjoyed by the IRS, we request the following as well:

1. Increase the current threshold to at least US$100,000
2. Japanese Yen can be used for verification purposes (e.g. 10 million Yen)
3. Consolidation of accounts is not necessary (whether the threshold has been reached should be verified on an account-by-account basis)
4. Evaluation of securities is based on each firm's criteria
5. Treat accounts with no transactions (including deposit and withdrawal) during a given year as non-U.S. accounts

(4) Step 2: Accounts of $50,000 or Less

As for Step 2, our understanding is that the account for purposes of this step does include the values of securities, and we appreciate the improvement since the Notice

2010-60.  In order to alleviate a significant burden on securities firms in Japan and to keep the right balance between the cost incurred by FFIs and the benefit enjoyed by the IRS, we request the following as we did in the (3) above:

1. Increase the current threshold to at least US$100,000
2. Japanese Yen can be used for verification purposes (e.g. 10 million Yen)
3. Consolidation of accounts is not necessary (whether the threshold has been reached should be verified on an account-by-account basis)
4. Evaluation of securities is based on each firm's criteria
5. Treat accounts with no transactions (including deposit and withdrawal) during a given year as non-U.S. accounts

(5) Step 3: Private Banking Accounts

If an account is classified as a private banking account in Step 3, Step 3(A)(ii) requires that participating FFIs "perform a diligent review of the paper and electronic account files and other records for each client with respect to whom they serve as a private banking relationship manager, and identify each client (including any associated family members) who, to the best of the knowledge of the private banking relationship manager, has [the following U.S. indicia]."  We request that the IRS provide more elaborated procedures on Step 3 in such a manner as not to place an excessive burden on participating FFIs.

We also request the following, regarding Step 3:

(i) Step 3(A)(iii)(a) provides that "In the case of any client identified as having a U.S. birthplace or address in Step 3(A)(ii)(b) or (c), the private banking relationship manager must request that the client provide either a Form W-9 establishing U.S. status, or a Form W-8BEN (or a substitute certification as may be provided in future guidance) and a non-U.S. passport or other similar government-issued evidence establishing the client's citizenship in a country other than the United States."  However, the determination as to whether a customer is a U.S. resident under the U.S. tax law may require the use of the information which only the U.S. tax authorities generally possess. Moreover, it is very difficult for financial institutions to continuously determine the customer's U.S. residency based on the Substantial Presence Test (i.e., 183 days or more of U.S. presence during requisite testing periods), and it is beyond the ordinary course of business for financial institutions.

Moreover, in the case where a securities firm cannot collect (or verify) documentation such as a Form W-8BEN or a non-U.S. passport from customers who are not classified as U.S. residents, it is almost impossible for the firm to follow up on such customers or classify those as recalcitrant customers, withhold taxes and close their accounts.

Accordingly, we request that the procedure to verify U.S. residency of customers be removed.

(ii) The requirement in Step 3(A)(iii)(a): “to establish non-U.S. status in the case of any client identified as having a U.S. birthplace in Step 3(A)(ii)(b), the private banking relationship manager will be required to obtain from the client a written explanation regarding the client’s renunciation of U.S. citizenship or reason that the client did not acquire U.S. citizenship at birth” is also impossible for securities firms to obtain such written explanation in the ordinary course of business, therefore we request that this requirement be removed.

(iii) Step 3(A)(iv) requires to “treat all accounts associated with a client as U.S. accounts (or, to the extent applicable, as Documented FFIs under Section II.B.3 of Notice 2010-60) if the client is identified as a U.S. person in Step 3(A)(i), or is identified as having U.S. indicia as described in Step 3(A)(ii) and does not establish non-U.S. status as described in Step 3(A)(iii)(a).” Under JSDA regulations, securities firms in Japan are strictly prohibited from allowing customers to use fictitious names, including nonresidents using names of residents in Japan. Also, in light of adhering to the aforementioned regulations, securities firms in Japan do not allow customers to open a joint account and require the name of their bank account, to which funds to withdraw are transferred, to be the same as the name of accounts maintained by securities firms.

Considering these facts, we request that “all accounts associated with a client” apply only to accounts that bear the name of the account holder.

(iv) Step 3(D) requires FFIs to “ensure that all of the written requests and responses related to the search are retained by the FFI for ten years.” We would like the IRS to respect retention periods that have already been established under each country’s laws and regulations. For instance, “Act on Prevention of Transfer of Criminal Proceeds” of Japan (the “Act”) requires that identification records and transaction records be retained for seven years after the associated transactions had taken place, therefore FATCA will force securities firms in Japan to retain customer documentation for ten years, which is longer than the retention period set by the Japanese local law.

(6) Step 4: Accounts with U.S. indicia

(i) Verification of U.S. residency

Similar to Step 3 above regarding customers who have a U.S. address, the determination as to whether a customer is a U.S. resident under the U.S. tax law may require the use of the information which only the U.S. tax authorities generally possess, and it is very difficult for financial institutions to continuously determine the customer’s U.S. residency based on the Substantial Presence Test and it is beyond the ordinary course of business for financial institutions.

Thus, we request that the procedure to verify U.S. residency of customers be removed.

(ii) Utilizing existing information system

We understand that participating FFIs are required to search electric information in existing customer data management systems. We request clarification that FFIs do not need to develop their computer systems or build a new system only for the purpose of complying with FATCA.

Also, the feasibility of electronic search for information regarding nationalities and domicile should be determined by whether or not there is a “field” by default for such information in the existing database. We request clarification that we are not required to perform the search with other related information by using random keywords, for example, if such a field does not exist in participating FFIs’ computer systems.

(7) Step 5: Accounts of $500,000 or more

Ensuring the risk-based approach

Because diligent review is performed for private banking accounts, due diligence for other accounts (accounts that are not private banking accounts) should be simplified in light of the risk-based approach. Specifically, the purpose of FATCA should be accomplished by searching electronic database in Step 4 with regard to accounts that are not private banking accounts, therefore we request that Step 5 (due diligence for high value accounts) not be required.

However, if diligent review for high-value accounts cannot be removed from the identification steps for pre-existing individual accounts, considering the fact that FATCA’s purpose is to prevent tax evasion committed by wealthy U.S. persons, in order to alleviate a tremendous administrative burden on securities firms in Japan, we request the following:

1. Increase the current threshold to at least US$10,000,000
2. Japanese Yen can be used for verification purposes (e.g. 1 billion Yen)
3. Consolidation of accounts is not required (whether the threshold has been reached should be verified on an account-by-account basis)
4. Valuation of securities is based on each firm’s criteria
5. Treat accounts with no transactions (including deposit and withdrawal) during a given year as non-U.S. accounts

JSDA strongly request that especially the No. 1 above be considered because diligent review should be performed only on a limited number of ultra high net worth individual accounts that pose a high risk of hiding assets and tax evasion using FFIs outside the U.S. To be consistent with such policy goals of FATCA, an appropriate threshold should be established.

Also, we strongly request that the No. 3 above be considered because it imposes a significant administrative burden on securities firms in Japan.

(8) Step 6: Annual retesting

Beginning in the third year following the effective date of the FFI Agreement, Step 6 requires that FFIs apply Step 5 annually to all preexisting individual accounts that did not previously satisfy the account balance threshold to check the account balance on the last day of the preceding year. However, this would create a serious burden on FFIs. Thus, as previously mentioned, we request an increase of the threshold amount to at least US$10 million and the extension of the frequency of retesting (e.g. from annual to every three years).

Also, considering the fact that enactment of FATCA was triggered by U.S. persons residing in the U.S. committed asset hiding and tax evasion, it is reasonable to apply different degrees of due diligence focusing on the time when such persons transfer money back to the U.S. in light of the risk-based approach. Thus, we request that among customers who meet the criteria in Step 5, we perform diligent review only on accounts which transferred money to the U.S. during the preceding 12 month period, and perform only electronic search as required under Step 4 with respect to other customers.

3. Certification requirements by FFIs

We understand the necessity of FFIs' certification to some extent; however, it is practically impossible for a responsible officer to identify and confirm all of the matters proposed in the Notice, and it is very difficult for the officer to certify the fact that "management personnel did not engage in certain activities." Accordingly, certification should only be required to confirm that the management did a good faith effort to meet the requirements proposed in the Notice.

In light of the reasons noted above, JSDA specifically request the following:

a. Instead of a responsible officer certifying "management personnel did not engage in certain activities," the officer only need to certify the fact that the FFI "had written policies and procedures in place."

b. Instead of limiting a person who is responsible for FATCA compliance to “the Chief Compliance Officer (“COO”) or another equivalent-level officer of the FFI,” each FFI should be able to appoint an appropriate officer depending upon each FFI’s situation.

c. Criminal penalties or penalties for the individual who is the responsible officer should not be imposed. We believe that if an external verification by an outside accounting firm, such as the one utilized under the existing QI regime, were to be utilized under FATCA, we could ensure an effective certification without relying on criminal penalties.

4. Long term recalcitrant account holders

In Japan, pursuant to the Act on the Protection of Personal Information, it is unlawful to disclose personal information of a customer to the third party without obtaining prior consent from the customer. In the case where a customer who does not provide prior consent does not agree to the withholding under FATCA, we think it is very difficult to withhold taxes under FFI Agreements because it lacks legal grounds under the Japanese law.

FATCA also requires participating FFIs to close accounts of “recalcitrant account holders” who do not consent to the disclosure of personal information to the third party. Because securities firms usually have custody agreements with customers, it is very difficult to terminate such contracts without customers’ consent. Under the “Act on Book-Entry Transfer of Corporate Bonds, Stocks, etc.” of Japan, the transfer of securities can be made only by the person to whom the reduction in the balance of securities is recorded. In other words, in order to close the customer’s securities account, it would be the recalcitrant account holder who is required to take necessary steps for the account to be closed, and it is virtually impossible for securities firms to reduce the balance in the customer’s account to zero and close the account.

For the aforementioned reasons, we request that information of customers who do not waive the right be exchanged through the framework under the Information Exchange Article of the U.S.-Japan Tax Treaty, and that the requirement of “involuntary termination of accounts” be removed from the requirements of participating FFIs.

5. Passthru payments

(1) Definition of passthru payments

We are disappointed about the definition of passthru payments provided in the Notice as it is practically not possible for us to comply with. Payments attributable to a withholdable payment should be payments that are either withholdable payments or directly traceable to withholdable payments. Therefore, JSDA entirely disagrees with the basic concept of passthru payment provided in the Notice.

Based on the definition provided in the Notice, payments that are obviously non-U.S. source income (e.g. interests and dividends generated from securities issued by securities firms and banks in Japan) are included in passthru payments and therefore subject to withholding. Because there is no legal basis for Japanese securities firms to withhold tax from customers' funds in this type of circumstances, we believe it is impossible for Japanese securities firms to withhold U.S. tax on passthru payments as defined in the Notice. We request a clear explanation as to why such payments are subject to U.S. taxing power.

(2) Calculation of passthru payment percentage

Most financial institutions do not maintain their assets separately whether it is U.S. asset or not, or whether it is issued by an FFI as defined under FATCA or not. It is practically difficult to classify assets as such in order to calculate passthru payment percentage. Moreover, it is unrealistic to calculate passthru payment percentage on every quarterly testing date when most securities firms do not even prepare financial statements quarterly. The Notice provides that "Any participating FFI which does not calculate and publish its passthru payment percentage will be deemed to have a passthru payment percentage of 100 percent." We think it is highly inappropriate that a large number of FFIs will be deemed to have passthru payment percentage of 100 percent due to the practically difficult calculation method and that it is beyond the reach of U.S. taxing power. Accordingly, JSDA entirely disagrees with the basic concept of passthru payment as provided in the Notice.

(3) Publishing passthru payment percentages

Business relationships among financial institutions are very complicated. For example, when a financial institution attempts to calculate its passthru payment percentage, it is a prerequisite that other financial institutions' passthru payment percentages have already been calculated. However, it is possible that such "other financial institutions" are also waiting for other financial institutions' updated passthru payment percentages. Thus, in a case where multiple FFIs own shares and interest of the other FFIs mutually, neither financial institution is able to calculate passthru payment percentage because it cannot be calculated until the other financial institutions calculate their passthru payment percentages under the rules provided in the Notice. Such chains of relationships are quite common in the financial services industry. As such, calculation of passthru payment percentage contains a lot of difficult issues in a practical sense. Therefore, JSDA request an entire revision on proposed rules concerning the calculation of passthru payment percentages.

6. Deemed-compliant status

JSDA appreciates that the Notice provided some directions for the deemed-compliant FFI provisions. However, the provisions do not appear to be workable as none of the Japanese securities firm would be eligible to meet the requirements despite the fact that the incentive for wealthy U.S. persons to evade taxes is very small for certain local securities firms in Japan. Therefore, we request revisions as follows:

(1) Requirements to obtain the deemed-compliant FFI status

The Notice provides that a deemed-compliant FFI will be required to: (1) apply for deemed-compliant status with the IRS; (2) obtain an FFI identification number (FFI-EIN) from the IRS identifying it as a deemed-compliant FFI; and (3) certify every three years to the IRS that it meets the requirements for such treatment.

However, it is extremely burdensome for local securities firms in Japan that have no investment or other connection to the U.S. to certify their status to the IRS every three years, considering the organizational and human resources of such local firms.

Therefore, we request that the above three requirements be removed or at least alleviated.

(2) Certain local banks

According to the Notice, "Treasury and the IRS intend to issue regulations under which each FFI in an expanded affiliated group will be treated as a deemed-compliant FFI" if each FFI meets the five requirements provided in the Notice.

Among the five requirements, (1) requires an FFI to be "licensed and regulated as a bank or similar organization authorized to accept deposits in the ordinary course of its business" and appears to exclude securities firms from the definition. However, there is no logical reason to exclude securities firms from "local" business model of FFIs, and therefore, securities firms should also be included in this requirement.

(2) requires "all of the FFIs in the expanded affiliated group to be organized in the same country." However, some securities firms in Japan do have overseas subsidiaries within the same group. If an overseas subsidiary enters into an FFI agreement on a stand-alone basis, it should not be included in the member of the expanded affiliated group for purposes of evaluating whether the group satisfies this requirement.

(5) requires "each FFI in the expanded affiliated group to implement policies and procedures to ensure that it does not open or maintain accounts for nonresidents, non-participating FFIs, or NFFEs." We request that this requirement be removed for

the legal limit mentioned in “4. long term recalcitrant account holders” above because this requirement would force Japanese securities firms to terminate accounts of customers who temporarily become a U.S. resident due to overseas job assignment, etc.

As an alternative to (5), we suggest that one of the following requirement be adopted: (a) a financial institution subject to regulatory authorities of a country which has a tax treaty with the U.S. and the Information Exchange Article and the Limitation of Benefits Article are included in the tax treaty, (b) a financial institution that generally does not open an account for nonresidents (except for customers who temporarily become a nonresident due to overseas job assignment, etc)., (3) a financial institution that does not remit funds to the U.S. on behalf of its customers.

(3) Local FFI members of participating FFI groups

In order for certain local banks (defined under the Notice Section III.B “local FFI members of participating FFI groups”) to be treated as a deemed-compliant FFI, it has to meet the four criteria provided in Section III.B.

(1) requires “the FFI member to maintain no operations outside its country of organization.” However, some securities firms in Japan that have overseas subsidiaries within the same group cannot meet this requirement. Therefore, if an overseas subsidiary enters into an FFI agreement on a stand-alone basis, it should not be included in the member of the expanded affiliated group for purposes of evaluating whether the group satisfies this requirement.

The conditions (3) and (4) require that identification procedures on U.S. accounts be in place and termination/transfer of U.S. accounts would become necessary if detected. Because this condition requires FFIs to close accounts of customers who are U.S. persons legitimately residing in Japan or who became U.S. residents due to temporary job assignment in Japan, it would force Japanese securities firms to involuntarily terminate customer relationship with such accountholders. For the reasons mentioned previously in “4. long term recalcitrant accounts,” it would be virtually impossible to comply with such requirements and we therefore request that (3) and (4) be removed.

As an alternative to (3) and (4), we suggest that one of the following requirement be adopted: (a) a financial institution subject to regulatory authorities of a country which has a tax treaty with the U.S. and the Information Exchange Article and the Limitation of Benefits Article are included in the tax treaty, (b) a financial institution that generally does not open an account for nonresidents (except for customers who temporarily become a nonresident due to overseas job assignment, etc)., (3) a financial institution that does not remit funds to the U.S. on behalf of its customers.

(4) Treatment of stand-alone FFIs

According to (2) and (3) above, it is assumed that an FFI must be part of an expanded affiliated group in order to be treated as a deemed-compliant FFI. However, we request clarification that a stand-alone FFI, which is not part of an expanded affiliated group, is treated as a deemed-compliant FFI so long as it meets the criteria provided in the Notice.

7. Reporting of U.S. accounts

For securities firms, reporting each amount provided in the Notice (shown below as (i) through (iv)) is an excessive burden considering that fact that compliance with these requirements would incur a significant amount of cost only to comply with FATCA; therefore, reporting of gross receipts and withdrawals (defined under Section 1471(c)(1)(D)) should be allowed to be used by participating FFIs.

[Reportable Amounts proposed in the Notice]
(i) the gross amount of dividends paid or credited to the account;
(ii) the gross amount of interest paid or credited to the account;
(iii) other income paid or credited to the account; and
(iv) gross proceeds from the sale or redemption of property paid or credited to the account with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder.

To secure the practical feasibility for securities firms regulated under the local Japanese law, we request the following:

a) Reporting in an appropriate format each FFI prepares should be allowed (including customer statements accompanied with a translation aid)
b) The reporting period should not be restricted to be a calendar year, and any 12-month period selected by each FFI should be permitted
c) Reporting in the currency each FFI uses on records and customer statements as required under the local laws and regulations should be permitted

8. Chapter 4 requirements for Qualified Intermediaries

Many securities firms in Japan have already obtained a Qualified Intermediary ("QI") status and have been duly performing their duties as QIs.

We anticipate that the requirements of FATCA may double the burden on securities firms in Japan; therefore, we request that future guidance on this matter be developed in such a way that any redundancy between the requirements under the existing QI regime and FATCA be well-coordinated to eliminate any potential overlap.

We request, if at all possible, that the reporting obligations of QI be terminated or be consolidated with the reporting obligations under FATCA.

9. Lead FFIs

Even though FFIs in the same expanded affiliated group have common ownership one another, each FFI is a separate legal entity, and it is basically difficult for an FFI in the group to handle and manage the applications or other paperwork on behalf of all FFIs in the group.

Accordingly, whether or not a group appoints a lead FFI should be an option for financial institutions as the situation may vary from one FFI group to another, and it should not be a requirement for all FFI groups across the board.

10. Section VII

The Notice provides the concept of the effective date of FFI Agreement. However, obligations and responsibilities that come with FFI agreement are still not clear and the uncertainty in certain issues on FATCA have made it very difficult for FFIs to proceed with practical and technical preparation to become ready to enter into FFI agreements. In terms of the required time frame to develop or modify existing information systems to be FATCA-ready, it does not appear to be possible for us to be 100 percent FATCA compliant by January 2013; therefore, we request a flexible approach to secure an ample transition period.

11. Requests for other issues that are not addressed in the Notice

(1) Procedures for entity accounts

Procedures for entity accounts are not addressed in the Notice but the issues are extremely important topic for securities firms in Japan.

Currently, securities firms in Japan are performing strict due diligence procedures with respect to entities by reviewing documentary evidence designated under the Act. However, it does not require a review of information regarding shareholders of entity account holders; therefore Japanese securities firms do not maintain any record of such information.

Even if Japanese securities firms request an entity accountholder for documentation such as a list of shareholders, it is likely that, in accordance with the Companies Act in Japan, the company may refuse to provide such a list to protect the information of shareholders.

Therefore, we request that verification of substantial U.S. owners be not required with regard to preexisting entity accountholders and that we perform identification procedures only on new customers who self-certifies their status or the information on substantial U.S. owners.

(2) Employee Stock Ownership Plan, etc.

In Japan, certain employee benefit regimes are in place for purposes of enhancing the welfare of employees, directors, and certain customers, such as employee stock plan, special accounts for maintaining shares obtained through employee stock plan, employee savings plan, and "million" investment funds. Their systems have no association with, and cannot be used as tools for, tax evasion committed through transfers of assets to overseas which is prevented by FATCA; accordingly, they should not be subject to FATCA.

One way to exclude such systems from FATCA is to treat accounts created for these plans as non-financial foreign entities as well as entities that are "engaged in an active trade or business."

Some employee stock plans that include stocks of U.S. companies (e.g., subsidiaries of U.S. companies) have entered into the withholding partnership agreement with the IRS and have already verified that the members of such plans only include residents of Japan and there is no U.S. person in the plan. Therefore, we sincerely request that those employee stock plans with existing withholding partnership agreements with the IRS not be subjected to additional administrative burden under FATCA.

III. Conclusion

So far, securities firms and financial institutions in Japan have been cooperative towards QI agreements. Because of the strict due diligence obligation imposed on securities firms and financial institutions in Japan under the Act to prevent money laundering, we believe that there has been no notable tax evasion committed by U.S. persons in Japan since the QI agreement became in effect on January 1, 2001.

Because the Notice still imposes a significant burden on securities firms in Japan, the JSDA sincerely request that the IRS give serious consideration to our above mentioned comments and requests to make FATCA a better and workable scheme.

Lastly, we would be willing to meet with the IRS to discuss any alternative solutions on this matter.

Sincerely yours,

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