Japan Securities Dealers Association
JSDA

Tokyo Shoken Kaikan Bldg., 1-5-8, Kayaba-cho,
Nihombashi, Chuo-ku, TOKYO 103-0025, JAPAN
Phone: +81-3-3667-8451 Fax: +81-3-3666-8009

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Department of the Treasury
Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Comments/Requests on the Proposed Regulations

Dear Sir/Madam:

## Ⅰ. Preamble

The Japan Securities Dealers Association (hereafter "JSDA") appreciates the given opportunity to submit comments in connection with the proposed regulations on the Foreign Account Tax Compliance Act (hereafter "FATCA"), which was announced on February 8, 2012 by the Internal Revenue Service (hereafter the "IRS").

JSDA is a hybrid association functioning as a self-regulatory organization ("SRO") 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 proposed regulations provides various considerations to alleviate the burden on financial institutions. However, we are still seriously concerned about the requirements of FATCA as currently proposed, since some of the requirements seem to be impossible for us to comply with due to legal and practical limits in Japan (e.g. withholding obligation on such as passthru payments and involuntary account closure) and that the cost and burden on the foreign financial institutions (“FFI”) appears to far exceed the benefit enjoyed by the IRS.

Needless to say, in order to successfully implement FATCA, it is vital for FFIs around the world to cooperate with the IRS. To this end, it is not appropriate to impose such serious burdens on participating FFIs that should be considered as "cooperating institutions" for implementing FATCA smoothly. From this point of view, JSDA requests for serious deliberations, such as providing certain U.S. tax benefits to financial institutions which become participating FFIs, U.S. government’s partial defrayment of compliance cost incurred by participating FFIs, and so on.

## Ⅱ. Comments/Requests on the Proposed Regulations

### 1. Implementation of the concept of residency relating to identification of U.S. individual accounts

In the past comment letter, JSDA has been suggesting performing only electronic searches with respect to residents in a country where FFIs are located in terms of a risk-based approach.

With certain exceptions, however, paper-based searches remain necessary for high-value accounts under the proposed regulations.

As we see in a case where account information held by a large Swiss bank matters, wealthy persons residing in the U.S. intended tax evasion through overseas financial institutions. Accordingly, targets of FATCA should primarily be U.S. residents who utilize overseas financial institutions, not the U.S. citizens who reside in the county in which FFIs are located.

Under the U.S. tax code, JSDA understands the current situation where U.S. citizens, regardless of actual residency, are taxed on their worldwide income. However, regarding U.S. citizens who have actually become Japanese residents, the amount of tax to be recovered from such people by U.S. tax authorities is limited, considering that tax payments made in Japan are allowed to be used as a foreign tax credit.

On the other hand, the number of U.S. citizens residing in Japan recorded by Immigration Bureau of Japan is approximately 52,000 people. Given the fact that it represents only 0.04% of 127,000,000 population of Japan, obligation to identify U.S. citizens out of an enormous quantity of customers imposes too much burdens of costs on the financial institutions in Japan as compared with the benefits that the U.S. tax authority obtains.

Therefore, we propose the following treatment. With respect to customers who live abroad, searches through electronic data should only be performed, and then for those with U.S. indicia found through the searches, current customer master file, including documentary identification evidence for the past five years, and account opening documents should be searched thoroughly, and only if U.S. citizenship is identified, such customers would be subject to annual reporting. This treatment will allow each FFI not to obtain identification evidencing citizenship in a country other than the U.S. from customers residing out of the U.S., leading to a reduction in administrative costs. It also allows each FFI to focus the limited resources to customers residing in the U.S., who would pose a higher risk.

Historically, it has been extremely sensitive (*) to ask customers for documentations indicating their nationality (such as non-U.S. passports). Therefore, this request may be very difficult. If this treatment is allowed, such burdens on financial institutions in Japan will be substantially reduced.

(*) In the discussion held by the Japanese Government for the enactment of the Personal Information Protection Law, the concern that obtaining information on nationalities is highly sensitive was raised. Taking such circumstances into consideration, we are concerned that financial institutions in Japan will encounter enormous business troubles by asking customers for their nationalities. JSDA hereby requests IRS understanding on this issue that the general perception relating to nationalities in Japan differs from the situation in the U.S. and/or Europe.

2. Identification of pre-existing U.S. Individual Accounts

(1) Relationship manager

JSDA has been requesting a revision of the definition of private banking proposed in Notice 2011-34, according to the situations in the U.S. and Europe.

<Details of Major previous Requests>

①Including a requirement for account balances to be U.S. $1,000,000 or more in the definition of "private banking accounts."

②The 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.

③Fulfilling "all" the requirements proposed by the guidance (providing services mainly with wealthy customers, providing investment advice on financial products even if they are not offered usually, etc.).

④Additions of the criteria listed below:

- The specifically designated employee serves a customer permanently.
- Providing investment advice on financial products of other firms than the FFI nor its affiliated FFIs.
- The fees for private banking services are based, entirely or in part, on the value of the customer's assets in the FFI.

The proposed regulations provide that specific identification procedures were relinquished regarding private banking accounts, however, the concept remains in the procedure to inquire with a relationship manager as a part of the specific procedures in connection with high value accounts with a balance or value of more than US $1,000,000. (Section 1.1471-4(c)(3)(ii)(B)(3), etc. of the proposed regulations).

Also, the definition of relationship manager is "an officer or other employee of an FFI who is assigned responsibility for specific account holders on an on-going basis, advises account holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs" (Section 1.1471-1(b)).

In this regard, JSDA appreciates the adoption of ①and ②among the above requests, but JSDA still thinks ③ and ④ are not satisfactory.
Specifically, there is a possibility that operating activities along with in-charges who advise ordinary investment is included in the definition of relationship manager. Because it is considered clearly an excessive treatment in the light of FATCA's enactment purpose, JSDA continues to request the above ④ be taken into consideration.

In addition to the above ④, JSDA suggests adding the requirement "offering professional tax advisory regarding overall wealth building" to the definition by using the connector "and." With respect to financial services for the wealthy persons targeted by FATCA, it is considered that professional tax advisory is generally an absolute imperative element, and therefore we propose adding this requirement to the definition to clarify the aims of FATCA regulations and to increase its effectiveness.

Further, together with the requests above, JSDA would like to ask for clarification of the following treatments to be allowed;

- When there is an obligation to inquire with a relationship manger, a relationship manager means only the person in-charge at the time of the inquiry.
- If a person in charge of providing investment advice does not exist in cases of Internet transactions etc., it may be interpreted that no relationship manager exists.

(2) Threshold of high-value accounts

JSDA has been requesting to increase the reasonable threshold level of asset balances (at least US $10,000,000 and over) with respect to the concept of high value accounts proposed by Notice 2011-34.

Under the proposed regulations, the threshold was increased from US $500,000 to US $1,000,000 for high-value accounts (Section 1.1471-4(c)(8)). In addition, the documents subject to manual review for high-value accounts are; current customer master file, documentary identification evidence for the past five years, account opening documents, AML related documentations, power of attorney, and standing instructions. A procedure to search U.S. indicia should be performed among them (Section 1.1471-4(c)(8)).

JSDA appreciates the increase of the threshold of asset balance.　However, it still has a serious divergence from the reasonable threshold (US $10,000,000) that JSDA has been asserting.

The scope of customers subject to elaborated due-diligence should be limited to ultra high net worth individuals with high risk as they are more likely to be motivated to hide assets and/or to evade tax utilizing overseas financial institutions.　Accordingly, JSDA continues to request to increase the threshold to $10 Million.

(3) Annual Retesting of high-value accounts

JSDA has been requesting to set the retesting span to be at earliest once in 3 years with respect to accounts that were not high-value accounts.

The proposed regulations indicate that no retesting would be generally necessary if identification was performed for high-value accounts at least once.　However, if non high-value accounts become high-value accounts later on, the procedure for identifying high-value accounts would be still necessary (Section 1.1471-4(c)(8)).

The obligation to retest accounts was not relinquished in the proposed regulations as a matter of practice, and therefore JSDA continues to request to have the retesting span be extended to at earliest once in 3 years.

With regard to periodical verification, considering that the reason for proposing FATCA implementation is for U.S. persons who reside in the U.S. who intend to hide assets and to evade taxes outside of the country, it is reasonable to apply different levels of due diligence by paying attention to the timings when U.S. persons try to retrieve the capital back from a risk-based approach.　JSDA proposes to perform manual due diligence on high-value accounts with a “record of remitting money to the U.S.” during the last year, and proposes to conduct electronic searches for other customers.

3. Aggregation of customer accounts held by the identical person and its treatment

(1) Aggregation of customer accounts held by the identical person

JSDA has been requesting the clarification that it is not necessary to aggregate customer accounts recognized as separate accounts within the same branch or within several branches, and to build a new system for aggregating customer accounts held by the identical person.

The proposed regulations provide that aggregation of customer accounts held by the identical person within an FFI and its expanded affiliated group is generally requested, but it clarifies that the aggregation is allowed to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number (including an EIN) (Section 1.1471-4(c)(3)(ii)(B)(2), 1.1471-4(c)(4)(iii)(B), 1.1471-4(c)(4)(iv)(B), etc.).

We appreciate that our request was taken into consideration in this respect. On the other hand, aggregating customer accounts within a group is considered to be impossible to be performed practically, due to fire-wall regulations in Japan. Accordingly, JSDA would like to request an additional requirement that the prevention by domestic laws in each country should not exist, as well as a systematical requirement as stated above.

(2) Treatment of accounts held by identical person

As to recalcitrant account holders, JSDA has been requesting that they would be absolutely limited to the accounts under their own names, though the guidance provided "treating all of accounts related to that customer as U.S. accounts."

The proposed regulation states that it is necessary for high-value accounts to combine accounts regardless of inconsistency in their names when relationship mangers know the relationship among accounts or have reasons to know (Section 1.1471-4(c)(8)(ii)).

Based on JSDA's self-regulatory provisions in Japan, anonymous transactions, including transactions by non-residents using Japanese residents' name, are strictly prohibited.

Further, in light of compliance with such provisions, there is no joint account with Japanese securities firm. It is also required that account names of bank accounts to remit the money and securities accounts must be matched. Accordingly, JSDA continues to request that this treatment should be deleted and limit application to accounts under a customer's own name.

4. Identification of new individual accounts

JSDA has been requesting that a procedure to verify customers if they are U.S. persons should be performed only when there is an indication of U.S. persons under the limited requirements listed.

Under the proposed regulations, if there are U.S. indicia in the customer information provided at the time of account opening, FFI is required to verify with the customers if they are U.S. persons or not (preamble of the proposed regulations).

In this respect, we appreciate to some extent that a limited list of U.S. indicia was introduced to the proposed regulation. However, as stated above, it is an extremely sensitive subject to ask customers for documentation which indicate their nationalities (e.g. non-U.S. passport, etc.) in our past history, and it is extremely difficult to perform. Accordingly, JSDA proposes U.S. Treasury and the IRS to enact obligation for U.S. persons to disclose nationalities to FFIs by U.S. domestic law. It is very reasonable to impose U.S. tax reporting requirements on U.S. taxpayers in order for the IRS to collect tax appropriately. Based on the acknowledgement, FFIs should be permitted to treat accounts as U.S accounts only if U.S customers voluntarily disclose such status, and otherwise to treat customers as non U.S. accounts.

Among U.S. indicia, if customers are "born in the U.S.," the proposed regulations indicate that "it is necessary to ask for a submission of explanatory documents which indicate reasons for abandonment of the U.S. citizenship, or reasons for not obtaining U.S. citizenship at the time of birth." However, asking such a delicate and private question is not something Japanese financial institutions could ask to their customers. Also, even if financial institutions ask such a question, JSDA would not expect an effective result to catch tax evaders because customers with the intention of evading taxes would be ready to provide an incorrect answer. Accordingly, JSDA requests the deletion of such a requirement as this requirement would just leave burdens on customers and FFIs in good faith.

5. Accounts with balance of US $50,000 or less

(1) Documented accounts excluded from the definition of U.S. accounts

JSDA has been requesting to include the value of securities as documented “depository accounts” that are excluded from the definition of U.S. accounts.

The proposed regulations sets a threshold of US $50,000 for depository accounts, but securities accounts are out of its scope (Section 1.1471-4(c)(4)(iii)(A)).

In this respect, such a provision may be set forth in order not to make customers with Form W-9 subject to annual reporting. However, it does not matter how the wealthy U.S. persons FATCA is trying to capture possess their assets, therefore we continue to request that the value of securities be included in “depository account.”

Moreover, in order to alleviate a significant burden on securities firms in Japan, we request the following as well:

①Increase the current threshold to at least US $100,000
②Japanese Yen can be used for verification purposes (e.g. 10 million Yen)
③Treat accounts with no transactions (including deposit and withdrawal) during a given year as non-U.S. accounts

Based on the regulations, JSDA understands that securities accounts with an account balance of US 50,000 or less can be excluded in the process of identifying pre-existing accounts. We understand that this process is designed in line with the scale and the possibility of tax evasion. JSDA would like to request that such accounts be excluded from reporting from the similar viewpoint, namely, excluded from the concept of U.S. accounts.

(2) Accounts excluded from the identification procedures of U.S. person

JSDA has been requesting the following requirements for accounts with balance of US $50,000 and less;

①Increase the current threshold to at least US $100,000

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

In terms of ①, the proposed regulation sets the threshold of US $50,000 including securities. There is no change from the prior guidance (Section III and V of the Preambles, and Section 1.1471-4(c)(4)(iii)(A)). In terms of ②, conversion to U.S. currency at the spot rate provided under Treasury Regulation 1.988-1(b) is required (Section 1.1471-4(c)(5)). In respect to ③, consolidating customer accounts held by the same person is only limited to the extent that the FFI's computerized systems link the accounts by reference to a data element (Section III of the Preambles and Section 1.1471-4(c)(4)(iii)(B) and 1.1471-4(c)(4)(iv)(B)(2)). With respect to ④, FFIs shall report the balance or value of the account as determined for purposes of reporting to the account holder (Section 1.1471-4(d)(4)(iii)). In terms of ⑤, nothing is specifically mentioned in the proposed regulations.

JSDA appreciates that our requests are reflected on the proposed regulations in terms of ③ and ④, however, JSDA continues to request ①, ②, and ⑤ to be adopted in order to reduce excessive burdens on Japanese securities firms.

6. Identifying pre-existing/new U.S. entity accounts

(1) Identifying substantial owners

JSDA has been requesting that verification of substantial U.S. owners not be required with regard to preexisting entity accountholders and that we perform identification procedures only on new customers who self-certify their status or the information on substantial U.S. owners.
Under the proposed regulations, verification of substantial U.S. owners with interest exceeding 10 % of passive NFFEs depends on the self-certification with regard to both preexisting and new entity accounts (Section III of the Preambles and Section 1.1471-3(d)(11)(vi)(D)). If no substantial U.S. owners are found, a passive NFFE will be required to provide written certification that it does not have any substantial U.S.

owners. If substantial U.S. owners are found, a passive NFFE will be required to provide the name, address, and TIN of each substantial U.S. owner of the NFFE (Section 1.1471-3(d)(11)(vi)(D)).

In this respect, JSDA appreciates that our requests are reflected on the proposed regulations by and large. However, considering that it is permitted to rely on the local AML rules to identify individual accounts, JSDA further requests that the threshold of the ownership percentage of U.S. substantial owner (interest exceeding 10%) should also be relied on the local AML rules if there are similar standards. (In our country, the threshold of identifying a substantial owner is set forth as exceeding 25% based on the "Act on Prevention of Transfer of Criminal Proceeds" which is to be revised on April 1, 2013.)

(2) Electronic search to identify entity accounts

JSDA also appreciates the adoption of a new threshold for pre-existing entities accounts in the proposed regulations. We would like to confirm that an electronic search on pre-existing entity accounts proposed in Notice 2010-60 (B.3.a.3) of Section III) has not been deleted.

As the threshold of a manual review requirement is US $1,000,000 (Section 1.1471-4(c)(8)) for pre-existing individual accounts based on the "alternative identification procedure" (Section 1.1471-4(c)(7)), JSDA would like to request that an electronic search for pre-existing entity accounts be implemented for those with a balance between US $250,000 and US $1,000,000 to keep the right balance.

Further, JSDA requests for the adoption of limited U.S. indicia such as "standing instruction to overseas" in case that the electronic search is performed as an alternative method.

(3) Standard for publicly traded NFFE

In terms of the standard for "established securities market" in relation to publicly traded NFFE (Section 1.1472-1(c)(i)(C)), it is too inflexible to simply apply an annual value of shares traded on the exchange with respect to established securities markets outside the U.S..

Financial instruments exchanges in Japan under the Financial Instruments and Exchange Act are sufficiently maintained with provisions on disclosure and listing requirements. Accordingly, JSDA requests that all such exchanges in Japan should be treated as “established securities market” under Section 1.1472-1(c )(1)(i)(C)(1)(iv).

Also, JSDA considers that the standard of volume and frequencies of trading in relation to publicly traded NFFE (“regularly traded”) (Section 1.1472-1(c)(i)(A)) is not necessary. JSDA understands that the reason why accounts held by publicly traded NFFE are not treated as U.S. accounts is because the corporate information is disclosed and has high credibility which satisfies listing requirements. JSDA is in the opinion that volume and frequencies in trading is not directly related to the standard for the publicly traded corporation.

(4) Active NFFE (See Section 1.1472-1(c)(v))

Determination of engaging in trade or business actively could be unstable year to year if standards of active NFFE rely on “ratio of passive income out of gross income” and “ratio of assets which give rise to passive income” by year.

Therefore, JSDA would like to request to allow for the use of the determination certified by the customer at the time of opening an account with regard to the ratio of “passive income” out of gross income and the ratio of assets which give rise to “passive income” unless the customer notifies the change.

Further, in a case where a “passive income” standard has to be adopted, the use of a calendar year basis is not reasonable. Thus, JSDA requests to use an accounting year basis for the period of computation.

(5) Methods of determination of active/passive NFFE in more convenient ways

① Information provided by third-party credit report

As one of the ways to determine active/passive NFFE more conveniently, JSDA would like to request that entities listed on a database provided by third-party credit agencies (including joint ventures of such credit agencies) which have authority to assign corporation codes authorized by UN/EDIFACT or ISO should be treated as entities engaging in trade or business.

② Verifying description of business at the time of account opening

In the light of AML due diligence in Japan under the Act on Prevention of Transfer of Criminal Proceeds, which will be revised on April 1, 2013, securities firms are required to verify “description of business” for an entity account. Accordingly, JSDA would like to request that determination of a trade or business should be approved through such verification.

Japanese securities firms not only handle trading of securities with the limit of the customer’s deposit balance, but also handle credit business with customers such as dealings on credit. JSDA would like to ask for your understanding that verifying customer’s credit information including entity customer’s category of business is generally a required practice to secure the soundness of securities firms’ finances.

7. Documentary evidence required to identify status

The proposed regulations set forth complicated requirements for classifications of accountholders and therefore the treatment of documentary evidence in accordance with each category is very complicated. We are concerned that this should bring confusion to business practices.

Especially, JSDA believes that requirements of various categories should be simplified much more in order to make verification procedures of documents feasible. The requirements should be more relaxed so that the documentations required for each jurisdiction’s AML rules and KYC rules can be used to identify the classifications for Chapter 4 purpose, or the requirements are matched to each jurisdiction’s background of such systems.

In the Section III of the Preambles of the proposed regulations, the concept that “the proposed regulations generally do not require an FFI to make significant modifications to the information collected on customer intake” is stipulated. JSDA requests that such intentions should be accomplished, so that no additional practice is required.

① Applicability of perjury

It is inappropriate to apply potential perjury under U.S. laws with respect to Forms

W-8 and a self-certification statement prepared in Japan (Section 1.1471-3(c)(4)). We do not have the customs to such “oath-type statement.” This would result in preventing the smooth handling of identification procedures by setting the perjury statement in various documents. Accordingly, the use of perjury statement for certification purposes could even make it difficult for FFIs to obtain such statements from customers.

② Use of AML documentations in each jurisdiction

Some categories which are classified without “exception for preexisting offshore obligations,” such as Section 501(c) entities, can be found in the proposed regulations. When such entities open accounts at Japanese securities firms, identification procedures are strictly performed under the Act on Prevention of Transfer of Criminal Proceeds, by obtaining documents of incorporation issued by a Government. Accordingly, JSDA requests to rely on such AML documents when classifying the categories under Chapter 4.

③ Documentations for non-profit organizations (Section 1.1471-3(d)(6)(iii))

JSDA believes that submission of a letter issued by counsel should not be necessary, and verification of a business name and category by documents issued by a government should be sufficient. Under Japanese Tax Law, payments to non-profit organizations that are exempt from withholding tax are not subject to information reporting. Under the proposed regulations, non-profit organizations in Japan will not qualify as non-profit organizations for FATCA purposes, because there is a requirement for non-profit organizations in the proposed regulations to be subject to the information reporting. JSDA would like to request to respect systems designed based on each jurisdiction’s concept, and to have flexible methods of verification complying with each jurisdiction’s system without overly burdensome requirements.

④ Documentation for publicly traded corporations (Section 1.1471-3(d)(11)(i)(A)(2))

JSDA requests to clarify that the information confirming that the payee is listed on a public securities exchange should include the information of websites of securities exchanges and information posted on newspapers and magazines regularly issued.

8. Period of collecting documentary evidence

With respect to the period of collecting documentary evidence from a customer with

U.S. indicia, JSDA has been requesting to count from the date when the FFI is able to contact such a customer.

The proposed regulations provide that the appropriate documentation should be obtained within one year of the effective date of its FFI agreement for any account holder that is a prima facie FFI, and within two years of the effective date of its FFI agreement for all other entity accounts and treat those who did not submit documentation as recalcitrant accountholders (Section 1.1471-4(c)(3)(i), 1.1471-4(c)(7)(ii)).

It is reasonably assumed that it might take time for Japanese securities firms to be able to contact customers, especially for non-resident accounts. Thus, JSDA continues to request to count the period from the date when securities firms are able to contact customers.

9. Certification requirements by responsible officer

JSDA has been requesting following points listed below;

① Instead of a responsible officer certifying "management personnel did not engage in certain activities," the officer only need to certify the fact that management personnel "had written policies and procedures in place."
② Instead of limiting a person who is responsible for FATCA compliance to "the Chief Compliance Officer ("COO") or another equivalent-level officer," each FFI should be able to appoint an appropriate officer depending upon each situation.
③ Criminal penalties or penalties for the individual who is the responsible officer should not be imposed.

With respect to ①, the regulations propose that if an FFI complies with the obligations set forth in an FFI agreement, it will not be held strictly liable for limited numbers of failure to identify a U.S. account (Section III of the Preamble). Also, it is permitted to rely on the internal reporting based on "reasonable referral," which indicates no formal and informal practices or procedures in place at any time from August 6, 2011 to the date of such certification to assist account holders in the avoidance of chapter 4 (Section V of the Preamble). In terms of ②, it can be responsible officers, not CCOs (Section III of the Preamble). With respect to ③, the proposed regulations do not specifically provide related rules.

In this respect, among the above listed points, we appreciate to some extent that our requests for ① and ② are reflected on the proposed regulations. Furthermore, JSDA would like to confirm the above referred "reasonable referral" includes; sending an inquiry to all sales persons via intranet under the name of responsible officers to request to respond if sales persons are aware of any applicability. In terms of the above ③, JSDA continues the request.

10. Annual reporting of U.S. accounts

(1) Forms of annual reporting and information to be reported

JSDA has been requesting for the following points listed below;

① Reporting in an appropriate format each FFI prepares should be allowed (including copies of customer statements accompanied with a translation aid)
② The reporting period should not be restricted to a calendar year; any 12-month period selected by each FFI should be permitted.
③ Reporting in the currency each FFI uses on records and customer statements as required under the local laws and regulations should be permitted

In terms of ① under the proposed regulations, the forms should be the ones provided by the IRS (Section 1.1471-4(d)(3)(v)). Also, balance or value reported to the accountholders can be used (Section 1.1471-4(d)(4)(iii)). With respect to ②, the reporting period is on a calendar year basis (Section 1.1471-4(a)(3), Section 1.1471-4(d)(2)(ii)). As to ③, local currency can be used (Section III of the Preamble and Section 1.1471-4(d)(4)(iii)(B)).

In this regard, with respect to above ③, the currency in which the account is maintained is permitted to be used. JSDA would like to confirm that it is allowed to use Japanese yen to evaluate account balance in securities accounts. Also, JSDA would like to confirm that foreign currencies, other than Japanese yen and U.S. dollars, are permitted to be used by securities firms to evaluate the balance or deposit balance (e.g. evaluation of balance in Euro for bonds issued in Europe).

Also, regarding ① and ② above, JSDA continues to request for kind consideration on securities firms' practical operations under the Japanese legal system.

In terms of ①, JSDA requests for an approval to use the format that each securities firm has because the preparation of Forms 1099 by Japanese securities firms, that are not U.S. brokers (U.S. payers), imposes substantial operational burdens by preparing U.S. tax forms using special papers.

As to ②, a statement to be reported to customers (report of transaction balance) is prepared once every three months (once a year for accounts with some balance without transactions) in compliance of Financial Instruments and Exchange Act as Japanese securities firms' practice. However, many securities firms prepare such a statement based on the cycle which is not based on a calendar year. JSDA requests for your kind consideration on this matter, because the number of customers for whom securities firms prepare a statement based on a calendar year is quite limited.

Further, information in relation to a "U.S. taxpayer identification number" is not generally obtained through normal practice by Japanese securities firms. Accordingly, JSDA requests to make it at the best effort level. Especially, it will be extremely difficult to additionally obtain an identification number from pre-existing customers as a practical matter. Therefore, JSDA strongly disagrees to make it mandatory to acquire an identification number from pre-existing customers.

(2) Reporting total amount of passthru payments paid to non-participating FFIs

With respect to the period before foreign passthru payments are paid after December 31, 2016, namely, 2015 and 2016, participating FFIs are obligated to report the foreign reportable amount (Section III of the Preambles and Section 1.1474-1(d)(2)(ii)). JSDA requests not to include foreign passthru payments in the definition of "other financial payments" which is currently reserved.

11. Passthru payments attributable to withholdable payments

JSDA has been asserting that the basic concept of passthru should be "either withholdable payments or directly traceable to withholdable payments."

The proposed regulations provide that comments are continuously welcomed on simplified calculations of passthru percentage and the safe harbor rule in terms of regulations for passthru payment (Section III of the Preamble).

(1) Withholding obligation

With regard to withholding obligation on passthru payments explained above, if payments that are obviously non-U.S. source income (e.g. non U.S. sourced 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 under this circumstance. We believe it is impossible for Japanese securities firms to withhold U.S. tax on passthru payments.

To begin with, JSDA considers that withholding obligation on passthru payments is excessive extraterritorial application of U.S. laws. Withholding on customers that is to be performed by financial institutions as one-sided might be treated as a violation of customers' property rights, and it may raise issues under the civil laws between customers and financial institutions in Japan.

In Japanese securities market, fair market value of shares issued by FFIs financial institutions reaches approximately 29 trillion yen (approximately 350 billion US dollars) in more than 100 brands as of the end of 2012. If regulations for passthru were to be enforced, a majority of investors would not prefer to hold stocks issued by FFIs, and because of the complexity of the calculations of passthru percentage, there would be massive pressure on the selling side in the securities market.

Deflecting the market mechanism of each country's securities market, which is said to be an essential part of capitalism, should not be permitted in an international harmony by imposing the sole country's tax act named FATCA. Thus, JSDA strongly requests that withholding obligation on payments that cannot be directly traceable to withholdable payments to be removed.

(2) Calculating/publishing passthru payment percentage

The reason why the U.S. Government has taxing power over non-U.S. source income is unclear (especially in the case where a payee is not a U.S. taxpayer). Thus, JSDA disagrees with the concept of passthru percentage itself.

If calculating/publishing of passthru payment percentage has to be done anyhow, it will be necessary to consider some cases where multiple FFIs own shares and interest of the other FFIs mutually since business relationships among financial institutions are very complicated. At least, other FFIs' passthru percentage should not be taken into consideration when each FFI calculates its own passthru percentage.

It is unrealistic under the current accounting practice to compute passthru percentage by assessing if issuers of securities are incorporated in the U.S. or not since it is not necessary to maintain their assets separately by the nationality of an incorporated country. JSDA understands that argument has been done so that FFIs do not have to design a new system structure with respect to the identification procedure of U.S. accounts under the FATCA regime. The passthru percentage should be discussed based on the same concept. We request your understanding that there is a limitation to implement the computation by utilizing FFIs' pre-existing information in a simple and realistic way.
It is unrealistic to calculate the balance of substantial U.S. assets on a quarterly basis by classifying all assets as U.S. assets or not just for passthru payment percentage. Therefore, the span of publishing should be no more than once a year.

JSDA requests that the Department of the Treasury and the IRS issue their determinations on the comments after receiving comments from across the world, and then request further comments.

12. Withholding obligation on the U.S. source income

JSDA has been disagreeing fundamentally with the concept of withholding obligation on the U.S. source income because there is no such legal basis in Japan for such a procedure and is not realistically feasible.

Under the proposed regulations, withholding on recalcitrant accounts in terms of the U.S. source income is set forth as proposed in the prior guidance (Section III of the preamble).

In this respect, as there is no legal basis in our country to withhold on the U.S. source income, it may be a violation to customers' proprietary right. Further, because the procedures to claim a refund seem complicated, there will be high possibilities of substantial double taxation and investment opportunity might be lost while the refund procedures are completed. Therefore, JSDA fundamentally disagrees with the concept of withholding obligation on the U.S. source income since JSDA continues to have the same concern over the serious disadvantages to customers as before.

13. Closure of recalcitrant accounts

JSDA has been requesting to provide customer information through a framework of the article of information exchange under the Japan and U.S. tax treaty, and to exclude "involuntary account closure" from the requirements of participating FFIs for situations in which customers disagree with releasing their information to a third party.

The proposed regulations still require account closures for recalcitrant accounts as proposed by the prior guidance (Section III of the Preamble).

It is impossible to close accounts involuntarily for recalcitrant customers in Japan, because involuntary account closure could lead not only to possible breach of contract, but also to the fact that it is impossible to return securities to customers since securities in Japan are generally dealt with electronically. Furthermore, it is difficult to return money to customers by selling customers' securities without their permissions.

JSDA again proposes that the U.S. Treasury and the IRS enact an obligation for U.S. persons to disclose nationalities to FFIs by U.S. domestic law, as already proposed in the above 4. FFIs should treat U.S. accounts only when U.S. customers report themselves as such, and FFI should be allowed to acknowledge others as non U.S. accounts.

14. Expanded affiliated group/Lead FFI

(1) Expanded affiliated group

The proposed regulations adopt a two-year transition period to treat FFIs which are subject to foreign laws that prohibit that FFI or branch from complying with the requirements of FFI Agreement as either Limited FFI or Limited Branch (Section 1.1471-4(e)).

In this regard, JSDA requests that the entire group should not be treated as non-participating FFIs and that a Lead FFI will not be penalized even if conflicts under local laws and regulations are not resolved within a two-year of transitional period. For financial institutions that own expanded affiliated group members in many countries, it is extremely unreasonable if the entire group members are to be treated as non-participating FFIs because of an existence of only one non-participating FFI in spite of considerable compliance costs incurred to become participating FFIs in almost all related jurisdictions.

Especially, FFIs in FATCA partner countries are supposed to perform practical operation based on the agreement between the U.S. and FATCA partners. Accordingly, the concept of expanded affiliated group should exclude FFIs in FATCA partner countries, and JSDA requests that expanded affiliate groups to consist members that are located in countries other than FATCA partners.

Furthermore, expanded affiliate groups of Japanese securities firms fundamentally are separate entities, although they have common ownership one another within the groups. Therefore, each FFI should be able to become a participating FFI if each FFI satisfies the requirements. Also, FFIs in a jurisdiction with laws that prevent FFIs to fully comply with the requirements of participating FFIs should be clearly distinguished from those FFIs which select to be non-participating FFIs on their own decision. JSDA strongly requests that no withholding is to be performed to such FFIs until conflicts with local laws and regulations are solved.

(2) Lead FFI

The proposed regulations do not specifically refer to Lead FFI, which was proposed by Notice 2011-34. 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 by complying with all the requirements under private information protection laws varying across the world.
JSDA requests that 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 by allowing the situation where both FFIs under the supervision of lead FFI and FFIs corresponding to the IRS individually exist in the same group.

15. Deemed-compliant status

JSDA has been commenting on the concern that securities firms which originally should be deemed-compliant FFIs do not satisfy the requirements proposed by Notice 2011-34, and the provisions do not appear to be workable as none of the Japanese securities firms would be eligible to meet the requirements despite the fact that the incentive for wealthy U.S. persons to evade taxes by using certain local securities firms in Japan is very small.

The proposed regulations provide that securities firms are added to the definition of "local FFIs," and securities firms can also clearly be subject to the provision of deemed-compliant (Section VI of the Preambles and Section 1.1471-5(f)(1)(i)(A)). On the other hand, in order to qualify "local FFI," the following requirements have to be satisfied (Section 1.1471-5(f)(1)(i)(A));

① Licensed and regulated as a securities firm in a country that is FATF compliant at registration, but not an investment fund
② No fixed place of business outside the country
③ Does not solicit business outside the country
④ Must be subject to residence reporting or withholding on resident account
⑤ 98% of accounts held by residents (including entities)
⑥ Must have policies in place to ensure an account is not opened by a specified U.S. person who is not a resident, a non-participating FFI (under such FFI's AML rules), or entity controlled or beneficially owned by a specified U.S. person
⑦ With respect to each account that is opened after December 31, 2011 by an individual who is not a resident of the country in which the FFI is organized, review those accounts in accordance with the procedures applicable to preexisting accounts, and must certify to the IRS the result of its review and closure of such accounts.
⑧ In the case of an FFI that is a member of an expanded affiliated group, each member of the expanded affiliated group must be incorporated or organized in the same country.

We appreciate to some extent that a securities firm is added to the definition of the "local FFI." However, because some customers can become U.S. residents due to overseas assignments and that is assumed to frequently happen at any securities firms, and therefore the circumstance where none of securities firms can satisfy the requirements of the local FFIs remain unchanged.

For those customers who used to work in Japan and are temporarily transferred to the U.S., JSDA believes that almost all of them are genuinely Japanese people because working visas are strictly limited in Japan. They are not the persons originally targeted by FATCA.

Considering these circumstances, in terms of ⑥ and ⑦, JSDA requests for the following treatment to be permitted, either to exclude the case where customers become non-resident due to a temporary overseas job assignment after opening their accounts, or to exclude the case where new purchases through such accounts are restricted during their temporary overseas job assignment.

As an alternative to the above approach, we suggest that either of the following requirements be adopted:

(a) a financial institution subject to regulatory authorities of a country which has a tax treaty with the U.S. containing the Information Exchange Article and the Limitation of Benefits Article, or

(b) a financial institution that does not remit funds to the U.S. on behalf of its customers.

16. Employee stock ownership plans, etc.

JSDA has been explaining that certain employee benefit regimes are in place in Japan, such as employee stock plans, special accounts for maintaining shares obtained through employee stock plan, employee savings plans, and "million" (*) investment funds and that their systems have no association with, and cannot be used as tools for, tax evasion committed through transfers of assets overseas which is prevented by FATCA; accordingly, they should not be subject to FATCA.

(*) "million" is certain types of general employee savings plans established for promoting welfare of employees in companies through employees' contributions made by payroll deduction (or direct debit from bank accounts of retirees).

The proposed regulations provide that "non-retirement savings account" is an exception to the definition of financial account (Section 1.1471-5(b)(2)(i)(B)). Further, "retirement and pension account" as well as "non-retirement savings account" are required to be tax-favored accounts under local tax laws, and the following requirements should be satisfied (Section 1.1471-5(b)(2)(i)(B)).

① Contributions to such account are limited by reference to earned income;
② Annual contributions are limited to US $50,000 or less;
③ Limits or penalties apply on withdrawals made before specific criteria are met under the law of the jurisdiction in which the account is maintained; and
④ Limits or penalties apply by law of the jurisdiction in which the account is maintained to contributions exceeding the limit.

The employee stock ownership plans, the employee savings plans, and the "million" investment funds in Japan do not satisfy the requirements above. However, JSDA requests to exclude the following investment bodies as well as the investment trusts from the definition of financial accounts.

＜Employee Stock Ownership Plans＞

Any associations established in FATF compliant countries that are organized for purchasing stocks of a company by companies or agencies that maintain a business relationship with the company as well as the company's directors and employees under a certain plan without being influenced by members' own judgments in investment.

＜Employee Savings Plan/Million Accounts (certain types of employee savings plan)＞

Any investment trusts organized in FATF compliant countries which satisfy the requirements provided under such countries' laws for the purpose of promoting employee's property accumulation, and those satisfy the following requirements.

- Contributions are made by employee's payroll deduction (or bank transfer for retired employees)
- Contributions are made periodically for a certain period of time

17. Investment Trust・SPV (Special Purpose Vehicle)

(1) Qualified Investment Vehicles

The proposed regulations provide restrictions to the categories of holder of record of direct debt interest or equity interests in excess of $50,000 (Section 1.1471-5(f)(1)(i)(C)). JSDA has concerns about confusion on practices if distributors need to identify customers at the time of sale and perform constant maintenance after a sale.

As an alternative method to guarantee the feasibility of FATCA without complicated practice, JSDA proposes that "qualified investment vehicles" status is allowed to investment vehicles sold by distributors all of that qualify as "participating FFIs, registered deemed compliant FFIs, or local banks that are certified deemed-compliant."

(2) Restricted Funds

The proposed regulation restricts distributors as "a participating FFI, a registered deemed-compliant FFI, a non-registering local bank or a restricted distributor" (Section 1.1471-5(f)(1)(i)(D)(2)). JSDA believes that feasibility can be acquired even if distributors are non-participating FFIs when prospectus and distribution agreements between management companies and distributors prohibit sales to U.S. residents. Therefore, JSDA requests that non-participating FFIs should also be qualified as restricted distributors on the condition that such treatment is implemented.

## Ⅲ. The framework of the Joint Statement announced by the U.S. and five European countries

1. Removal of duplicated approaches

With respect to the Joint Statement announced by the U.S. and five European countries (FATCA partners) on February 8, 2012, a direction to build a framework which reduces burdens on practical operations as well as intergovernmental approaches for the implementation of FATCA to solve legal conflicts is adopted.

On the other hand, as part of a framework of the Joint Statement, each FATCA partner is supposed to agree with the following;

① Pursue the necessary implementing legislation to require FFIs in its jurisdiction to apply the necessary diligence to identify US accounts, and report to the authorities of the FATCA partner the required information

② Build a framework to transfer to the United States, on an automatic basis, the information reported by the FFIs.

Even if countries other than these five are willing to build a framework with the U.S. that is similar to this intergovernmental agreement, it is expected to build something equivalent to ① and ② above. However, it would take such a considerable time for each country to build a domestic reporting system. It is easily assumed that such a framework may not be available by the effective date of the FFI Agreement and the commencement of withholding procedures.

In this case, it turns all in vain for FFIs to have duplicated labor and costs if financial institutions develop an elaborated system by concluding FFI Agreement with the IRS in 2013, and later they have to develop the system again suitable to the framework of intergovernmental agreement.

Accordingly, JSDA requests that those FFIs, for instance, "FFIs for pending intergovernmental agreement," be treated as certified deemed-compliant and that a transitional grace period be allowed to enter into contracts with the IRS if governments of such countries show intentions to discuss a framework of intergovernmental agreement with the U.S..

Further, with respect to the transitional grace period, JSDA requests for sufficient time by considering the time that an agreement is concluded between authorities, and that a framework within Japan is realized and practically operated. Namely, JSDA requests that the transitional grace period shall be calculated from the later of the date that a framework of intergovernmental agreement is implemented or that a domestic system is implemented well.

2. Treatment in which group member is in a country not entering into intergovernmental agreement

If group members are organized in both a FATCA partner country and a non FATCA partner country, JSDA requests to relax the requirement of local FFI, “all members are organized in the same country,” so that companies in a non FATCA partner country can become local FFIs.

## Ⅳ. Conclusion

Residents in Japan are reasonably taxed on capital gains, dividends, and interests in relation to securities trading. It is considerably a different situation in Japan compared to the situation in tax haven countries. JSDA believes that the incentive to perform securities trading through securities firms in Japan for the purpose of tax evasion committed by U.S. residents by using an inappropriate status of Japanese residency is extremely low.

Also, verification of identification at the time of payment of capital gain, which is subject to self-assessed separated taxation, is strictly performed in Japan as well as information reporting to the tax authority under the system of payment record.

Given such situations, many of the concepts of the proposed regulations still impose an enormous burden on securities firms in Japan. Accordingly, JSDA requests your further thoughts by considering our comments and requests explained above to build a better regime.

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

Sincerely yours,

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Hidemi Ijichi
Executive Officer, Japan Securities Dealers Association

CC:

Ms. Manal Corwin
International Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Mr. Michael Danilack
Deputy Commissioner (International)
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Mr. Steven A. Musher
Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

John Sweeney
Office of Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024