Subcommittee on Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order

Follow-up to the meeting on 21 May 2014

Purpose

This paper sets out the Administration's responses to the issues raised by Members at the Subcommittee meeting on 21 May 2014.

Handling Requests for Exchange of Information ("EoI")

2. As a form of international tax cooperation, jurisdictions conduct EoI for the purposes of enhancing tax transparency and preventing fiscal evasion. However, jurisdictions are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. It is the international standard drawn up by the Organisation for Economic Cooperation and Development ("OECD") that EoI requests have to be **foreseeably relevant** to the administration and enforcement of the laws of the applicant party concerning taxes covered by the comprehensive avoidance of double taxation agreements ("CDTAs") or tax information exchange agreements ("TIEAs"). The requested party is **not** obligated to provide information in response to requests which are "**fishing expeditions**", i.e. speculative requests that have no apparent nexus to a tax inquiry or investigation.

3. In the case of Hong Kong, we have all along adopted a **highly stringent approach** in handling EoI requests made pursuant to CDTAs to ensure that the overriding prerequisite of meeting the standard of "foreseeable relevance" is satisfied before any information is to be exchanged. We would follow the same stringent approach in handling EoI requests pursuant to TIEAs, with highlights as follows -

(a) For each and every EoI request received, Hong Kong's competent authority (i.e. the Inland Revenue Department ("IRD")) will in the first instance examine whether the standard of "foreseeable relevance" is met, having regard to the **conditions** laid down in the relevant TIEAs and the **checklist** of

particulars that the applicant party has to provide in lodging its EoI request, as stipulated under the Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) ("the Disclosure Rules");

(b) IRD will **not** simply rely on **claims** made by the applicant party but will also examine carefully the **supporting evidence and facts of proof** provided by the applicant party in order to decide whether the information sought is foreseeably relevant to the determination of the tax liability of the person under examination by the applicant party; and

(c) If the evidence provided is not sufficiently clear and specific to show that the information requested is foreseeably relevant to the enforcement of the applicant party's tax laws, IRD will not entertain the EoI request. Neither will IRD accede to frivolous EoI requests made by the applicant party.

4. For the period between 2009 and April 2014, IRD did not provide information in relation to 17 EoI requests as the applicant parties failed to demonstrate the "foreseeable relevance" of the information requested. There are so far no cases where the subjects of EoI requests have objected to IRD's disclosure of relevant information to the applicant parties or have requested IRD to amend the information to be disclosed. Nor are there any cases where the subjects of EoI requests have challenged IRD's decisions on information disclosure by applying for judicial review or taking other legal proceedings.

EoI Mechanism under the TIEA between Hong Kong and the United States of America ("HK/US TIEA")

5. Up till now, Hong Kong has signed a total of 29 CDTAs, all of which provide for an EoI mechanism which does not restrict the scope of information to be exchanged to financial information held by financial institutions. The EoI mechanism under CDTAs has been running smoothly and IRD has not encountered any concrete cases of data holders being aggrieved to provide the requested information.

6. **The EoI arrangement under the HK/US TIEA is essentially**

the same as that under CDTAs, and is on par with the international standard. Article 5(5) of the HK/US TIEA, which is generally based on the OECD's model agreement with some modifications, sets out the requirements on the particulars that the applicant party shall provide to the requested party to demonstrate the "foreseeable relevance" of the requested information to the administration or enforcement of the applicant party's tax laws. The requirements are intended to ensure that EoI requests lodged are clear, specific and consistent with the OECD standard. As mentioned above, before acceding to EoI requests lodged by the US, IRD will make a fair and cautious assessment of the validity of each request, with reference to the evidence and facts of proof provided by the US to ascertain the foreseeable relevance of the information requested or whether the information is in possession or control of a person within the jurisdiction of Hong Kong. Furthermore, IRD will ensure that the rights and interests of taxpayers are securely protected by the safeguards provided under the terms of the HK/US TIEA and the provisions of the Disclosure Rules.

7. As stipulated in Article 7 of the HK/US TIEA, any information received by a Contracting Party shall be treated confidential and may be disclosed only to persons or authorities (including courts and administrative bodes) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the agreement; and such persons or authorities shall use such information only for such purposes. **There is no provision in the HK/US TIEA allowing for use of information exchanged for non-tax purposes**. Accordingly, under the HK/US TIEA, no commercial information exchanged can be disclosed or referred to other enforcement authorities not performing the above-mentioned purposes.

8. As regards the mechanism to resolve disputes, Article 9 of the HK/US TIEA provides for the mutual agreement procedure to deal with difficulties or doubts regarding the implementation or interpretation of the TIEA. It also provides the flexibility for the contracting parties to communicate with each other directly to reach a mutual agreement.

Significance of the HK/US TIEA

9. Entering into a TIEA with the US fulfills Hong Kong's international obligation in enhancing tax transparency. It also enables the early conclusion of an intergovernmental agreement ("IGA") with the US to facilitate financial institutions' compliance with the US Foreign Account Tax Compliance Act ("FATCA"), because the IGA needs to be underpinned by an EoI agreement (be it CDTA or TIEA). During the TIEA negotiations with the US, we have made best endeavours to secure terms which are most favourable to Hong Kong's interest, including exclusion of the article on tax examinations abroad, adoption of a positive listing approach in relation to tax types covered and time limitation on disclosure of information.

10. In the unfortunate event that the Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order ("the Order") is repealed by the Legislative Council, it will inevitably call into question whether Hong Kong remains committed to supporting international move to enhance tax transparency. The most imminent adverse consequence is that Hong Kong could not proceed to conclude the IGA with the US on the necessary basis of having a TIEA in place, rendering financial institutions in Hong Kong having to deal with more onerous compliance burden under FATCA without an IGA. In practical terms, even if the Order is repealed, we do not see any prospect of the US agreeing to adopt a formulation distinct from the OECD's model agreement. As mentioned at the Subcommittee meeting on 21 May 2014, any major deviations from the OECD's model agreement, such as limiting the scope of information to be exchanged to information held by financial institutions only, will run the risk of the TIEA not being internationally regarded as a compliant EoI agreement.

Supplementary Information on FATCA

11. While we are not in a position to ascertain the number of US taxpayers in Hong Kong, we note from reports published by the Census and Statistics Department that there were 16 742 US nationals in Hong Kong in 2011 and 1 339 companies representing parent companies located in the US in 2013.

12. A template published by the US Department of the Treasury in relation to a Model 2 IGA for the implementation of FATCA and a sample "Foreign Financial Institution Agreement" published by the US Internal Revenue Service are at **Annexes A and B** (English version only) respectively. We have summarised the major provisions in relation to this Model 2 IGA which Hong Kong is pursuing with the US in Annex B to LC Paper No. CB(1)1463/13-14(02).

13. As regards the exemption or simplification of the reporting requirements, the IGA will contain provisions to treat registered financial institution with a local client base satisfying relevant prescribed requirements as a "registered deemed-compliant foreign financial institution" for the purposes of relevant FATCA rules. In the case of Hong Kong, this will mean, in essence, a local financial institution, which does not have a fixed place of business outside of Hong Kong and the Mainland, and which maintains at least 98% of financial accounts, by value, held by residents of Hong Kong and the Mainland. To qualify for the exemption, this type of "local financial institutions" will still have to register with the US Internal Revenue Service, and must have procedures in place to monitor whether the institution opens or maintains a financial account for any US taxpayers who are not a resident of Hong Kong.

Financial Services and the Treasury Bureau
May 2014

 Annex A

Agreement between the Government of the United States of America and the Government of [FATCA Partner] for Cooperation to Facilitate the Implementation of FATCA

Whereas, the Government of the United States of America and the Government of [FATCA Partner] (each, a "Party," and together, the "Parties") seek to build on their existing relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve their cooperation in combating international tax evasion;

Whereas, [Article [] of the Tax Information Exchange Agreement between the United States and [FATCA Partner] signed . . . .]/[Article [] of the Convention between the United States and [FATCA Partner] for the Avoidance of Double Taxation with Respect to Taxes on Income, signed ….]/[the Convention on Mutual Administrative Assistance in Tax Matters] (the ["Convention"]/["TIEA"]), done at [__] on [__][1] authorizes the exchange of information for tax purposes;

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act ("FATCA"), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Government of [FATCA Partner] is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that [FATCA Partner] financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, intergovernmental cooperation to facilitate FATCA implementation would address these issues and reduce burdens for [FATCA Partner] financial institutions;

Whereas, the Parties desire to conclude an agreement to provide for cooperation to facilitate the implementation of FATCA based on direct reporting by [FATCA Partner] financial institutions to the U.S. Internal Revenue Service, supplemented by the exchange of information upon request pursuant to the [Convention/TIEA], and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the [Convention/TIEA];

Now, therefore, the Parties have agreed as follows:

Article 1
Definitions

1. For purposes of this agreement and any annexes thereto ("Agreement"), the following

[1] [Select the appropriate instrument to serve a legal basis for the exchange of information. Instruments that are not in force generally cannot be referenced as the legal basis for the exchange of information. Note that only the Convention on Mutual Administrative Assistance in Tax Matters done at Strasbourg on 25 January 1988 is currently in force in the United States. The Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters done at Paris on May 27, 2010 is not yet in force in the United States and thus cannot serve a legal basis for the exchange of information.]

terms shall have the meanings set forth below:

a) The term **"United States"** means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a "**State**" of the United States includes the District of Columbia.[2]

b) The term **"U.S. Territory"** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

c) The term **"IRS"** means the U.S. Internal Revenue Service.

d) The term **"[FATCA Partner]"** means [full name of FATCA Partner][, including ____][, but not including ____].[3]

e) The term **"Partner Jurisdiction"** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.

f) The term **"Competent Authority"** means:

1) in the case of the United States, the Secretary of the Treasury or his delegate; and

2) in the case of [FATCA Partner], […].[4]

g) The term **"Financial Institution"** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

h) The term "**Foreign Reportable Amount**" means, in accordance with relevant U.S. Treasury Regulations, a payment of fixed or determinable annual or periodical income that would be a withholdable payment if it were from sources within the United States.

i) The term **"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

j) The term **"Depository Institution"** means any Entity that accepts deposits in

[2] [The United States prefers not to include a geographic description of the parties as this is unnecessary.]

[3] [The United States prefers not to include a geographic description of the parties as this is unnecessary; an example of a political definition is "Mexico means the United Mexican States."]

[4] [Include the FATCA Partner Competent Authority.]

the ordinary course of a banking or similar business.

k) The term **"Investment Entity"** means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

2) individual and collective portfolio management; or

3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(k) shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

l) The term **"Specified Insurance Company"** means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

m) The term **"[FATCA Partner] Financial Institution"** means (i) any Financial Institution [resident in]/[organized under the laws of][5] [FATCA Partner], but excluding any branch of such Financial Institution that is located outside [FATCA Partner], and (ii) any branch of a Financial Institution not [resident in]/[organized under the laws of] [FATCA Partner], if such branch is located in [FATCA Partner].

n) The term **"Partner Jurisdiction Financial Institution"** means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.

o) The term **"Reporting [FATCA Partner] Financial Institution"** means any [FATCA Partner] Financial Institution that is not a Non-Reporting [FATCA Partner] Financial Institution.

p) The term **"Non-Reporting [FATCA Partner] Financial Institution"** means any [FATCA Partner] Financial Institution, or other Entity resident in [FATCA Partner], that is described in Annex II as a Non-Reporting [FATCA Partner] Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations [in effect on

[5] [Select the appropriate classification for Financial Institutions to be treated as FATCA Partner Financial Institutions, either based on their place of residence or place of organization. This decision is usually made based on the appropriate concept under FATCA Partner's tax laws, and where there is no such concept, the legal organization test is generally chosen.]

the date of signature of this Agreement].[6]

q) The term **"Nonparticipating Financial Institution"** means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 4 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.

r) The term **"New Account"** means a Financial Account opened by a Reporting [FATCA Partner] Financial Institution on or after July 1, 2014.

s) The term **"U.S. Account"** means a Financial Account maintained by a Reporting [FATCA Partner] Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Account if such account is not identified as a U.S. Account after application of the due diligence procedures in Annex I.

t) The term "**Non-Consenting U.S. Account"** means a Financial Account maintained by a Reporting [FATCA Partner] Financial Institution as of June 30, 2014 with respect to which (i) a Reporting [FATCA Partner] Financial Institution has determined that it is a U.S. Account in accordance with the due diligence procedures in Annex I, (ii) the laws of [FATCA Partner] prohibit the reporting required under an FFI Agreement absent consent of the Account Holder, (iii) the Reporting [FATCA Partner] Financial Institution has sought, but was unable to obtain, the required consent to report or the Account Holder's U.S. TIN; and (iv) the Reporting [FATCA Partner] Financial Institution has reported, or was required to report, aggregate account information to the IRS as prescribed under sections 1471 to 1474 of the U.S. Internal Revenue Code and relevant U.S. Treasury Regulations.

u) The term **"Financial Account"** has the meaning set forth in relevant U.S. Treasury Regulations, but does not include any account that is excluded from the definition of Financial Account in Annex II.

v) The term **"FFI Agreement"** means an agreement that sets forth the requirements, consistent with this Agreement, for the Reporting [FATCA Partner] Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code.

w) The term **"Account Holder**" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the

[6] [Some of our partner jurisdictions have expressed the need for a static definition of Non-Reporting FATCA Partner Financial Institution, even though we believe that a dynamic approach is preferred to provide flexibility. The bracketed language has been included to accommodate jurisdictions that have a need for a static definition.]

account. For purposes of the immediately preceding sentence, the term "Financial Institution" does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

x) The terms "**Cash Value Insurance Contract"** and **"Annuity Contract"** have the meanings set forth in relevant U.S. Treasury Regulations.

y) The term **"U.S. Person"** means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(y) shall be interpreted in accordance with the U.S. Internal Revenue Code.

z) The term **"Specified U.S. Person"** means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

aa) The term **"Entity"** means a legal person or a legal arrangement such as a trust.

bb) The term **"Non-U.S. Entity"** means an Entity that is not a U.S. Person.

cc) An Entity is a **"Related Entity"** of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, [FATCA Partner] may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.

dd) The term **"U.S. TIN"** means a U.S. federal taxpayer identifying number.

ee) The term **"Controlling Persons"** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 2
Reporting and Exchange of Information

1. **Directive to [FATCA Partner] Financial Institutions.** [FATCA Partner] shall direct and enable all Reporting [FATCA Partner] Financial Institutions to:

a) register on the IRS FATCA registration website with the IRS by July 1, 2014, and comply with the requirements of an FFI Agreement, including with respect to due diligence, reporting, and withholding;

b) with respect to Financial Accounts maintained by Reporting [FATCA Partner] Financial Institutions as of June 30, 2014 identified as U.S. Accounts,

(i) request from each Account Holder the Account Holder's U.S. TIN and consent to report [and simultaneously inform the Account Holder in writing that, if the U.S. TIN and consent are not given, (1) aggregate information about the account shall be reported to the IRS, (2) information about the account may give rise to a group request by the IRS for specific information about the account, (3) in such case, the account information shall be transmitted to the [FATCA Partner] tax administration, and (4) the [FATCA Partner] tax administration may exchange this information with the IRS in

accordance with paragraph 2 of this Article];[7]

(ii) report annually to the IRS, in the time and manner required by an FFI Agreement and relevant U.S. Treasury Regulations, the aggregate information required with respect to Non-Consenting U.S. Accounts;

c) with respect to accounts of, or obligations to, Nonparticipating Financial Institutions that exist as of June 30, 2014, and in connection with which the Reporting [FATCA Partner] Financial Institution expects to pay a Foreign Reportable Amount,

(i) with respect to calendar years 2015 and 2016, request from each such Nonparticipating Financial Institution the Nonparticipating Financial Institution's consent to report [and simultaneously inform the Nonparticipating Financial Institution in writing that, if such consent is not given, (1) aggregate information about Foreign Reportable Amounts paid to the Nonparticipating Financial Institution shall be reported to the IRS, (2) such information may give rise to a group request by the IRS for specific information about the account or obligation, (3) in such case, the information about the account or obligation shall be transmitted to the [FATCA Partner] tax administration, and (4) the [FATCA Partner] tax administration may exchange this information with the IRS in accordance with paragraph 2 of this Article];[8]

(ii) with respect to calendar years 2015 and 2016, report to the IRS the number of non-consenting Nonparticipating Financial Institutions to which Foreign Reportable Amounts were paid during the year and the aggregate value of all such payments no later than March 15 of the year following the year to which the information relates;

d) with respect to New Accounts identified as U.S. Accounts, obtain from each Account Holder consent to report, consistent with the requirements of an FFI Agreement, as a condition of account opening; and

e) with respect to new accounts opened by, or obligations entered into with, a Nonparticipating Financial Institution on or after July 1, 2014, and in connection with which the Reporting [FATCA Partner] Financial Institution expects to pay a Foreign Reportable Amount, obtain from each such Nonparticipating Financial Institution consent to report, consistent with the requirements of an FFI Agreement, as a condition of opening the account, or entering into the obligation.

2. **Exchange of Information.**

[7] [The bracketed language would be included in agreements with jurisdictions where such notification is required.]

[8] [See footnote 7.]

a) In the context of FATCA implementation, the U.S. Competent Authority may make group requests to the [FATCA Partner] Competent Authority based on the aggregate information reported to the IRS pursuant to the directive described in subparagraphs 1(b)(ii) and 1(c)(ii) of this Article, for all the information about Non-Consenting U.S. Accounts and Foreign Reportable Amounts paid to Nonparticipating Financial Institutions that the Reporting [FATCA Partner] Financial Institution would have had to report under an FFI Agreement had it obtained consent. Such requests shall be made pursuant to Article []{9} of the [Convention/TIEA] and shall apply to information for the time period beginning on or after the date of signature of this Agreement.

b) The information requested pursuant to subparagraph 2(a) of this Article shall be considered information that [may be relevant]/[is foreseeably relevant]/[is necessary]{10} for carrying out the administration or enforcement of the domestic laws of the United States concerning taxes covered by the [Convention/TIEA] and under which taxation is not contrary to the [Convention/TIEA], without regard to whether the Reporting [FATCA Partner] Financial Institution or another party has contributed to non-compliance of the taxpayers in the group request.

c) The [FATCA Partner] Competent Authority shall, within six months of the receipt of the group request, provide the U.S. Competent Authority with all such requested information in the same format in which the information would have been reported if it had been reported directly to the IRS by the Reporting [FATCA Partner] Financial Institution. The [FATCA Partner] Competent Authority shall notify the U.S. Competent Authority and the relevant Reporting [FATCA Partner] Financial Institution if there will be any delay in the exchange of the requested information. In such case, the provisions of subparagraph 2(b) of Article 3 of this Agreement shall apply with respect to the Reporting [FATCA Partner] Financial Institution, and the [FATCA Partner] Competent Authority must exchange the requested information with the U.S. Competent Authority as soon as possible.

d) Notwithstanding subparagraph 2(c) of this Article, the [FATCA Partner] Competent Authority is not required to obtain and exchange the U.S. TIN of the Account Holder of a Non-Consenting U.S. Account if such U.S. TIN is not in the records of the Reporting [FATCA Partner] Financial Institution. In such a case, the [FATCA Partner] Competent Authority shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting [FATCA Partner] Financial Institution has such date of birth in its records.

Article 3
Application of FATCA to [FATCA Partner] Financial Institutions

1. **Treatment of Reporting [FATCA Partner] Financial Institutions.** Subject to the provisions of paragraph 2 of Article 4 of this Agreement, each Reporting [FATCA Partner]

[9] [Include the appropriate Article of the applicable Convention or TIEA.]

[10] [Include the relevant language from the applicable Convention or TIEA.]

Financial Institution that registers with the IRS on the IRS FATCA registration website and complies with the terms of an FFI Agreement shall be treated as complying with the requirements of, and as not subject to withholding under, section 1471 of the U.S. Internal Revenue Code.

2. **Suspension of Rules Relating to Non-Consenting U.S. Accounts.**

a) Subject to subparagraph 2(b) of this Article, the United States shall not require a Reporting [FATCA Partner] Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if:

(i) the Reporting [FATCA Partner] Financial Institution complies with the directives in paragraph 1 of Article 2 of this Agreement with respect to the account; and

(ii) the [FATCA Partner] Competent Authority exchanges with the U.S. Competent Authority the requested information described in subparagraph 2(a) of Article 2 of this Agreement within six months from the date of the receipt of such request.

b) If the condition of subparagraph 2(a)(ii) of this Article is not fulfilled, the Reporting [FATCA Partner] Financial Institution shall be required to treat the account as held by a recalcitrant account holder as defined in relevant U.S. Treasury Regulations, including by withholding tax where required by those U.S. Treasury Regulations, beginning on the date that is six months after the date of the receipt of the request described in subparagraph 2(a) of Article 2 of this Agreement and ending on the date on which the [FATCA Partner] Competent Authority exchanges the requested information with the U.S. Competent Authority.

3. **Specific Treatment of [FATCA Partner] Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, [FATCA Partner] retirement plans described in Annex II. For this purpose, a [FATCA Partner] retirement plan includes an Entity established or located in, and regulated by, [FATCA Partner], or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of [FATCA Partner] and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

4. **Identification and Treatment of Other Deemed Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting [FATCA Partner] Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a [FATCA Partner] Financial Institution, that otherwise meets the requirements described in Article 2 of this Agreement or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating

FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such [FATCA Partner] Financial Institution shall continue to be treated as a participating FFI, deemed-compliant FFI, or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

a) the [FATCA Partner] Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;

b) each such Related Entity or branch identifies its U.S. accounts and reports to the IRS the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and

c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the [FATCA Partner] Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

6. **Coordination of Definitions with U.S. Treasury Regulations.** Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, [FATCA Partner] may use, and may permit [FATCA Partner] Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

Article 4
Verification and Enforcement

1. **Minor and Administrative Errors.** Consistent with the terms of an FFI Agreement, the U.S. Competent Authority may make an inquiry directly to a Reporting [FATCA Partner] Financial Institution where it has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting inconsistent with the requirements of an FFI Agreement. [The competent authority agreement or arrangement may provide that the U.S. Competent Authority would notify the [FATCA Partner] Competent Authority when the U.S. Competent Authority makes such an inquiry of a Reporting [FATCA Partner] Financial Institution regarding the Reporting [FATCA Partner] Financial Institution's compliance with the conditions set forth in this Agreement.][11]

2. **Significant Non-Compliance.** The U.S. Competent Authority shall notify the

[11] [Consider whether the competent authority agreement or arrangement should provide for this notification described in the bracketed language.]

[FATCA Partner] Competent Authority when the U.S. Competent Authority has determined that there is significant non-compliance with the requirements of an FFI Agreement or this Agreement with respect to a Reporting [FATCA Partner] Financial Institution. If the non-compliance is not resolved within a period of 12 months after notification of significant non-compliance is first provided by the U.S. Competent Authority, the United States shall treat the Reporting [FATCA Partner] Financial Institution as a Nonparticipating Financial Institution pursuant to this paragraph 2.

3. **Competent Authority [Consultation]/[Agreement or Arrangement].** [The Competent Authorities of [FATCA Partner] and the United States may consult on notified cases of significant non-compliance pursuant to paragraph 2 of this Article.]/[The Competent Authorities of [FATCA Partner] and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article []¹² of the Convention which shall:

a) establish the procedures for the exchange of information described in paragraph 2 of Article 2 of this Agreement; and

b) prescribe rules and procedures as may be necessary to implement this Article.]¹³

4. **Reliance on Third Party Service Providers.** In accordance with the provisions of an FFI Agreement and relevant U.S. Treasury Regulations, Reporting [FATCA Partner] Financial Institutions may use third party service providers to fulfill the requirements of an FFI Agreement, but these requirements shall remain the responsibility of the Reporting [FATCA Partner] Financial Institutions.

[Article 5
Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency

1. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

2. **Development of Common Reporting and Exchange Model.** The Parties are committed to working with Partner Jurisdictions and the Organisation for Economic Co-operation and Development on adapting the terms of this Agreement and other agreements between the United States and Partner Jurisdictions to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.]¹⁴

Article 6
Consistency in the Application of FATCA to Partner Jurisdictions

[12] [Include the appropriate Article of the applicable Convention or TIEA.]

[13] [Consider whether the Competent Authorities want to consult on cases of significant non-compliance or enter into an agreement or arrangement prescribing the rules and procedures to implement Art. 4 and the procedures for exchange of information described in para. 2 of Art. 2.]

[14] [Consider whether to include this Art. 5.]

1. [FATCA Partner] shall be granted the benefit of any more favorable terms under Article 3 or Annex I of this Agreement relating to the application of FATCA to [FATCA Partner] Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as [FATCA Partner] described in Article 2 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 4, 6, 8, and 9 of this Agreement.

2. The United States shall notify [FATCA Partner] of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of the entry into force of the agreement incorporating the more favorable terms, unless [FATCA Partner] declines the application thereof.

[Article 7
Reciprocal Information Exchange

Consistent with its obligations under the Convention, the United States shall continue to cooperate with [FATCA Partner] to respond to requests pursuant to the Convention to collect and exchange information on accounts held in U.S. financial institutions by residents of [FATCA Partner]. In addition, when and to the extent [FATCA Partner] seeks to collaborate with the United States to implement FATCA based on direct reporting by [FATCA Partner] Financial Institutions to the Government of [FATCA Partner], followed by the transmission of such information to the United States, the United States is willing to negotiate such an agreement [on a reciprocal basis] on the same terms and conditions as similar agreements concluded with Partner Jurisdictions, subject to the Parties having determined that the standards of confidentiality and other prerequisites for such cooperation are fulfilled.][15]

Article 8
Consultations and Amendments

1. In case any difficulties in the implementation or interpretation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.

2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 10 of this Agreement.

Article 9
Annexes

The Annexes form an integral part of this Agreement.

Article 10
Term of Agreement

1. This Agreement shall enter into force on the date of [FATCA Partner]'s written notification to the United States that [FATCA Partner] has completed its necessary internal

[15] [Consider whether to include this Art. 7.]

procedures for entry into force of this Agreement.

2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at [_____], in duplicate, in the English and [FATCA Partner] languages,[16] both texts being equally authentic, this [__] day of [_____], 20[__].

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF [FATCA PARTNER]:

[16] [Note that it is possible to sign in English, with an official FATCA Partner language version agreed at a later date. This permits signature at an earlier date and was the approach taken by Switzerland.]

ANNEX I

DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS

I. **General.**

A. Reporting [FATCA Partner] Financial Institutions must identify U.S. Accounts and accounts held by Nonparticipating Financial Institutions in accordance with the due diligence procedures contained in this Annex I.

B. For purposes of the Agreement,

1. All dollar amounts are in U.S. dollars and shall be read to include the equivalent in other currencies.

2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year, or in the case of a Cash Value Insurance Contract or an Annuity Contract, as of the last day of the calendar year or the most recent contract anniversary date.

3. Subject to subparagraph E(1) of section II of this Annex I, an account shall be treated as a U.S. Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

4. Unless otherwise provided, information with respect to a U.S. Account must be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in each section of this Annex I, Reporting [FATCA Partner] Financial Institutions may rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Account or an account held by a Nonparticipating Financial Institution, except that if an account is treated as held by a recalcitrant account holder under procedures described in relevant U.S. Treasury Regulations, such account shall be treated as a U.S. Account for purposes of this Agreement. Reporting [FATCA Partner] Financial Institutions may make such election separately for each section of this Annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained). Except as otherwise provided in an FFI Agreement, once a Reporting [FATCA Partner] Financial Institution has chosen to rely on the procedures in relevant U.S. Treasury Regulations with respect to any group of accounts, such Reporting [FATCA Partner] Financial Institution must continue to apply such procedures consistently in all subsequent years, unless there has been a material modification to relevant U.S. Treasury Regulations.

II. **Preexisting Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts among Preexisting Accounts held by individuals ("Preexisting Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting [FATCA Partner] Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified group of such accounts, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as U.S. Accounts:

1. Subject to subparagraph E(2) of this section, a Preexisting Individual Account with a balance or value that does not exceed $50,000 as of June 30, 2014.

2. Subject to subparagraph E(2) of this section, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of $250,000 or less as of June 30, 2014.

3. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of [FATCA Partner] or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (*e.g.*, if the relevant Financial Institution does not have the required registration under U.S. law, and the law of [FATCA Partner] requires reporting or withholding with respect to insurance products held by residents of [FATCA Partner]).

4. A Depository Account with a balance of $50,000 or less.

B. **Review Procedures for Preexisting Individual Accounts With a Balance or Value as of June 30, 2014, that Exceeds $50,000 ($250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed $1,000,000 ("Lower Value Accounts").**

1. **Electronic Record Search.** The Reporting [FATCA Partner] Financial Institution must review electronically searchable data maintained by the Reporting [FATCA Partner] Financial Institution for any of the following U.S. indicia:

a) Identification of the Account Holder as a U.S. citizen or resident;

b) Unambiguous indication of a U.S. place of birth;

c) Current U.S. mailing or residence address (including a U.S. post office box);

d) Current U.S. telephone number;

e) Standing instructions to transfer funds to an account maintained in the United States;

f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or

g) An "in-care-of" or "hold mail" address that is the ***sole*** address the Reporting [FATCA Partner] Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an "in-care-of" address outside the United States or "hold mail" address shall not be treated as U.S. indicia.

2. If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account, or the account becomes a High Value Account described in paragraph D of this section.

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B(1) of this section, a Reporting [FATCA Partner] Financial Institution is not required to treat an account as a U.S. Account if:

a) Where the Account Holder information unambiguously indicates a ***U.S. place of birth***, the Reporting [FATCA Partner] Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) A non-U.S. passport or other government-issued identification evidencing the Account Holder's citizenship or nationality in a country other than the United States; ***and***

(3) A copy of the Account Holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; ***or***

(b) The reason the Account Holder did not obtain U.S. citizenship at birth.

b) Where the Account Holder information contains a ***current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account***, the Reporting [FATCA Partner] Financial Institution obtains, or has

previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***and***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

c) Where the Account Holder information contains ***standing instructions to transfer funds to an account maintained in the United States,*** the Reporting [FATCA Partner] Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***and***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

d) Where the Account Holder information contains ***a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account)***, the Reporting [FATCA Partner] Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); **or**

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

C. **Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts.**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed by June 30, 2016.

2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting [FATCA Partner] Financial Institution

must treat the account as a U.S. Account unless subparagraph B(4) of this section applies.

3. Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Account under this section shall be treated as a U.S. Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

D. **Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds $1,000,000 as of June 30, 2014, or December 31 of 2015 or Any Subsequent Year ("High Value Accounts").**

1. **Electronic Record Search.** The Reporting [FATCA Partner] Financial Institution must review electronically searchable data maintained by the Reporting [FATCA Partner] Financial Institution for any of the U.S. indicia described in subparagraph B(1) of this section.

2. **Paper Record Search.** If the Reporting [FATCA Partner] Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph D(3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting [FATCA Partner] Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting [FATCA Partner] Financial Institution within the last five years for any of the U.S. indicia described in subparagraph B(1) of this section:

a) The most recent documentary evidence collected with respect to the account;

b) The most recent account opening contract or documentation;

c) The most recent documentation obtained by the Reporting [FATCA Partner] Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

d) Any power of attorney or signature authority forms currently in effect; and

e) Any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting [FATCA Partner] Financial Institution is not required to perform the paper record search described in subparagraph D(2) of this section if the Reporting [FATCA Partner] Financial Institution's electronically searchable information includes the following:

a) The Account Holder's nationality or residence status;

b) The Account Holder's residence address and mailing address currently on file with the Reporting [FATCA Partner] Financial Institution;

c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting [FATCA Partner] Financial Institution;

d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting [FATCA Partner] Financial Institution or another Financial Institution);

e) Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; ***and***

f) Whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting [FATCA Partner] Financial Institution must treat as a U.S. Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Specified U.S. Person.

5. **Effect of Finding U.S. Indicia.**

a) If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D(4) of this section, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.

b) If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

c) Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Account under this section shall be treated as a U.S. Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

E. **Additional Procedures Applicable to High Value Accounts.**

1. If a Preexisting Individual Account is a High Value Account as of June 30, 2014, the Reporting [FATCA Partner] Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account by June 30, 2015. If based on this review such account is identified as a U.S. Account on or before December 31, 2014, the Reporting [FATCA Partner] Financial Institution must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Account after December 31, 2014 and on or before June 30, 2015, the Reporting [FATCA Partner] Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Preexisting Individual Account is not a High Value Account as of June 30, 2014, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting [FATCA Partner] Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Account, the Reporting [FATCA Partner] Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified U.S. Person.

3. Once a Reporting [FATCA Partner] Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting [FATCA Partner] Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph D(4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

5. A Reporting [FATCA Partner] Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting [FATCA Partner] Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(4) of this section, is required to obtain the appropriate documentation from the Account Holder.

F. **Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes.** A Reporting [FATCA Partner] Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfill its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in subparagraph B(1) of this section with respect to Lower Value Accounts or subparagraphs D(1) through D(3) of this section with respect to High Value Accounts.

III. **New Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts among Financial Accounts held by individuals and opened on or after July 1, 2014 ("New Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting [FATCA Partner] Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, the following New Individual Accounts are not required to be reviewed, identified, or reported as U.S. Accounts:

1. A Depository Account unless the account balance exceeds $50,000 at the end of any calendar year.

2. A Cash Value Insurance Contract unless the cash value exceeds $50,000 at the end of any calendar year.

B. **Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting [FATCA Partner] Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting [FATCA Partner] Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting [FATCA Partner] Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

1. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account and obtain a self-certification that includes the Account Holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).

2. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting [FATCA Partner] Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting [FATCA Partner] Financial Institution cannot rely on

the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting [FATCA Partner] Financial Institution is unable to obtain a valid self-certification, the Reporting [FATCA Partner] Financial Institution must treat the account as a Non-Consenting U.S. Account.

IV. **Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts and accounts held by Nonparticipating Financial Institutions among Preexisting Accounts held by Entities ("Preexisting Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting [FATCA Partner] Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an account balance or value that does not exceed $250,000 as of June 30, 2014, is not required to be reviewed, identified, or reported as a U.S. Account until the account balance or value exceeds $1,000,000.

B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds $250,000 as of June 30, 2014, and a Preexisting Entity Account that does not exceed $250,000 as of June 30, 2014 but the account balance or value of which exceeds $1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D of this section.

C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, shall be treated as U.S. Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments are required to be reported under an FFI Agreement.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting [FATCA Partner] Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by Nonparticipating Financial Institutions:

1. **Determine Whether the Entity Is a Specified U.S. Person.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a U.S. Person. For this purpose, information indicating that the Account Holder is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

b) If the information indicates that the Account Holder is a U.S.

Person, the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified U.S. Person.

2. **Determine Whether a Non-U.S. Entity Is a Financial Institution.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a Financial Institution.

b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting [FATCA Partner] Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a U.S. Account.

3. **Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Consistent with the Requirements of an FFI Agreement.**

a) Subject to subparagraph D(3)(b) of this section, a Reporting [FATCA Partner] Financial Institution may determine that the Account Holder is a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting [FATCA Partner] Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting [FATCA Partner] Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

b) If the Account Holder is a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI Agreement.

c) If the Account Holder is not a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting [FATCA Partner] Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable consistent with the requirements of an FFI Agreement, unless the Reporting [FATCA Partner] Financial Institution:

(1) Obtains a self-certification (which may be on an IRS

Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; ***or***

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.

4. **Determine Whether an Account Held by an NFFE Is a U.S. Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting [FATCA Partner] Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting [FATCA Partner] Financial Institution must follow the guidance in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Account Holder, a Reporting [FATCA Partner] Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting [FATCA Partner] Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting [FATCA Partner] Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed $1,000,000; ***or***

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that exceeds $1,000,000.

d) If any Controlling Person of a Passive NFFE is a U.S. citizen or resident, the account shall be treated as a U.S. Account.

E. **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds $250,000 as of June 30, 2014 must be completed by June 30, 2016.

2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed $250,000 as of June 30, 2014, but exceeds $1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds $1,000,000.

3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting [FATCA Partner] Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting [FATCA Partner] Financial Institution must redetermine the status of the account in accordance with the procedures set forth in paragraph D of this section.

V. **New Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened on or after July 1, 2014 ("New Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting [FATCA Partner] Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting [FATCA Partner] Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds $50,000.

B. **Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting [FATCA Partner] Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B(2) of this section, a Reporting [FATCA Partner] Financial Institution may determine that the Account Holder is an Active NFFE, a [FATCA Partner] Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting [FATCA Partner] Financial

Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number or other information that is publicly available or in the possession of the Reporting [FATCA Partner] Financial Institution, as applicable.

2. If the Account Holder is a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI Agreement.

3. In all other cases, a Reporting [FATCA Partner] Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:

a) If the Account Holder is ***a Specified U.S. Person***, the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account.

b) If the Account Holder is ***a Passive NFFE***, the Reporting [FATCA Partner] Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting [FATCA Partner] Financial Institution must treat the account as a U.S. Account.

c) If the Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph B(3)(d) of this section, a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Account, and no reporting is required with respect to the account.

d) If the Account Holder is a Nonparticipating Financial Institution (including a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI Agreement.

VI. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting [FATCA Partner] Financial Institution may not rely on a self-certification or

documentary evidence if the Reporting [FATCA Partner] Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

1. **AML/KYC Procedures.** "AML/KYC Procedures" means the customer due diligence procedures of a Reporting [FATCA Partner] Financial Institution pursuant to the anti-money laundering or similar requirements of [FATCA Partner] to which such Reporting [FATCA Partner] Financial Institution is subject.

2. **NFFE.** An "NFFE" means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in [FATCA Partner] or another Partner Jurisdiction and that is not a Financial Institution.

3. **Passive NFFE.** A "Passive NFFE" means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

4. **Active NFFE.** An "Active NFFE" means any NFFE that meets any of the following criteria:

a) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market. For purposes of this Agreement, interests are "regularly traded" if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an "established securities market" means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange;

c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;

d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international

organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;

e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;

g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

i) The NFFE is an "excepted NFFE" as described in relevant U.S. Treasury Regulations; ***or***

j) The NFFE meets all of the following requirements:

i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

ii. It is exempt from income tax in its jurisdiction of residence;

iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; ***and***

v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

5. **Preexisting Account**. A "Preexisting Account" means a Financial Account maintained by a Reporting [FATCA Partner] Financial Institution as of June 30, 2014.

C. **Account Balance Aggregation and Currency Translation Rules.**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting [FATCA Partner] Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting [FATCA Partner] Financial Institution, or by a Related Entity, but only to the extent that the Reporting [FATCA Partner] Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph 1.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting [FATCA Partner] Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting [FATCA Partner] Financial Institution, or by a Related Entity, but only to the extent that the Reporting [FATCA Partner] Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting [FATCA Partner] Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has

reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. **Currency Translation Rule.** For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting [FATCA Partner] Financial Institution must convert the U.S. dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting [FATCA Partner] Financial Institution is determining the balance or value.

D. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:

1. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.

2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.

3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.

4. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.

5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

E. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract.** A Reporting [FATCA Partner] Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified U.S. Person and may treat such Financial Account as other than a U.S. Account unless the Reporting [FATCA Partner] Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting [FATCA Partner] Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified U.S. Person if the information collected by the Reporting

[FATCA Partner] Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph (B)(1) of section II of this Annex I. If a Reporting [FATCA Partner] Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person, the Reporting [FATCA Partner] Financial Institution must follow the procedures in subparagraph B(3) of section II of this Annex I.

F. **Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section I of this Annex I, Reporting [FATCA Partner] Financial Institutions may rely on due diligence procedures performed by third parties, to the extent provided in an FFI Agreement and relevant U.S. Treasury Regulations.

Annex II

The following Entities shall be treated as exempt beneficial owners or deemed-compliant FFIs, as the case may be, and the following accounts are excluded from the definition of Financial Accounts.[1]

This Annex II may be modified by a mutual written decision entered into between the Competent Authorities of [FATCA Partner] and the United States: (1) to include additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in this Annex II as of the date of signature of the Agreement; or (2) to remove Entities and accounts that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Any such addition or removal shall be effective on the date of signature of the mutual decision, unless otherwise provided therein. [Procedures for reaching such a mutual decision may be included in the mutual agreement or arrangement described in paragraph 3 of Article 4 of the Agreement.]

I. **Exempt Beneficial Owners other than Funds.** The following Entities shall be treated as Non-Reporting [FATCA Partner] Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, ***other than*** with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

A. **Governmental Entity.** The government of [FATCA Partner], any political subdivision of [FATCA Partner] (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of [FATCA Partner] or any one or more of the foregoing (each, a "[FATCA Partner] Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of [FATCA Partner].

[1] [The descriptions in this Annex II are a summary of the final U.S Treasury Regulations and include the modifications to the final regulations to which the United States Treasury is willing to agree. The United States Treasury no longer intends to separately list in Annex II to future intergovernmental agreements classes of Entities or accounts that are addressed by the descriptions herein. In addition, the United States Treasury no longer intends to list non-profit organizations or Entities that are not Financial Institutions. These types of Entities are described in subparagraphs B(2) through B(4) of section VI of Annex I. The descriptions in this Annex II reflect extensive consultation with financial institutions and governments, and therefore cannot be further modified solely to ease or eliminate a specific element of a description (*e.g.*, with respect the requirement that a Financial Institution with a local client base has at least 98 percent of its Financial Accounts by value as of the last day of the preceding calendar year held by residents (described in paragraph A of section III of this Annex II), the United States Treasury will not agree to a lower applicable percentage). The United States Treasury is, however, willing to discuss the application of this Annex II to Entities or accounts that do not satisfy all the requirements of a particular description listed herein. As part of such discussion, FATCA Partner must provide the United States Treasury with a specific written description of which requirements are satisfied and which are not satisfied, and with respect to the requirements that are not satisfied, must demonstrate the existence of a substitute requirement that provides equal assurance that such Entity or account presents a low-risk of tax evasion.]

1. An integral part of [FATCA Partner] means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of [FATCA Partner]. The net earnings of the governing authority must be credited to its own account or to other accounts of [FATCA Partner], with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

2. A controlled entity means an Entity that is separate in form from [FATCA Partner] or that otherwise constitutes a separate juridical entity, provided that:

   a) The Entity is wholly owned and controlled by one or more [FATCA Partner] Governmental Entities directly or through one or more controlled entities;

   b) The Entity's net earnings are credited to its own account or to the accounts of one or more [FATCA Partner] Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

   c) The Entity's assets vest in one or more [FATCA Partner] Governmental Entities upon dissolution.

3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government.[2] Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

B. **International Organization.** Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with [FATCA Partner]; and (3) the income of which does not inure to the benefit of private persons.

C. **Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of [FATCA Partner] itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that

[2] [The activities of a national social security scheme will generally be considered to be performed for the general public with respect to the common welfare. The income of a pension fund established to provide retirement benefits for employees of the government, however, generally will be considered to inure to a private person, although the pension fund may still be treated as an exempt beneficial owner under paragraph D of section II of this Annex II.]

is separate from the government of [FATCA Partner], whether or not owned in whole or in part by [FATCA Partner].

II. **Funds that Qualify as Exempt Beneficial Owners.** The following Entities shall be treated as Non-Reporting [FATCA Partner] Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.

A. [**Treaty-Qualified Retirement Fund.** A fund established in [FATCA Partner], provided that the fund is entitled to benefits under an income tax treaty between [FATCA Partner] and the United States on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of [FATCA Partner] that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.][3]

B. **Broad Participation Retirement Fund.** A fund established in [FATCA Partner] to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

1. Does not have a single beneficiary with a right to more than five percent of the fund's assets;

2. Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in [FATCA Partner]; and

3. Satisfies at least one of the following requirements:

a) The fund is generally exempt from tax in [FATCA Partner] on investment income under the laws of [FATCA Partner] due to its status as a retirement or pension plan;

b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through D of this section or from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) from the sponsoring employers;

c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs A through D of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II), or penalties apply to distributions or withdrawals made before such specified events; or

[3] [This paragraph would only be included where FATCA Partner and the United States have in effect an income tax treaty with such a provision.]

d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed $50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.

C. **Narrow Participation Retirement Fund.** A fund established in [FATCA Partner] to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

1. The fund has fewer than 50 participants;

2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;

3. The employee and employer contributions to the fund (other than transfers of assets from treaty-qualified retirement funds described in paragraph A of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) are limited by reference to earned income and compensation of the employee, respectively;

4. Participants that are not residents of [FATCA Partner] are not entitled to more than 20 percent of the fund's assets; and

5. The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in [FATCA Partner].

D. **Pension Fund of an Exempt Beneficial Owner.** A fund established in [FATCA Partner] by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

E. **Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a [FATCA Partner] Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

III. **Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.** The following Financial Institutions are Non-Reporting [FATCA Partner] Financial Institutions that shall be treated as registered deemed-compliant FFIs or certified deemed-compliant FFIs, as the case may be, for purposes of section 1471 of the U.S. Internal Revenue Code.

A. **Registered Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements is a Non-Reporting [FATCA Partner] Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of [FATCA Partner];

2. The Financial Institution must have no fixed place of business outside of [FATCA Partner]. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;

3. The Financial Institution must not solicit customers or Account Holders outside [FATCA Partner]. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside [FATCA Partner] merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within [FATCA Partner] but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;

4. The Financial Institution must be required under the laws of [FATCA Partner] to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying [FATCA Partner]'s AML due diligence requirements;

5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution as of the last day of the preceding calendar year must be held by residents (including residents that are Entities) of [FATCA Partner] [or a Member State of the European Union];[4]

6. Beginning on or before July 1, 2014, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of [FATCA Partner] (including a U.S. Person that was a resident of [FATCA Partner] when the Financial Account was opened but subsequently ceases to be a resident of [FATCA

[4] [The bracketed language would only be included where FATCA Partner is a Member State of the European Union.]

Partner]) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of [FATCA Partner];

7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. Person who is not a resident of [FATCA Partner] or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of [FATCA Partner] is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a Reporting [FATCA Partner] Financial Institution or close such Financial Account;

8. With respect to a Preexisting Account held by an individual who is not a resident of [FATCA Partner] or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S. Account or Financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a Reporting [FATCA Partner] Financial Institution or close such Financial Account;

9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in [FATCA Partner] and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II, satisfy the requirements set forth in this paragraph A;

10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of [FATCA Partner]; and

11. The Financial Institution must satisfy the requirements set forth in paragraph C of section VI of this Annex II.

B. **Local Bank.** A Financial Institution satisfying the following requirements is a Non-Reporting [FATCA Partner] Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

1. The Financial Institution operates solely as (and is licensed and regulated under the laws of [FATCA Partner] as) (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;

2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;

3. The Financial Institution satisfies the requirements set forth in subparagraphs A(2) and A(3) of this section, provided that, in addition to the limitations on the website

described in subparagraph A(3) of this section, the website does not permit the opening of a Financial Account;

4. The Financial Institution does not have more than $175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than $500 million in total assets on their consolidated or combined balance sheets; and

5. Any Related Entity must be incorporated or organized in [FATCA Partner], and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.

C. **Financial Institution with Only Low-Value Accounts.** A [FATCA Partner] Financial Institution satisfying the following requirements is a Non-Reporting [FATCA Partner] Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

1. The Financial Institution is not an Investment Entity;

2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of $50,000, applying the rules set forth in Annex I for account aggregation and currency translation; and

3. The Financial Institution does not have more than $50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than $50 million in total assets on their consolidated or combined balance sheets.

D. **Registered Qualified Credit Card Issuer.** A [FATCA Partner] Financial Institution satisfying the following requirements is a Non-Reporting [FATCA Partner] Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer;

2. Beginning on or before July 1, 2014, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of $50,000, or to ensure that any customer deposit in excess of $50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit

balances to the extent of disputed charges but does include credit balances resulting from merchandise returns; and

3. The Financial Institution must satisfy the requirements set forth in paragraph C of section VI of this Annex II.

IV. **Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.** The Financial Institutions described in paragraphs A through E of this section are Non-Reporting [FATCA Partner] Financial Institutions that shall be treated as registered deemed-compliant FFIs or certified deemed-compliant FFIs, as the case may be, for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

A. **Trustee-Documented Trust.** A trust established under the laws of [FATCA Partner] to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the Agreement with respect to all U.S. Accounts of the trust. Such a trust is a Non-Reporting [FATCA Partner] Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.

B. **Registered Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B(1) or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B(3) of this section is a Non-Reporting [FATCA Partner] Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in [FATCA Partner] that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.

2. A Financial Institution is a sponsored controlled foreign corporation if (a) the Financial Institution is a controlled foreign corporation[5] organized under the laws of [FATCA Partner] that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic account system with the

[5] A "controlled foreign corporation" means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by "United States shareholders" on any day during the taxable year of such foreign corporation. The term a "United States shareholder" means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

3. The sponsoring entity complies with the following requirements:

   a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill the requirements of an FFI Agreement;

   b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;

   c) Prior to December 31, 2015, the sponsoring entity has registered the Financial Institution with the IRS pursuant to the registration requirements set forth in paragraph C of section VI of this Annex II;

   d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements (including the requirements set forth in paragraph C of section VI of this Annex II) that the Financial Institution would have been required to perform if it were a Reporting [FATCA Partner] Financial Institution;[6]

   e) The sponsoring entity identifies the Financial Institution and includes the Financial Institution's Global Intermediary Identification Number (or GIIN) in all reporting completed on the Financial Institution's behalf; and

   f) The sponsoring entity has not had its status as a sponsor revoked. The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored Financial Institutions if there is a material failure by the sponsoring entity to comply with its obligations described above with respect to any sponsored Financial Institution.

C. **Sponsored, Closely Held Investment Vehicle.** A [FATCA Partner] Financial Institution satisfying the following requirements is a Non-Reporting [FATCA Partner] Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

[6] [A sponsoring entity that sponsors both a FATCA Partner Financial Institution and an FFI that is not located in an Partner Jurisdiction would perform, with respect to the FATCA Partner Financial Institution, all the due diligence, withholding, reporting, and other requirements that the FATCA Partner Financial Institution would have been required to perform if it were a Reporting FATCA Partner Financial Institution and, with respect to the other FFI, all the due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI.]

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;

2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting [FATCA Partner] Financial Institution;

3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;

4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and

5. The sponsoring entity complies with the following requirements:

   a) The sponsoring entity has registered as a sponsoring entity with the IRS on the FATCA registration website;

   b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting [FATCA Partner] Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;

   c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and

   d) The sponsoring entity has not had its status as a sponsor revoked. The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored Financial Institutions if there is a material failure by the sponsoring entity to comply with its obligations described above with respect to any sponsored Financial Institution.

D. **Investment Advisors and Investment Managers.** An Investment Entity established in [FATCA Partner] that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution. Such an Investment Entity is a Non-Reporting [FATCA Partner] Financial

Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.

E. **Collective Investment Vehicle.** An Investment Entity established in [FATCA Partner] that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of $50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions, and the Investment Entity satisfies the requirements set forth in paragraph C of section VI of this Annex II. Such an Investment Entity is a Non-Reporting [FATCA Partner] Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.

F. **Special Rules.** The following rules apply to an Investment Entity:

1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

2. With respect to interests in:

   a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests in excess of $50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or

   b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations;

   the reporting obligations of any Investment Entity that is a [FATCA Partner] Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

3. With respect to interests in an Investment Entity established in [FATCA Partner] that is not described in paragraph E or subparagraph F(2) of this section, consistent with paragraph 4 of Article 4 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by first-mentioned Investment Entity pursuant to the Agreement with respect to such interests is reported by such Investment Entity or another person.

4. [An Investment Entity established in [FATCA Partner] that is regulated as a collective investment vehicle shall not fail to qualify under paragraph E or subparagraph F(2) of this section, or otherwise as a deemed-compliant FFI, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

   a) The collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after December 31, 2012;

   b) The collective investment vehicle retires all such shares upon surrender;

   c) The collective investment vehicle (or a Reporting [FATCA Partner] Financial Institution) performs the due diligence procedures set forth in Annex I and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and

   d) The collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to January 1, 2017.][7]

V. **Accounts Excluded from Financial Accounts.** The following accounts are excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Accounts.

A. **Certain Savings Accounts.**

1. Retirement and Pension Account. A retirement or pension account maintained in [FATCA Partner] that satisfies the following requirements under the laws of [FATCA Partner].

   a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

   b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of [FATCA Partner] are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

   c) Annual information reporting is required to the tax authorities in [FATCA Partner] with respect to the account;

   d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

[7] [This provision would only be included where FATCA Partner has previously allowed collective investment vehicles to issue bearer shares.]

e) Either (i) annual contributions are limited to $50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of $1,000,000 or less, in each case applying the rules set forth in Annex I for account aggregation and currency translation.

2. Non-Retirement Savings Accounts. An account maintained in [FATCA Partner] (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of [FATCA Partner].

a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;

b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of [FATCA Partner] are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

d) Annual contributions are limited to $50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.

B. **Certain Term Life Insurance Contracts.** A life insurance contract maintained in [FATCA Partner] with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

1. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

3. The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

4. The contract is not held by a transferee for value.

C. **Account Held By an Estate.** An account maintained in [FATCA Partner] that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

D. **Escrow Accounts.** An account maintained in [FATCA Partner] established in connection with any of the following:

1. A court order or judgment.

2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

   a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

   b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

   c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

   d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

   e) The account is not associated with a credit card account.

3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.

4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

E. **Partner Jurisdiction Accounts.** An account maintained in [FATCA Partner] and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

VI. **Definitions and Other Special Rules.** The following additional definitions and special rules shall apply to the descriptions above:

A. **Reporting Model 1 FFI.** The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.

B. **Participating FFI.** The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means where relevant, an FFI Agreement as defined in Article 1 of the Agreement as well as an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.

C. **Registration Requirements for a Financial Institution that Qualifies as a Registered Deemed-Compliant FFI.** A Financial Institution that qualifies as a registered deemed-compliant FFI must satisfy the following requirements:

1. Register on the IRS FATCA registration website with the IRS pursuant to procedures prescribed by the IRS and agree to comply with the terms of its registered deemed-compliant status;

2. Have its responsible officer certify every three years to the IRS, either individually or collectively for such Financial Institution and its Related Entities, that all of the requirements for the deemed-compliant category claimed by the Financial Institution have been satisfied since July 1, 2014;

3. Maintain in its records the confirmation from the IRS of the Financial Institution's registration as a deemed-compliant FFI and the Financial Institution's Global Intermediary Identification Number (or GIIN) or such other information as the IRS specifies in forms or other guidance; and

4. Agree to notify the IRS if there is a change in circumstances that would make the Financial Institution ineligible for the deemed-compliant status for which it has registered, and to do so with six months of the change in circumstances unless the Financial Institution is able to resume its eligibility for its registered deemed-compliant status within the six-month notification period.

Annex B

Internal Revenue Bulletin: 2014-3

January 13, 2014

Rev. Proc. 2014–13

FFI Agreement for Participating FFI and Reporting Model 2 FFI

Table of Contents

SECTION 1. PURPOSE

This revenue procedure provides guidance to foreign financial institutions (FFIs) entering into an FFI agreement with the Internal Revenue Service (IRS) under section 1471(b) of the Internal Revenue Code (Code) and § 1.1471–4 of the Income Tax Regulations[2] (the FFI agreement) to be treated as participating FFIs. This revenue procedure also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of the FFI agreement, as modified by the Model 2 IGA. A reporting Model 2 FFI should interpret the FFI agreement by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout the FFI agreement, except in cases where the FFI agreement explicitly refers to a reporting Model 2 FFI.

SECTION 2. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111–147 added chapter 4 of Subtitle A (chapter 4 or FATCA) to the Code, comprised of sections 1471 through 1474. On January 28, 2013, the Department of the Treasury (Treasury Department) and the IRS published final regulations under chapter 4 in the Federal Register (78 FR 5874), and, on September 10, 2013, published corrections to those final regulations (collectively, the final chapter 4 regulations). The final chapter 4 regulations provide comprehensive guidance to withholding agents and FFIs; in particular, the regulations under §1.1471–4 provide the substantive requirements applicable to participating FFIs under the FFI agreement.

On July 29, 2013, the Treasury Department and the IRS issued Notice 2013–43 (2013–31 I.R.B. 113), which revises the timelines for implementation of the FATCA requirements and provides additional guidance concerning the treatment of FFIs located in jurisdictions that have signed intergovernmental agreements for the implementation of FATCA (IGAs) but have not yet brought those IGAs into force. On October 29, 2013, the Treasury Department and the IRS published Notice 2013–69 (2013–46 I.R.B. 503), which sets forth a draft FFI agreement that substantially incorporates the provisions of §1.1471–4 of the final chapter 4 regulations, as modified by Notice 2013–43 (e.g., to reflect revised timelines for FATCA implementation). Further, on December 13, 2013, the Treasury Department and the IRS released Announcement 2014-1 (2014-2 I.R.B. 393), which provides that the FFI agreement will be published prior to January 1, 2014. Section 5 of this revenue procedure sets forth the FFI agreement, which finalizes the draft FFI agreement. Modifications to the draft FFI agreement that are incorporated into the FFI agreement are described in section 4 of this revenue procedure.

SECTION 3. FATCA REGISTRATION FOR PARTICIPATING FFI OR REPORTING MODEL 2 FFI STATUS

An FFI may register on Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, via the FATCA registration website available at *http://www.irs.gov/fatca* to enter into the FFI agreement on behalf of one or more of its branches so that each of such branches may be treated as a participating FFI and receive a global intermediary identification number (GIIN). A branch of such an FFI that cannot, under the laws of the jurisdiction in which such branch is located, satisfy all of the terms of the FFI agreement will be treated as a limited branch (as defined in the FFI agreement) and will be subject to withholding under section 1471 as a nonparticipating FFI. A reporting Model 2 FFI may also register on the FATCA registration website on behalf of one or more of its branches to obtain a GIIN and to agree to comply with the terms of the FFI agreement, as modified by an applicable Model 2 IGA.

In general, the FFI agreement does not apply to a reporting Model 1 FFI, or any branch of such an FFI, unless the reporting Model 1 FFI has registered a branch located outside of a Model 1 IGA jurisdiction so that such branch may be treated as a participating FFI or reporting Model 2 FFI. In such a case, the terms of the applicable FFI agreement apply to the operations of such branch. With respect to an FFI (or branch of an FFI) that is a qualified intermediary (QI) or an FFI that is a withholding foreign partnership (WP) or a withholding foreign trust (WT), the revised QI, WP, and WT agreements will incorporate by reference the requirements of the FFI agreement (including the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI) and the terms of the FFI agreement will apply to an FFI (or an QI branch of an FFI) that is treated as a participating FFI or reporting Model 2 FFI.

See Announcement 2014–1 and the FATCA registration user guide for more information about the FATCA registration process. Each branch of a participating FFI or reporting Model 2 FFI that is registered, other than a limited branch, will be issued a GIIN to use in connection with complying with the FFI agreement and to identify itself to withholding agents. For information on registration by financial institutions that are QIs, WPs, and WTs, see Announcement 2014–1.

SECTION 4. UPDATES FROM DRAFT FFI AGREEMENT

The FFI agreement contains a number of changes to provisions of the draft FFI agreement that needed to be corrected or further clarified.

First, several of the cross-references in the FFI agreement (notably, in section 2 of the FFI agreement) are modified in anticipation of the publication of two sets of temporary regulations to which the updated cross-references relate. One set of temporary regulations will provide further clarifications and modifications to the final chapter 4 regulations (temporary chapter 4 regulations), and a second set of temporary regulations will provide coordinating rules under chapters 3, 4, and 61 of the Code (temporary coordination regulations). Both sets of temporary regulations are expected to be published in early 2014.

Second, the FFI agreement contains revisions to correct minor technical errors in the draft FFI agreement. For example, an incorrect reference to an escrow procedure due to a change in circumstances of an account holder or payee is removed. Similarly, the 30-day period for such change of circumstances in the draft FFI agreement is corrected to a 90-day period in the FFI agreement. The FFI agreement corrects section 6.05(A)(1) of the draft FFI agreement to remove the separate subsection for pooled reporting for a reporting Model 2 FFI. The types of income previously described in section 6.05(A)(1)(ii) of the draft FFI agreement were not chapter 4 reportable amounts and would not be reported on Form 1042–S.

Third, revisions are made to further clarify the FFI agreement and conform it to the temporary chapter 4 regulations. For example, the terms chapter 4 withholding rate pool (including the U.S. payee pool) and chapter 4 reporting pool are defined and clarified. In addition, as contemplated in Notice 2013–69, the FFI agreement provides that, with respect to calendar years 2015 and 2016, participating FFIs that are required to report foreign reportable amounts paid to nonparticipating FFIs shall report this information on Form 8966. To the extent provided in section 6.04, a participating FFI may report all such payments made to nonparticipating FFIs.

Finally, the FFI agreement also provides for a 2-year transition period during which a reporting Model 2 FFI may elect to apply the due diligence procedures described in the FFI agreement in lieu of those in Annex I of an applicable Model 2 IGA and the FFI agreement is also revised to reflect that this election is made by the reporting Model 2 FFI and not the reporting Model 2 IGA jurisdiction.

SECTION 5. FFI AGREEMENT

The text of the FFI agreement is set forth below. The IRS will not provide signed copies of the FFI agreement.

Section 1. PURPOSE AND SCOPE

Section 2. DEFINITIONS

Section 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NONPARTICIPATING FFI PAYEES

Section 4. WITHHOLDING REQUIREMENTS

Section 5. DEPOSIT REQUIREMENTS

Section 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS

Section 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING

Section 8. COMPLIANCE PROCEDURES

Section 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE

Section 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS

Section 11. FFI GROUP

Section 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT

Section 13. MISCELLLANEOUS PROVISIONS

SECTION 1. PURPOSE AND SCOPE.

.01 Purpose. THIS AGREEMENT is made under, and in pursuance of, section 1471(b) and §1.1471–4:

WHEREAS, an FFI has completed and submitted a Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, in accordance with its instructions, which registration indicated that one or more of its branches seeks to be treated as a participating FFI, and has represented that such branches are eligible to, and will comply with, the terms of the FFI agreement;

WHEREAS, this agreement establishes the FFI's due diligence, withholding, information reporting, tax return filing, and other obligations as a participating FFI under sections 1471 through 1474 and §§1.1471–1 through 1.1474–6;

NOW THEREFORE, the terms of this agreement are as follows:

.02 General Obligations. An FFI that agrees to comply with the terms of this agreement applicable to one or more of its branches will be treated as a participating FFI with respect to such branches, and such participating FFI branches will not be subject to withholding under section 1471. An FFI (or branch of an FFI) must act in its capacity as a participating FFI with respect to all of the accounts that it maintains for purposes of reporting such accounts and must act as a withholding agent to the extent required under this agreement. A branch of an FFI that cannot satisfy all of the terms of this agreement under the laws of the jurisdiction in which such branch is located must meet the conditions described in §1.1471–4(e)(2)(iii) to be treated as a limited branch and will be subject to withholding under section 1471 as a nonparticipating FFI**.** A reporting Model 2 FFI may comply with the requirements of the FFI agreement, including with respect to due diligence, reporting, and withholding, by applying the rules set forth in this agreement (applied by substituting the term "reporting Model 2 FFI" for "participating FFI" throughout the FFI agreement, except where the provisions of the FFI agreement explicitly refer to a reporting Model 2 FFI).

SECTION 2. DEFINITIONS

01. Scope of Definitions.

(A) In General. Unless specifically modified in this agreement, all terms used in this agreement have the same meaning as provided in sections 1471 through 1474, including the regulations thereunder. See § 1.1471–1(b) for a comprehensive list of chapter 4 terms and definitions.

(B) Reporting Model 2 FFIs. A reporting Model 2 FFI must use the definitions set forth in the applicable Model 2 IGA with respect to the accounts that it maintains in the Model 2 IGA jurisdiction, unless the Model 2 IGA jurisdiction permits the use of a definition provided in this agreement or § 1.1471–1(b) in lieu of a definition set forth in the applicable Model 2 IGA, and such application does not frustrate the purposes of the Model 2 IGA.

.02 Account/Financial account. "Account" or "financial account" means an account described in § 1.1471–1(b)(1).

.03 Account holder. "Account holder" has the meaning set forth in §1.1471–1(b)(2).

.04 Account maintained by a participating FFI. "Account maintained by a participating FFI" means an account that a participating FFI is treated as maintaining under §1.1471–5(b)(5).

.05 Active NFFE. In the case of a reporting Model 2 FFI, "active NFFE" means an active NFFE as defined in the applicable Model 2 IGA.

.06 Backup withholding. "Backup withholding" has the meaning set forth in §1.1471–1(b)(7).

.07 Branch. "Branch" has the meaning set forth in §1.1471–1(b)(10).

.08 Branch that maintains the account. A branch maintains an account if the rights and obligations of the participating FFI and the account holder with regard to such account (including any assets held in the account) are governed by the laws of the jurisdiction in which the branch is located. See § 1.1471–5(b)(5) for when an FFI is treated as maintaining an account.

.09 Certified deemed-compliant FFI. "Certified deemed-compliant FFI" has the meaning set forth in § 1.1471–1(b)(14).

.10 Change in circumstances. For a participating FFI, a "change in circumstances" has the meaning described in § 1.1471–4(c)(2)(iii). In the case of a reporting Model 2 FFI that applies the procedures of Annex I of the applicable Model 2 IGA with respect to an account, a change of circumstances has the meaning that such term has under Annex I of the applicable Model 2 IGA.

.11 Chapter 4 reportable amount. "Chapter 4 reportable amount" has the meaning set forth in § 1.1471–1(b)(18).

.12 Chapter 4 reporting pool. "Chapter 4 reporting pool" means a chapter 4 withholding rate pool of account holders and payees, described in section 6.05(A)(1)(i) of this agreement, associated with a withholdable payment that is within a particular income code (as provided in the instructions to Form 1042–S) reported on Form 1042–S and for which a separate Form 1042–S is required to be filed.

.13 Chapter 4 status. "Chapter 4 status" has the meaning set forth in §1.1471–1(b)(19).

.14 Chapter 4 withholding rate pool. "Chapter 4 withholding rate pool" means a pool provided on an FFI withholding statement (or a chapter 4 withholding statement, as defined in §1.1471–3(c)(3)) with respect to a single type of income (e.g., interest or dividends) and consisting of: (i) a class of recalcitrant account holders described in §1.1471–4(d)(6) (including a pool of recalcitrant account holders to which the escrow procedures for dormant account applies, or for recalcitrant account holders described in section 4.01(D) of this agreement for which the participating FFI has made a backup withholding election), (ii) payees that are nonparticipating FFIs that are subject to withholding under chapter 4, or (iii) U.S. payees as described in section 9.02(B) of this agreement (in the case of a participating FFI) or sections 9.02(B) and 9.02(C) of this agreement (in the case of a reporting Model 2 FFI).

.15 Custodial institution. "Custodial institution" has the meaning set forth in § 1.1471–1(b)(25).

.16 Deemed-compliant FFI. "Deemed-compliant FFI" has the meaning set forth in § 1.1471–1(b)(27).

.17 Depository institution. "Depository institution" has the meaning set forth in § 1.1471–1(b)(30).

.18 Effective date of the FFI agreement. The effective date of the FFI agreement with respect to an FFI or a branch of an FFI that is a participating FFI is the date on which the IRS issues a GIIN to the FFI or branch. For a participating FFI that receives a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

.19 Entity account. "Entity account" has the meaning set forth in § 1.1471–1(b)(40).

.20 Entity payee. "Entity payee" means a payee that is an entity and that is not an account holder.

.21 Excepted NFFE. "Excepted NFFE" has the meaning set forth in § 1.1471–1(b)(41).

.22 Exempt beneficial owner. "Exempt beneficial owner" has the meaning set forth in § 1.1471–1(b)(42).

.23 Exempt recipient. "Exempt recipient" has the meaning set forth in § 1.1471–1(b)(43).

.24 Financial institution (FI). "Financial institution" or "FI" has the meaning set forth in §1.1471–1(b)(50).

.25 FFI group. "FFI group" means an expanded affiliated group (as defined in § 1.1471–5(i)) that includes one or more participating FFIs or, in the case of a reporting Model 2 FFI, a group of related entities as defined in an applicable Model 2 IGA.

.26 FFI member. "FFI member" means an FFI that is a member of an FFI group.

.27 FFI withholding statement. "FFI withholding statement" means a withholding statement provided by a participating FFI that meets the requirements of section 9.02 of this agreement.

.28 Foreign financial institution (FFI). "Foreign financial institution" or "FFI" has the meaning set forth in §1.1471–1(b)(47).

.29 Foreign reportable amount. "Foreign reportable amount" means a payment of foreign source amounts described in § 1.1471–4(d)(2)(ii)(F).

.30 Form 945. "Form 945" means IRS Form 945, *Annual Return of Withheld Federal Income Tax.*

.31 Form 1042. "Form 1042" means IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.*

.32 Form 1042–S. "Form 1042–S" means IRS Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding.*

.33 Form 1099. "Form 1099" means IRS Form 1099–B, *Proceeds From Broker and Barter Exchange Transactions*; IRS Form 1099–DIV, *Dividends and Distributions*; IRS Form 1099 –INT, *Interest Income*; IRS Form 1099–MISC, *Miscellaneous Income*; IRS Form 1099–OID, *Original Issue Discount*, and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

.34 Form 8957. "Form 8957" means IRS Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration,* and includes the online version of the form on the FATCA registration website available at *http://www.irs.gov/fatca*.

.35 Form 8966. "Form 8966" means IRS Form 8966, *FATCA Report*, and includes the FATCA Report XML.

.36 GIIN. "GIIN" or "global intermediary identification number" has the meaning set forth in § 1.1471–1(b)(57).

.37 Grandfathered obligation. "Grandfathered obligation" has the meaning set forth in § 1.1471–2(b)(2)(i).

.38 Individual account. "Individual account" has the meaning set forth in §1.1471–1(b)(64).

.39 Intergovernmental Agreement (IGA). "Intergovernmental Agreement" or "IGA" has the meaning set forth in § 1.1471–1(b)(67).

.40 IRS FFI List. "IRS FFI List" has the meaning set forth in § 1.1471–1(b)(73).

.41 Lead FI. "Lead FI" means an FFI or U.S. financial institution that is designated by members of the FFI group to initiate and manage FATCA registration via the FATCA registration website for such FFI members of the FFI group and that agrees to the responsibilities described in section 11.02 of this agreement.

.42 Limited branch. "Limited branch" has the meaning set forth in § 1.1471–1(b)(76).

.43 Limited FFI. "Limited FFI" has the meaning set forth in § 1.1471–1(b)(77).

.44 Model 1 IGA. "Model 1 IGA" has the meaning set forth in § 1.1471–1(b)(78).

.45 Model 2 IGA. "Model 2 IGA" has the meaning set forth in § 1.1471–1(b)(79).

.46 New account. "New account" means an account other than a preexisting account.

.47 Non-consenting U.S. account. For purposes of a reporting Model 2 FFI, "non-consenting U.S. account" has the meaning that such term has under an applicable Model 2 IGA.

.48 Non-exempt recipient. "Non-exempt recipient" has the meaning set forth in §1.1471–1(b)(81).

.49 Non-financial foreign entity (NFFE). "Non-financial foreign entity" or "NFFE" has the meaning set forth in § 1.1471–1(b)(80).

.50 Nonparticipating FFI. "Nonparticipating FFI" has the meaning set forth in § 1.1471–1(b)(82).

.51 Nonqualified intermediary (NQI). "Nonqualified intermediary" or "NQI" has the meaning set forth in § 1.1471–1(b)(85).

.52 Non-U.S. account. "Non-U.S. account" has the meaning set forth in § 1.1471–1(b)(84).

.53 Non-U.S. payor. "Non-U.S. payor" means a payor other than a U.S. payor.

.54 Nonwithholding foreign partnership (NWP). "Nonwithholding foreign partnership" or "NWP" has the meaning set forth in § 1.1471–1(b)(86).

.55 Nonwithholding foreign trust (NWT). "Nonwithholding foreign trust" or "NWT" has the meaning set forth in § 1.1471–1(b)(87).

.56 Offshore obligation. "Offshore obligation" has the meaning set forth in § 1.1471–1(b)(88).

.57 Owner-documented FFI. "Owner-documented FFI" has the meaning set forth in § 1.1471–1(b)(90).

.58 Participating FFI. "Participating FFI" means an FFI, or branch of an FFI, that has registered with the IRS to comply with the terms of, and to enter into, this agreement with the IRS, and to obtain a GIIN. See also the definition of reporting Model 2 FFI.

.59 Passive NFFE. "Passive NFFE" means an NFFE other than an excepted NFFE (or, in the case of a reporting Model 2 FFI, other than an active NFFE).

.60 Payee. "Payee" has the meaning set forth in § 1.1471–1(b)(96).

.61 Preexisting account. "Preexisting account" means an account described in § 1.1471–1(b)(101).

.62 Qualified intermediary. "Qualified intermediary" or "QI" has the meaning set forth in § 1.1471–1(b)(107).

.63 Recalcitrant account holder. "Recalcitrant account holder" has the meaning set forth in § 1.1471–1(b)(110).

.64 Registered deemed-compliant FFI. "Registered deemed-compliant FFI" means an FFI described in §1.1471–5(f)(1), and includes a reporting Model 1 FFI, a QI branch of a U.S. financial institution that is a reporting Model 1 FFI, and a nonreporting FFI treated as a registered deemed-compliant FFI under a Model 2 IGA.

.65 Reporting Model 1 FFI. "Reporting Model 1 FFI" means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 1 IGA and that has registered with the IRS to obtain a GIIN.

.66 Reporting Model 2 FFI. "Reporting Model 2 FFI" means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 2 IGA and that has registered with the IRS to comply with the terms of this agreement, as modified by an applicable Model 2 IGA, and to obtain a GIIN.

.67 Reportable payment. "Reportable payment" has the meaning set forth in § 1.1471–1(b)(113).

.68 Responsible officer. "Responsible officer" has the meaning set forth in § 1.1471–1(b)(115).

.69 Specified insurance company. "Specified insurance company" has the meaning set forth in § 1.1471–1(b)(118).

.70 Territory FI. "Territory FI" or "territory financial institution" has the meaning set forth in § 1.1471–1(b)(129).

.71 U.S. account. "U.S. account" has the meaning set forth in § 1.1471–1(b)(133).

.72 U.S. branch treated as a U.S. person. "U.S. branch treated as a U.S. person" has the meaning set forth in § 1.1471–1(b)(134).

.73 U.S. payor. "U.S. payor" has the meaning set forth in § 1.1471–1(b)(139).

.74 U.S. source FDAP income. "U.S. source FDAP income" has the meaning set forth in § 1.1471–1(b)(141).

.75 Withholdable payment. "Withholdable payment" has the meaning set forth in § 1.1471–1(b)(144).

.76 Withholding agent. "Withholding agent" has the meaning set forth in § 1.1471–1(b)(146).

.77 Withholding foreign partnership (WP). "Withholding foreign partnership" or "WP" has the meaning set forth in § 1.1471–1(b)(148).

.78 Withholding foreign trust (WT). "Withholding foreign trust" or "WT" has the meaning set forth in § 1.1471–1(b)(150).

SECTION 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NONPARTICIPATING FFI PAYEES

.01 In General. The due diligence procedures described in this section 3 generally apply to a participating FFI (other than a U.S. branch treated as a U.S. person). The participating FFI must perform the due diligence procedures described in this section 3 to determine which of the accounts that it maintains are (i) U.S. accounts, (ii) accounts held by recalcitrant account holders, (iii) accounts held by nonparticipating FFIs, or (iv) non-U.S. accounts. A participating FFI that makes a withholdable payment to a payee other than an account holder must also perform due diligence procedures described in this section 3 to determine if withholding is required under section 4 of this agreement.

(A) Reporting Model 2 FFIs. A reporting Model 2 FFI must apply the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to all accounts that such reporting Model 2 FFI maintains within the Model 2 IGA jurisdiction unless the reporting Model 2 FFI elects to apply the due diligence procedures of this agreement, as described in this section 3. A reporting Model 2 FFI may apply the due diligence procedures described in section 3.02 of this agreement separately for each section of Annex I (for example, preexisting entity accounts) with respect to all accounts or with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained). Except for the two year period following the date that an applicable Model 2 IGA has been signed, a reporting Model 2 FFI that applies the due diligence procedures of section 3.02 of this agreement with respect to certain accounts must continue to apply these procedures consistently to these accounts in all subsequent years unless there has been a material modification to section 3.02 of this agreement or § 1.1471–4(c). With respect to the two year period beginning on the date that an applicable Model 2 IGA has been signed, a reporting Model 2 FFI may apply either the due diligence procedures described in section 3.02 of this agreement or those described in Annex 1 of the applicable Model 2 IGA with respect to any clearly identified group of accounts, without being bound to a particular set of due diligence rules, so long as the application does not frustrate the purpose of the Model 2 IGA. A reporting Model 2 FFI must apply the due diligence procedures of section 3.02(B) of this agreement with respect to an entity payee that is receiving a withholdable payment.

(B) U.S. Branch of a Participating FFI treated as a U.S. Person. A U.S. branch of a participating FFI that is treated as a U.S. person (as described in § 1.1471–1(b)(134)) is required to apply the due diligence requirements described in § 1.1471–3 to determine the chapter 4 status of account holders and entity payees and must apply the due diligence requirements of chapter 3 or chapter 61 (as applicable) with respect to individual account holders. See section 4.02(C) of this agreement for special withholding rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

.02 Due Diligence Procedures.

(A) Identification and Documentation of Account Holders. A participating FFI is required to determine the chapter 4 status of each holder of an account maintained by the participating FFI and to identify each account that is a U.S. account, non-U.S. account, account held by a recalcitrant account holder, or account held by a nonparticipating FFI. For this purpose, the participating FFI is required to apply the due diligence procedures for accounts to the extent, and in the manner, required under § 1.1471–4(c) within the applicable time periods described in § 1.1471–4(c)(3), (c)(4), and (c)(5). A participating FFI that is unable to reliably associate valid documentation with an account holder to determine the chapter 4 status of such account holder under such required procedures must apply the presumption rules of section 3.04 of this agreement. See also §1.1471–4(d)(2) for other account holders to which a participating FFI's due diligence requirements apply (e.g., account holders of a territory FI, sponsored FFI, or owner-documented FFI).

(B) Identification and Documentation of Certain Payees other than Account Holders. For determining when withholding is required under section 4 of this agreement, a participating FFI is, prior to payment, required to reliably associate the payment with documentation that meets the requirements of section 3.03(B) of this agreement when making a withholdable payment to an entity payee. If an account holder receives a withholdable payment and is not treated as the payee of the payment, in addition to documenting the chapter 4 status of the account holder, the participating FFI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding is required under section 4 of this agreement. See, however, § 1.1471–3(e)(4)(vi) for when a participating FFI may rely on the chapter 4 status of a payee provided by another participating FFI or registered deemed-compliant FFI that is acting as an intermediary or that is a flow-through entity with respect to the payee. Except as otherwise provided in section 4.02(A) of this agreement, a participating FFI must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee if, prior to the time of payment, it cannot reliably associate the payment with documentation meeting the requirements of section 3.03(B) of this agreement. See, however, § 1.1471–3(c)(7) for requirements that apply for documentation received after the date of a payment. With respect to a preexisting account, a participating FFI must, to the extent required under § 1.1471–4(c), determine the chapter 4 status of the payee within the applicable time period described in § 1.1471–4(c)(3) or, if unable to do so, must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee.

.03 Additional Requirements for Identification and Documentation of Account Holders and Payees.

(A) In General. To the extent that the participating FFI is required to retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee, the participating FFI must do so in accordance with the requirements of § 1.1471–4(c)(2). The participating FFI must also institute procedures that meet the requirements of § 1.1471–4(c)(2) to ensure that any change in circumstances (described in section 2 of this agreement) is identified with respect to an account.

(B) Requirements for Documentation.

(1) In General. To the extent the participating FFI obtains withholding certificates, substitute certification forms, written statements, or documentary evidence to document an account holder or payee, such documentation must meet the requirements set forth in § 1.1471–3(c). Sections 1.1471–3(c)(3) through (5) provide the requirements of valid withholding certificates, written statements, and documentary evidence. Section 1.1471–3(c)(6) provides other applicable rules for withholding certificates, written statements, and documentary evidence, including their periods of validity and electronic transmission requirements. Sections 1.1471–3(c)(8) and (9) provide requirements related to the sharing of documentation and reliance by a participating FFI on documentation collected by another person. A participating FFI must obtain the documentation specified in § 1.1471–3(d) to establish the chapter 4 status of an entity account holder or an entity payee. A participating FFI may rely on documentation that meets the requirements of § 1.1471–3(c) until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. If the participating FFI is unable to obtain the required documentation within 90 days of a change in circumstances, the participating FFI must apply the presumption rules of section 3.04 of this agreement with respect to the account or payee until valid documentation is obtained upon which the FFI is permitted to rely.

(2) Requirements for Reporting Model 2 FFIs. To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to an account, such documentation must meet the requirements described in the applicable Model 2 IGA, and the reporting Model 2 FFI may rely on such documentation until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. Upon the expiration of the documentation or a change in circumstances, the reporting Model 2 FFI must obtain new or additional documentation or must redetermine the status of the account in accordance with the due diligence procedures described in Annex I of the applicable Model 2 IGA. If an account holder of a new account (as defined in the applicable Model 2 IGA) has a change in circumstances that would cause such account to be treated as a U.S. account and the account holder refuses to provide consent for such account to be reported, the reporting Model 2 FFI must report the account as a non-consenting U.S. account as described in section 6.03(B) of this agreement.

.04 Presumption Rules in Absence of Valid Documentation. If the participating FFI is required to, but is unable to, obtain documentation (or a record of documentation) that meets the requirements of this section 3 within the applicable time period described in section 3.02 of this agreement, or if the participating FFI knows or has reason to know that documentation provided for an account holder or payee is unreliable or incorrect, as determined applying the standards of knowledge described in § 1.1471–4(c)(2), or as determined under Annex I of the applicable Model 2 IGA in the case of a reporting Model 2 FFI that applies such procedures with respect to an account, the FFI is required to apply the presumption rules described in this section 3.04 until valid documentation is provided for the account holder or payee upon which the FFI is permitted to rely. However, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely on such documentation until the earlier of 90 days following the change in circumstances or the date new documentation is obtained upon which the participating FFI may rely to document the chapter 4 status of the account holder or payee. See, however, § 1.1441–1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under § 1.1441–1(b)(3)(iv), to the extent a withholdable payment that is also a reportable amount (as defined in §1.1441–1(c)(22)) is made to the account holder or payee.

(A) Entity Payee or Account Held by an Entity. With respect to a withholdable payment made to an entity payee, a participating FFI must apply the presumption rules of § 1.1471–3(f). The presumption rules of § 1.1471–3(f) also apply to an account held by an entity. However, in the case of an account held by a passive NFFE that provides the documentation described in § 1.1471–3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners required under § 1.1471–3(d)(12)(iii), the participating FFI must treat the account as held by a recalcitrant account holder in accordance with § 1.1471–5(g)(2)(iv).

(B) Account Held by an Individual. With respect to an account held by an individual, a participating FFI must treat the account as held by a recalcitrant account holder in accordance with § 1.1471–5(g) and classify the type of recalcitrant account holder in accordance with the pools described in § 1.1471–4(d)(6).

(C) Presumption Rules for Reporting Model 2 FFIs. To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, such FFI must apply the procedures of Annex I of the applicable Model 2 IGA to treat the account as held by a nonparticipating FFI or non-consenting U.S. account. A reporting Model 2 FFI that applies the due diligence procedures described in section 3.02 of this agreement with respect to an account must treat an account that would otherwise be treated as held by a recalcitrant account holder as a non-consenting U.S. account to the extent required under the applicable Model 2 IGA. With respect to a withholdable payment made to an entity payee, a reporting Model 2 FFI must apply the presumption rules of §1.1471–3(f).

SECTION 4. WITHHOLDING REQUIREMENTS.

.01 Withholding Requirements (A) In General. A participating FFI is generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to an account maintained by such participating FFI that is held by a recalcitrant account holder or a nonparticipating FFI. A participating FFI is also generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to a payee that is (or is presumed to be) a nonparticipating FFI with respect to an offshore obligation that is not an account. There is no requirement to withhold on foreign passthru payments for payments made before January 1, 2017 and therefore this requirement is not addressed in this agreement. See section 7.03 of this agreement for the requirements of a participating FFI that is prohibited by law from withholding as required under this section 4.01.

(B) Modification of Withholding Requirements for a Reporting Model 2 FFI. Notwithstanding the withholding requirements described in section 4.01(A) of this agreement, a reporting Model 2 FFI is not required to deduct and withhold tax on any withholdable payment made to its non-consenting U.S. accounts, provided that the conditions under the applicable Model 2 IGA regarding the suspension of withholding relating to non-consenting U.S. accounts are met. If such conditions are not met, the reporting Model 2 FFI is required to treat its non-consenting U.S. accounts as held by recalcitrant account holders and is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to such accounts in accordance with section 4.02 of this agreement. In addition, a reporting Model 2 FFI is required to withhold in accordance with section 4.02 of this agreement on any withholdable payment made to a nonparticipating FFI that is an account holder or a payee other than an account holder.

(C) Special Withholding Requirements of U.S. Branch of a Participating FFI treated as a U.S. Person. A U.S. branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts it maintains that are held by U.S. non-exempt recipients (or presumed U.S. non-exempt recipients) will be treated as satisfying its withholding requirements under this section 4 and § 1.1471–4(b) with respect to such account holders. For all other payees of a withholdable payment, a U.S. branch of a participating FFI must withhold to the extent required under sections 1471(a) and 1472. See section 3.01(B) of this agreement for special due diligence rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

(D) Election to Withhold under Section 3406 on Recalcitrant Account Holders. With respect to recalcitrant account holders that receive a withholdable payment and that are subject to backup withholding under section 3406, a participating FFI (including a U.S. branch of a participating FFI that is not treated as a U.S. person) may elect to satisfy its withholding obligation under this section 4 and § 1.1471–4(b) by applying backup withholding under section 3406 to such withholdable payments. Nothing in this section 4 or § 1.1471 –4(b) relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not withholdable payments (e.g., payments with respect to grandfathered obligations). See section 4.04(D) of this agreement for the coordination of backup withholding under section 3406 for a participating FFI that does not make the election described in this section 4.01(D) and that withholds under section 1471(b) with respect to a withholdable payment that is also a reportable payment made to a recalcitrant account holder that is subject to backup withholding under section 3406.

.02 General Rules for Withholding.

(A) Withholding Determination in General. A participating FFI that makes a withholdable payment is required to determine whether withholding under this section 4 applies at the time the withholdable payment is made by applying the requirements of § 1.1471–4(b) to determine the payee of the payment and to reliably associate the payment with valid documentation to establish the payee's chapter 4 status. The exceptions to withholding described in § 1.1471–2, including the exceptions for payments made under a grandfathered obligation and payments made to certain excepted accounts, apply for purposes of determining whether withholding is required under this section 4. A participating FFI is not required to withhold under this section 4 on payments made to an account holder of a preexisting account prior to the expiration of the applicable time period described in section 3.02(A) of this agreement for identifying the account (or applying the presumption rules), unless the account is documented as held by a nonparticipating FFI.

(B) Withholding Requirements for a Participating FFI that is an NQI, NWP, or NWT. A participating FFI that is an NQI, NWP, or NWT is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary, provided that it provides its withholding agent with an FFI withholding statement with sufficient information for such withholding agent to establish the portion of the payment (if any) that is allocable to recalcitrant account holders (in each of the chapter 4 withholding rate pools described in section 9.02(B) of this agreement), to payees that are nonparticipating FFIs, and to payees that are U.S. persons (U.S. payee pool) in accordance with § 1.1471–4(b)(3). If a participating FFI elects to backup withhold under section 3406 with respect to recalcitrant account holders as described in section 4.01(D) of this agreement, the participating FFI must provide its withholding agent with an FFI withholding statement with sufficient information for such withholding agent to establish the portion of the payment allocable to such account holders in accordance with § 1.6049–4(c)(4)(iii) and to apply backup withholding. See § 1.1471–3(c)(iii) and section 9 of this agreement for the requirements applicable to a participating FFI's withholding certificate, withholding statement, and associated documentation. If the withholdable payment is exempt from chapter 4 withholding, the information provided by the participating FFI to the withholding agent must also include the payee's chapter 4 status when specific payee information is required for purposes of chapter 3. A participating FFI must also provide the withholding agent with information regarding any account holders or payees of an intermediary or flow-through entity that hold an account with the participating FFI, other than a QI, WP, or WT.

A participating FFI is required to withhold under § 1.1471–4(b)(3) when it fails to provide sufficient information to its withholding agent or when it knows or has reason to know that the withholding agent has not withheld to the extent required under § 1.1471–2(a)(i) with respect to its account holders. For example, if a participating FFI provides the documentation described in § 1.1471–3(c)(3)(iii) to its withholding agent and, based on the amount of the payment that it receives from the withholding agent, it knows or has reason to know that the withholding agent has underwithheld on the payment, it is required to deduct and withhold tax from the payment to the extent of the underwithheld tax. A participating FFI is also required to withhold when it applies the dormant account procedures described in section 5.02 of this agreement.

(C) Withholding Requirements with Respect to Limited Branches and Limited FFIs. A participating FFI is required to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI to the extent required under § 1.1471–4(b)(5), including when a participating FFI has reason to know that a withholdable payment was made to a limited branch of a participating FFI or registered deemed-compliant FFI. A participating FFI making a withholdable payment to another participating FFI or to a registered deemed-compliant FFi will have reason to know that a withholdable payment is made to a limited branch of such other FFI when the participating FFI is directed to make the payment to an address of such other FFI in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of such FFI) that is identified as the FFI (or branch of such FFI) that is supposed to receive the payment. For example, if a participating FFI identifies Branch A, located in Jurisdiction A, as its branch to receive withholdable payments on a withholding certificate described in § 1.1471–3(e)(3)(ii), but subsequently directs the participating FFI to which the withholding certificate was provided to make the payment to an address of the FFI in Jurisdiction B, then the participating FFI making the withholdable payment will have reason to know that the payment is made to a limited branch, unless the participating FFI making the withholdable payment obtains documentation that allows it to treat the payment made to the address in Jurisdiction B as made to a payee that is a participating FFI or deemed-compliant FFI. See § 1.1471–3(e)(3)(i).

.03 Liability for Failure to Withhold. A participating FFI that fails to withhold any tax under chapter 4 as required under section 4.02 of this agreement is liable for the amount of tax not withheld and any interest, additions to tax, and penalties that may apply under a relevant provision of the Code.

.04 Coordination with Other Withholding Provisions.

(A) In General. A participating FFI is a withholding agent for purposes of chapter 4, a withholding agent under chapter 3 with respect to a payment subject to withholding under § 1.1441–2(a) or under sections 1445 or 1446, and a payor for purposes of withholding under section 3406. Except to the extent provided in this section 4.04, no provision of this agreement otherwise limits the requirement of a participating FFI to withhold as a withholding agent for purposes of chapters 3 and 4 or as a payor for purposes of backup withholding under section 3406 to the extent required.

(B) Coordination of Withholding under Sections 1471(a) and 1472(a). A participating FFI that complies with the withholding requirements of this agreement is deemed to satisfy its chapter 4 withholding obligations under sections 1471(a) and 1472(a) with respect to its account holders and entity payees.

(C) Coordination with Withholding under Chapter 3. In the case of a withholdable payment that is also subject to withholding under section 1441, 1442, or 1443, a participating FFI may credit the tax withheld under section 4.02 of this agreement against its liability under section 1441, 1442, or 1443 as described in § 1.1474–6(b). In the case of a withholdable payment that is also subject to withholding under section 1445, withholding under section 1445 applies to the payment to the extent described under § 1.1474–4(6)(c), and withholding is not required under section 4.02 of this agreement. In the case of a withholdable payment that is also subject to withholding under section 1446, withholding under section 1446 applies to the extent described under § 1.1474–6(d), and withholding is not required under section 4.02 of this agreement.

(D) Coordination with Backup Withholding. In the case of a withholdable payment that is also a reportable payment made by the participating FFI to a recalcitrant account holder, withholding under section 3406 will not apply to the reportable payment if tax is withheld on the payment under section 4.02 of this agreement, unless the participating FFI elects to apply backup withholding under section 3406 to recalcitrant account holders as described in section 4.01(D) of this agreement.

SECTION 5. DEPOSIT REQUIREMENTS

.01 In General. A participating FFI that withholds tax as required under this agreement must deposit amounts withheld within the time period provided in § 1.1474–1(b)(1) or, for amounts withheld under the election described in section 4.01(D) of this agreement, § 31.6302–4. See § 1.1471–2(a)(5)(ii) for an optional escrow procedure when a withholding agent is unable to determine at the time of payment whether such payment is a withholdable payment.

.02 Dormant Accounts. If a participating FFI receives a withholdable payment not otherwise subject to backup withholding under section 3406, or withholding under chapter 3, on behalf of a dormant account held by a recalcitrant account holder, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. The tax withheld in escrow becomes due on the date that is the earlier of 90 days or the end of the calendar year following the

date that the account ceases to be a dormant account. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this section 5.02 may not delegate the responsibility to escrow withheld tax to the withholding agent from which it receives the payment. See section 6.05(C) of this agreement for the reporting requirements and section 9 of this agreement for the requirements of an FFI withholding statement when the participating FFI applies the escrow rule for dormant accounts described in this section 5.02. Sections 1.1471–4(d)(6)(ii) and (iii) provide the rules for determining when the participating FFI must treat an account as dormant and when an account will no longer be treated as a dormant account.

SECTION 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS

.01 In General. Under section 1471(c) and § 1.1471–4(d), a participating FFI is required to report annually certain specific payee information with respect to U.S. accounts that it maintains. A participating FFI is also required to report certain aggregate account information described in section 6.03 of this agreement with respect to its recalcitrant account holders classified in accordance with the pools described in § 1.1471–4(d)(6) and, in the case of a reporting Model 2 FFI, its non-consenting U.S. accounts classified in accordance with the pools described in § 1.1471–4(d)(6). A participating FFI has a transitional reporting obligation for payments of foreign reportable amounts made to account holders that are nonparticipating FFIs as described in section 6.04 of this agreement. A participating FFI may also be required under section 6.05 of this agreement to report certain aggregate information with respect to chapter 4 reportable amounts paid to its recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons. If a participating FFI is required to file information returns under section 6.05 of this agreement, the participating FFI is also required under 6.06(A) of this agreement to file Form 1042 to report chapter 4 reportable amounts and any tax withheld on such amounts. A participating FFI must file information returns about its account holders or payees for purposes of chapter 4 (Forms 8966, 1099, 1042-S) on magnetic media (as defined in § 301.1474–1(d)(1)). See section 6.06(B) of this agreement for the income tax return filing requirements of a U.S. branch of a participating FFI that makes withholdable payments. See also section 7 of this agreement for the requirements of a participating FFI that is prohibited by law from reporting its U.S. accounts as required under this section 6. In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE, the term "substantial U.S. owner" means a "controlling person" as defined in the applicable Model 2 IGA that is identified as a specified U.S. person.

.02 U.S. Account Reporting

(A) Accounts for which Reporting is Required.

(1) In General. On a calendar-year basis, a participating FFI must report each U.S. account that it maintains in the manner described in section 6.02(B) of this agreement. The participating FFI is also required to report accounts held by an FFI that it has agreed to treat as an owner-documented FFI under § 1.1471–3(d)(6) to the extent required under this section 6.02.

(2) Special Reporting of Account Holders of Territory FIs. If a participating FFI maintains an account held by a territory FI that acts as an intermediary with respect to a withholdable payment, and the territory FI does not agree to be treated as a U.S. person with respect to the payment, the participating FFI is required to report each specified U.S. person and each substantial U.S. owner of an entity treated as a passive NFFE with respect to which the territory FI acts as an intermediary to the extent that the territory FI provides the participating FFI with sufficient information to report such account. See § 1.1471–4(d)(2)(ii)(B)(2) for the information required to be reported for an account or payee of a territory FI.

(3) Additional U.S. Account Reporting Requirement for a Trustee of a Trustee-Documented Trust. In addition to the accounts required to be reported under section 6.02(A)(1) of this agreement, a participating FFI that is the trustee of a trustee-documented trust (as defined in an applicable Model 1 or Model 2 IGA) must report each U.S. account maintained by the trust as if the participating FFI maintained the account.

(B) General Reporting Requirements of a Participating FFI (other than its U.S. Branch treated as a U.S. Person). A participating FFI (other than its U.S. branch treated as a U.S. person) may report its U.S. accounts on Form 8966 in the manner described in § 1.1471–4(d)(3). Alternatively, to the extent allowed under § 1.1471–4(d)(5), a participating FFI may elect to perform chapter 61 reporting as modified in section 6.02(B)(1) of this agreement, in lieu of reporting in the manner described in § 1.1471–4(d)(3). A participating FFI may elect to perform chapter 61 reporting with respect to all its U.S. accounts or with respect to any clearly identified group of U.S. accounts (such as by line of business or the location where the account is maintained) in the manner described in section 6.02(B)(1) of this agreement. With respect to a cash value insurance contract or annuity contract held by a specified U.S. person, a participating FFI may also elect to report under section 6047(d) in the manner described in § 1.1471–4(d)(5)(i)(B).

(1) Modified Chapter 61 Reporting. A participating FFI (including a U.S. branch that is not treated as a U.S. person) that elects to perform chapter 61 reporting must report the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049 and must report payments made to an account subject to reporting under the applicable section. A participating FFI that is a non-U.S. payor, however, must determine the payments subject to reporting under the applicable section as if it were a U.S. payor.

A participating FFI that elects to perform chapter 61 reporting must treat each account holder that is a specified U.S. person, U.S.-owned foreign entity, or owner-documented FFI as if it were an account holder who is an individual and citizen of the United States and must report each such account regardless of whether the account holder of such account qualifies as an exempt recipient. With respect to each account holder of a U.S. account that is a specified U.S. person, the participating FFI must report on the appropriate Form 1099 the information described in § 1.1471–4(d)(5)(ii) and the accompanying instructions to the form. With respect to an account held by an entity treated as a passive NFFE with substantial U.S. owners or held by an owner-documented FFI with specified U.S. persons identified in § 1.1471–3(d)(6)(iv)(A)(1) and (2), the participating FFI must report on Form 8966 the U.S. owner information described in § 1.1471–4(d)(5)(ii) and (iii) and the accompanying instructions to the form.

A participating FFI that reports an account under this section 6.02(B)(1) must report such account for the calendar year regardless of whether the participating FFI makes a reportable payment to the account during the calendar year. In such a case and with respect to a specified U.S. person, the appropriate form is Form 1099-MISC, *Miscellaneous Income*. For example, with respect to a custodial account, the participating FFI is required to file a Form 1099–MISC even if no reportable payments were paid or credited to the account with respect to any financial instrument, investment, or contract held in such account. A participating FFI that reports accounts under this section 6.02(B)(1) may decide at a later time to report the accounts in the manner described in § 1.1471–4(d)(3) beginning on the first reporting date for the calendar year following the calendar year for which it last reports an account under this section 6.02(B)(1).

(2) Transitional Reporting Rules. For calendar years 2014 and 2015, a participating FFI that reports under § 1.1471–4(d)(3) is only required to report the account information specified in §1.1471–4(d)(7)(ii) for its U.S. accounts. For calendar years 2014 and 2015, a participating FFI that reports under § 1.1471–4(d)(5) is only required to report the account information specified in § 1.1471–4(d)(7)(iii) with respect to its U.S. accounts.

(3) Time and Manner of Filing. The participating FFI must file Form 8966 or Form 1099 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

(C) Special Reporting Rules for U.S. Branches treated as U.S. Persons. In the case of a U.S. branch of a participating FFI that is treated as a U.S. person, such branch must report under chapter 61 with respect to account holders that are U.S. non-exempt recipients (or presumed U.S. non-exempt recipients), including any account holders subject to backup withholding under section 3406, and under § 1.1474–1(i) with respect to entities treated as passive NFFEs with substantial U.S. owners and owner-documented FFIs with specified U.S. persons identified in § 1.1471–3(d)(6)(iv)(A)(1) and (2).

.03 Reporting with respect to Recalcitrant Account Holders

(A) In General. A participating FFI is required to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966 and in the manner described in § 1.1471–4(d)(6). Such reporting is required regardless of whether the participating FFI makes a withholdable payment to the account during the calendar year. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

(B) Reporting Model 2 FFIs' Reporting of Non-Consenting U.S. Accounts. Instead of the reporting described in section 6.03(A) of this agreement, a reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting U.S. accounts classified in accordance with the pools described in §1.1471–4(d)(6) and the accompanying instructions to the form. Such reporting is required regardless of whether the reporting Model 2 FFI makes a withholdable payment to the account during the calendar year. A reporting Model 2 FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates (unless otherwise specified in the applicable Model 2 IGA) in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

.04 Special Transitional Reporting of Payments to Nonparticipating FFIs. For calendar years 2015 and 2016, the participating FFI must report on a specific payee basis on Form 8966 the aggregate amount of foreign reportable amounts paid with respect to an account held by a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI) that the participating FFI maintains. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the account holder and the participating FFI has not obtained such consent (i.e., the account holder is a non-consenting nonparticipating FFI), the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid to such non-consenting nonparticipating FFIs. In either case, the participating FFI may report all income, gross proceeds, and redemptions (regardless of source) paid to the nonparticipating FFI's account (or all non-consenting nonparticipating FFIs' accounts, as applicable) by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions

.05 Withholdable Payment Reporting and Reporting of Tax Withheld.

(A) In General. Except as otherwise provided in this section 6.05(A) and section 6.05(B) of this agreement, a participating FFI is required to report on Form 1042–S chapter 4 reportable amounts made during the year to payees that are recalcitrant account holders, nonparticipating FFIs, and, with respect to a non-U.S. payor, U.S. persons that are included in a U.S. payee pool (see section 9.02). Forms 1042-S must identify the foreign branch of the FFI maintaining the payee's account using the GIIN assigned to such branch and the employer identification number (EIN) of the legal entity covered by this agreement. A U.S. branch of a participating FFI is required to file separate Forms 1042-S using the EIN assigned to such U.S. branch to report chapter 4 reportable amounts that it paid to its account holders and payees.

(1) Allowance for Specific Payee or Pooled Reporting. A participating FFI may report chapter 4 reportable amounts made to a specific recipient or to a chapter 4 reporting pool to the extent permitted or required under section 6.05(A)(1)(i) of this agreement. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. A participating FFI that fails to file returns or furnish statements required by this agreement may be subject to penalties in accordance with sections 6721 through 6724.

(i) Pooled Reporting. A participating FFI may report on Form 1042–S chapter 4 reportable amounts made to recalcitrant account holders and nonparticipating FFIs in a chapter 4 reporting pool. With respect to recalcitrant account holders, a separate chapter 4 reporting pool is required for each class of recalcitrant account holders described in § 1.1471–4(d)(6). Additionally, a participating FFI that is a non-U.S. payor must report payees of U.S. accounts that it reports under section 6.02 of this agreement in a chapter 4 reporting pool of U.S. payees. Section 1.1474–1(d) provides additional reporting requirements for chapter 4 reportable amounts. See also Form 1042–S and its accompanying instructions for the chapter 4 reporting pool codes for recipients and income codes.

(ii) Specific Recipient Reporting. As an alternative to reporting chapter 4 reportable amounts to a chapter 4 reporting pool of recalcitrant account holders and nonparticipating FFIs as described in section 6.05(A)(1)(i) of this agreement, a participating FFI may issue a Form 1042–S to a recalcitrant account holder or a nonparticipating FFI on a specific payee basis. Section 1.1474–1(d)(1)(i) specifies the information that is required to be included on Form 1042–S. See also section 10.04 of this agreement for the limitation on filing a collective refund claim on behalf of account holders or payees that are reported on a specific payee basis.

(2) Reporting Required when Electing to Withhold under Section 3406 on Recalcitrant Account Holders. A participating FFI that elects to satisfy its obligation to withhold on withholdable payments with respect to recalcitrant account holders by backup withholding under section 3406 with respect such payments as described in section 4.01(D) of this agreement must report on the applicable Form 1099 the reportable payments made during the year to such persons. Forms 1099 must be filed by the legal entity covered by this agreement and must exclude payments made by its U.S. branch, if any. A U.S. branch of a participating FFI that has not agreed to be treated as a U.S. person and makes the election described in section 4.01(D) of this agreement is required to file separate Forms 1099 using the EIN assigned to such U.S. branch.

(3) U.S. Branch of a Participating FFI. A U.S. branch of a participating FFI (regardless of whether it is treated as a U.S. person) must report separately on Form 1042–S or 1099 with respect to amounts paid or received by the U.S. branch during the year on behalf of its account holders. A U.S. branch of a participating FFI that is not treated as a U.S. person is only required to report on Form 1042–S or Form 1099, however, to the extent described in section 6.05(B) of this agreement. See section 6.06(B) of this agreement for the requirement for a U.S. branch to file a separate Form 1042 or Form 945.

(B) Special Reporting Rules when Withholding Agent Reports on Behalf of Participating FFI. A participating FFI is not required to report on Form 1042–S or Form 1099 as described in section 6.05(A) of this agreement amounts that the participating FFI receives on behalf of a recalcitrant account holder, nonparticipating FFI, or chapter 4 reporting pool of payees that are U.S. persons to the extent that its withholding agent has correctly reported on a Form 1042–S or Form 1099, as the context requires, and withheld the correct amount of tax on such amounts. The participating FFI is required to report, however, when the participating FFI knows, or has reason to know, that the payment is not correctly reported on Form 1042–S or Form 1099, that less than the required amount has been withheld on the payment, or that the amount of tax withheld is not correctly reported on Form 1042–S or Form 1099. In such a case, the participating FFI must report the payment on Form 1042–S or Form 1099 to the extent required under section 6.05(A) of this agreement. See section 9 of this agreement for the information that the participating FFI must include on its withholding statement to enable its withholding agent to report.

(C) Dormant Accounts. Notwithstanding section 6.05(B) of this agreement**,** a participating FFI is required to report a chapter 4 reportable amount made to a recalcitrant account holder that holds a dormant account for which the participating FFI sets aside the amount withheld in escrow, in lieu of depositing the tax withheld. See section 5.02 of this agreement for the requirements of the escrow procedure for dormant accounts. See also section 9 of this agreement for the withholding statement requirements with respect to dormant accounts and the instructions to Form 1042–S for reporting under this procedure.

(D) U.S. Source FDAP Income Subject to Reporting under Chapter 3. In a case in which a participating FFI reports under section 6.05(A) of this agreement a withholdable payment of U.S. source FDAP income subject to withholding under section 4 of this agreement, a separate Form 1042–S is not required to be filed for the same payment for chapter 3 reporting purposes under § 1.1461–1(c)(2). A participating FFI that is reporting U.S. source FDAP income that is a chapter 4 reportable amount that is not subject to withholding under section 4 of this agreement must include in its reporting an exemption code for chapter 4 purposes to the extent the participating FFI is required to report the amount under § 1.1461–1(c)(2).

(E) Reporting of Withholdable Payments to Limited Branches and Limited FFIs. A participating FFI must report (or provide sufficient information to its withholding agent, as described in section 6.05(B) of this agreement, to report) withholdable payments that it receives on behalf of a limited branch or limited FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a limited branch or limited FFI. See Form 1042–S and its accompanying instructions for the other information that a participating FFI is required to report in such a case.

(F) Time and Manner of Filing. A participating FFI must file Forms 1042-S on magnetic media with the IRS on or before March 15 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions. A participating FFI must file the relevant Forms 1099, if applicable, on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

.06 Tax Return Filing Requirements

(A) In General. If a participating FFI is required to report on Form 1042–S chapter 4 reportable amounts, it must also file an income tax return on Form 1042 to report the chapter 4 reportable amounts paid to account holders and payees that the participating FFI is required to report on Form 1042–S. A participating FFI will also be required to report on Form 1042 the amount of tax withheld and the amount of tax deposited with respect to such payments for the calendar year, in addition to any other information required by the form and its accompanying instructions. If a participating FFI applies backup withholding, instead of withholding under chapter 4, with respect to recalcitrant account holders as described in section 4.01(D) of this agreement, the participating FFI must also file an income tax return on Form 945 to the extent the participating FFI withheld tax on withholdable payments that are reportable amounts paid to its account holders. See section 6.05(B) of this agreement for the rules on when Form 1042–S and Form 1099 are required to be filed.

Form 1042 or Form 945 must be filed by the legal entity covered by this agreement, and it must exclude payments made by any U.S. branch of such entity. Withholding certificates and other statements or information provided to the participating FFI should not be attached to the return. With respect to Form 1042, the information required for purposes of chapter 4 is in addition to the information required to be provided on Form 1042 for purposes of chapter 3. A participating FFI must file Form 1042 with the IRS on or before March 15 of the year following the calendar year to which the form relates. A participating FFI must file Form 945 with the IRS on or before January 31 of the year following the calendar year to which the form relates.

(B) U.S. Branch of a Participating FFI. A U.S. branch of a participating FFI that is required to report on Form 1042–S chapter 4 reportable amounts must file a separate Form 1042 to report the chapter 4 reportable amounts that it paid to account holders and payees. Form 1042 should include the information described in section 6.06(A) of this agreement. A U.S. branch of a participating FFI that is treated as a U.S. person may also be required to file an income tax return on Form 945 if such branch applied backup withholding under section 3406(a) with respect to reportable amounts paid to accounts held by U.S. non-exempt recipients. See section 4.02(C) of this agreement for the withholding requirements of a U.S. branch of a participating FFI that is treated as a U.S. person.

.07 Coordination with Chapter 61 Reporting. A non-U.S. payor that is a participating FFI will satisfy its reporting obligations under chapter 61 (Form 1099 reporting) with respect to a payment to a payee that is a U.S. non-exempt recipient (or presumed U.S. non-exempt recipient) if such participating FFI reports such an account holder pursuant to sections 6.02 and 6.03. See also § 1.6049–4(c)(4) (including when a reporting Model 2 FFI will satisfy its obligation to report under chapter 61 with respect to a reportable payment). Notwithstanding the first sentence of this section 6.07, a participating FFI is required to report on Form 1099 to the extent the participating FFI applies backup withholding under section 3406 to the payment. See §1.6049–4(b)(6) for how a participating FFI may report a payment under chapter 61 to which backup withholding applies

.08 Retention Requirements

(A) Account Statements. A participating FFI is required to retain information that summarizes the account activity of its U.S. accounts and accounts held by recalcitrant account holders and nonparticipating FFIs to the extent required in §1.1471–4(d).

(B) Forms 1042-S. A participating FFI must retain a copy of each Form 1042–S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042–S relates.

SECTION 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING.

.01 In General. If a participating FFI (or branch thereof) is prohibited by law from reporting its U.S. accounts as required under section 6.02 of this agreement or from withholding to the extent required under section 4 of this agreement, the participating FFI (or branch thereof) must comply with the requirements of section 7.02 or 7.03 of this agreement.

.02 Prohibitions on Reporting U.S. Accounts. A participating FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a U.S. account as required under section 6.02 of this agreement must satisfy the requirements of § 1.1471–4(i)(2) to request a valid and effective waiver of such law or otherwise close or transfer the account.

(A) Reporting Model 2 FFI. A reporting Model 2 FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a preexisting U.S. account as required under section 6.02 of this agreement must request consent to report such account and, if consent is not provided, must report certain aggregate information about such account with other non-consenting U.S. accounts in accordance with section 6.03 of this agreement. With respect to a new account (as defined in the applicable Model 2 IGA), a reporting Model 2 FFI must obtain from each account holder of a U.S. account, as a condition of account opening, the consent required under domestic law in order for such reporting Model 2 FFI to report the account as required under section 6.02 of this agreement. Additionally, a reporting Model 2 FFI must request the account holder's consent to report, if required by domestic law, after account opening for any new account that is not identified as a U.S. account at account opening and that must subsequently be treated as a U.S. account due to a change in circumstances. If consent is not provided by the account holder, the reporting Model 2 FFI must treat the account as a non-consenting U.S. account and report the account as described in section 6.03(B) of this agreement.

.03 Legal Prohibitions Preventing Withholding with Respect to Recalcitrant Account Holders and Nonparticipating FFIs. To the extent a participating FFI is prohibited under domestic law from withholding with respect to recalcitrant account holders and nonparticipating FFIs as required under section 4 of this agreement, the participating FFI is required to satisfy the requirements of § 1.1471–4(i)(3) to block or transfer each account or offshore obligation held by such persons.

.04 Limited Branches

(A) In General. If a participating FFI maintains one or more limited branches, the participating FFI must meet the requirements described in § 1.1471–4(e)(2)(iii). Such requirements include withholding on payments made or received on behalf of a limited branch as described in section 4.03(C) of this agreement and reporting such payments as described in section 6.05(E) of this agreement. After the expiration of the transitional rule for limited branches under § 1.1471–4(e)(2)(v), a participating FFI with one or more limited branches will cease to be a participating FFI. If a limited branch maintained by a participating FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, the participating FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following the date that the branch ceases to be a limited branch by registering such branch as a participating FFI or deemed-compliant FFI by that date.

(B) Limited Branch of a Reporting Model 2 FFI. If a reporting Model 2 FFI maintains one or more limited branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each limited branch, which includes the requirements to withhold on payments made or received on behalf of such branch as described in section 4.03(C) of this agreement and to report such payments as described in section 6.05(E) of this agreement. If a branch maintained by the FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, a reporting Model 2 FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following such date that the branch will cease to be a limited branch by registering such branch as a participating FFI or deemed-compliant FFI by that date. A reporting Model 2 FFI with one or more limited branches will continue to be a reporting Model 2 FFI after the expiration of the transitional rule for limited branches under §1.1471–4(e)(2)(v), provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such branches.

SECTION 8. COMPLIANCE PROCEDURES

.01 In General. A participating FFI is required to adopt a compliance program under the authority of the responsible officer of the participating FFI or, in the case of a participating FFI that adopts a consolidated compliance program under the requirements of § 1.1471–4(f)(2)(ii), under the authority of the responsible officer of a compliance FI. A participating FFI's compliance program must include policies, procedures, and processes sufficient for the participating FFI to satisfy the due diligence, reporting, and withholding requirements of this agreement. A participating FFI must also perform, or have performed on its behalf, a review of its compliance with this agreement for the certification period (described in § 1.1471–4(f)(3)). The results of such review must be considered by the responsible officer in making the periodic certifications described in section 8.03 of this agreement. A participating FFI must also comply with the IRS review of compliance described in section 8.04 of this agreement.

.02 Responsible Officer. A participating FFI must appoint a responsible officer to establish, or to appoint one or more designees to establish, a compliance program that meets the requirements of section 8.01 of this agreement and to periodically review the sufficiency of such compliance program. The responsible officer must make the certifications described in section 8.03 of this agreement to the IRS regarding the FFI's compliance with this agreement.

.03 Certifications of Compliance by Responsible Officer

(A) Certification Regarding the Due Diligence Procedures. No later than 60 days following the date that is two years after the effective date of this agreement, the responsible officer of the participating FFI must make the certification described in § 1.1471–4(c)(7) regarding the FFI's completion of the due diligence procedures for preexisting accounts required under section 3 of this agreement and regarding the absence of any formal or informal practices or procedures to assist account holders in the avoidance of chapter 4 as described in § 1.1471–4(c)(7).

(B) Periodic Certification of Compliance. On or before July 1 of the calendar year following the certification period defined in § 1.1471–4(f)(3)(i), the responsible officer of the participating FFI must make either the certification of effective internal controls described in § 1.1471–4(f)(3)(ii) or, when required, make the qualified certification under § 1.1471–4(f)(3)(iii). The responsible officer must consider the results of the participating FFI's periodic review in making the periodic certification of compliance.

(C) Method of Making Certifications. The participating FFI (or the compliance FI with respect to such FFI) must make the certifications of compliance in such manner as the IRS may prescribe in future guidance or other instructions.

.04 Review of Compliance

(A) General Inquiries of FFI and Account Holder Compliance. Based upon the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS for each calendar year, the IRS may request additional information with respect to the information reported or required to be reported on such forms described in section 6.06 of this agreement or may request the account statements described in § 1.1471–4(d)(4)(v). The IRS may request additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(B) Inquiries of Reporting Model 2 FFIs. In the case of a reporting Model 2 FFI, subject to the terms set forth in an applicable competent authority arrangement under the applicable Model 2 IGA, the U.S. Competent Authority may make an inquiry directly to a reporting Model 2 FFI regarding the information described in section 8.04(A) of this agreement. When the U.S. Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting, the U.S. Competent Authority may make such an inquiry directly to a reporting Model 2 FFI. Additionally, if a reporting Model 2 FFI reports aggregate information regarding its non-consenting U.S. accounts and accounts held by nonparticipating FFIs as described in sections 6.03 and 6.04 of this agreement, the U.S. Competent Authority, consistent with the terms of the applicable competent authority arrangement under the applicable Model 2 IGA, may request information regarding the accounts underlying the aggregate information returns filed with respect to such accounts.

(C) Inquiries regarding Substantial Non-Compliance. Based on the information reporting forms and tax returns (Forms 945, 1042, 1042–S, 8966, and 1099) filed with the IRS for each calendar year, the certifications made by the responsible officer, or any other information related to a participating FFI's compliance with this agreement, the IRS may determine in its discretion that the participating FFI may not have substantially complied with the requirements of this agreement. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with this agreement or the performance of specified review procedures as described in § 1.1471–4(f)(4)(ii). If the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement, the IRS will notify the participating FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

(D) Inquiries regarding Significant Non-Compliance for Reporting Model 2 FFIs. Consistent with the terms of the applicable competent authority arrangement under the Model 2 IGA, the U.S. Competent Authority may request information necessary to verify a reporting Model 2 FFI's compliance with this agreement as described in § 1.1471–4(f)(4)(ii). If the U.S. Competent Authority determines that a reporting Model 2 FFI has failed to significantly comply with the requirements of this agreement, as modified by the applicable Model 2 IGA, the U.S. Competent Authority will notify the Competent Authority of the jurisdiction in which the reporting Model 2 FFI is located, and will also notify the reporting Model 2 FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

SECTION 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE

.01 Participating FFI Withholding Certificate. A participating FFI agrees to furnish a valid withholding certificate to each withholding agent from which it receives a withholdable payment and to each participating FFI or deemed-compliant FFI with whom the participating FFI holds an account. When a participating FFI receives a withholdable payment as a beneficial owner of the payment (as defined in § 1.1471–1(b)(7)) or otherwise holds an obligation or account for its own benefit, the withholding certificate to be furnished is a Form W–8BEN–E (or acceptable substitute form under § 1.1471–3(c)(6)(v)) that certifies that the participating FFI is the beneficial owner and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI that is receiving the payment and the branch's GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and all of the other information required by § 1.1471–3(c)(3)(ii), the form, and its accompanying instructions. Alternatively, with respect to a payment made prior to January 1, 2017, or made with respect to an offshore obligation, the participating FFI may provide its GIIN or other documentation as described in § 1.1471–3(d)(4)(ii) or (iii). In such a case, the participating FFI will not be subject to withholding and will not be reported as a nonparticipating FFI with respect to withholdable payments it receives from a withholding agent to whom the participating FFI provided such documentation. If, however, the branch receiving the withholdable payment is a limited branch, the participating FFI must identify itself as a nonparticipating FFI on the Form W–8BEN–E that it provides to the withholding agent, and such payment will be subject to withholding and reporting for purposes of chapter 4. See § 1.1471–4(e)(2)(iv)(E) for rules applicable to a limited branch of a participating FFI.

When a participating FFI receives a withholdable payment of U.S. source FDAP income as an intermediary, holds an account with a participating or registered deemed-compliant FFI as an intermediary, or is a flow-through entity, the withholding certificate that the participating FFI must furnish to the withholding agent is a Form W–8IMY (or acceptable substitute form under § 1.1471–3(c)(6)(v)) that certifies that the participating FFI is a flow-through entity or is acting as an intermediary (as applicable) and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI receiving the payment and its GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and includes all of the other information required by § 1.1471–3(c)(3)(iii), section 4.03(B) of this agreement, the form, and its accompanying instructions. Alternatively, with respect to an offshore obligation, the participating FFI (or the branch of the participating FFI receiving the payment) may provide the branch's GIIN and the documentation described in § 1.1471–3(d)(4)(iii). In such a case, the participating FFI will not be subject to withholding (or reporting) as a nonparticipating FFI for purposes of chapter 4 that would otherwise apply based on its status as a participating FFI, though withholding for purposes of chapter 4 may apply to the extent that it receives payment on behalf of recalcitrant account holders or nonparticipating FFIs and fails to provide sufficient information for its withholding agent to withhold under chapter 4 with respect to such persons. Additionally, withholding for purposes of chapter 3 may apply with respect to payments of U.S. source FDAP income based on the status of persons for whom the participating FFI receives the payment. For the requirements of a withholding certificate provided by a foreign partnership or foreign trust receiving a chapter 3 reportable amount, see § 1.1441–5(c)(2) or §1.1441–5(e)(5),respectively. For the requirements of a withholding certificate provided by a foreign intermediary that receives a chapter 3 reportable amount, see § 1.1441–1(e)(3).

.02 Withholding Statement

(A) In General. A participating FFI agrees to provide an FFI withholding statement that includes the information described in section 9.02(B) of this agreement to each withholding agent from which it receives a withholdable payment of U.S. source FDAP income on behalf of its account holders or other persons (including its partners, beneficiaries, or owners for a participating FFI that is a flow-through entity). See section § 1.1471–3(c)(iii)(B)(1) and (2) for the requirements of an FFI withholding statement. The withholding statement must be updated as often as necessary for the participating FFI to meet its withholding and reporting obligations under sections 4 and 6 of this agreement.

(B) Allocation of Payment on Withholding Statement. A participating FFI must allocate a withholdable payment of U.S. source FDAP income to each payee of the payment on its withholding statement. A participating FFI may include, however, on the withholding statement information that indicates the portion of such withholdable payment that is allocated to each of its chapter 4 withholding rate pools (consisting of separate pools for each class of recalcitrant account holders, for nonparticipating FFIs, and for U.S. payees). If a participating FFI applies the escrow procedure for dormant accounts described in section 5.02 of this agreement, the participating FFI must indicate the portion of such payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts that the participating FFI (and not the withholding agent) will hold in escrow. A participating FFI must identify its pools of recalcitrant account holders in accordance with the chapter 4 reporting pools provided on Form 1042–S and its accompanying instructions. If, however, a participating FFI elects to apply backup withholding instead of withholding under chapter 4 with respect to recalcitrant account holders that are described in section 4.01(D) of this agreement, the withholding statement provided to the withholding agent must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to the chapter 4 withholding rate pool of such recalcitrant account holders. In the case of a participating FFI that is a non-U.S. payor, a chapter 4 withholding rate pool of U.S. payees should include only those account holders that the participating FFI reports under section 6.02 of this agreement. See § 1.6049–4(b)(6) for the information that such a participating FFI may report with respect to payments subject to backup withholding under section 3406. See Form 1042–S and its accompanying instructions for information on the chapter 4 withholding rate pools applicable to recalcitrant account holders, nonparticipating FFIs, and U.S. payees.

If any portion of a withholdable payment is attributable to payees not subject to withholding or reporting under chapter 4, but the payment is subject to withholding or reporting under chapters 3 or 61, see §§ 1.1441–1(e)(3)(iv), 1.1441–5(c)(3)(iv), and 1.6049–5(d) for the applicable requirements (including the requirements applicable to the withholding statement and the appropriate documentation to be provided with respect to each such payee). In addition to allocating the portion of the payment to each such recipient, the withholding statement must include the information necessary for the withholding agent to report the payment on Form 1042–S or Form 1099.

If a participating FFI has an account holder that is a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), territory FI, or QI (including a QI branch of a U.S. financial institution) that is acting as an intermediary or is a flow-through entity and that has provided the information described in § 1.1471–3(c)(2) necessary for the withholding agent to report on the payment, the participating FFI must provide to its withholding agent the account holder information or pool reporting information provided to it by such other entity for determining the amount of withholding or the reporting required under chapter 4. See § 1.1471–3(e)(4)(vi)(B) providing that the participating FFI may rely on the determination of a payee's chapter 4 status that is provided by another participating FFI or registered deemed-compliant FFI unless the first-mentioned participating FFI knows or has reason to know that such information is incorrect or unreliable.

(C) Allocation of Payment on Withholding Statement for Reporting Model 2 FFIs. In addition to the information described in section 9.02(B) of this agreement, a withholding statement provided by a reporting Model 2 FFI must include in its chapter 4 withholding rate pool of U.S. payees any account holder of a non-consenting U.S. account that is not subject to chapter 4 withholding under an applicable Model 2 IGA (described in section 4.02(B)(2) of this agreement), but only to the extent that the payment is not subject to withholding under chapter 3 or backup withholding under section 3406.

(D) Procedure for Specific Recipient Reporting. For payments that are received by a participating FFI that is acting as an intermediary or that is a flow-through entity and that are subject to withholding under chapter 4 or backup withholding under section 3406 (described in section 4.01(D) of this agreement), that participating FFI may provide specific recipient information instead of chapter 4 withholding rate pool information on the withholding statement regarding any (or all) recipients that are recalcitrant account holders or nonparticipating FFIs. In such a case, the withholding statement must include the information necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S or Form 1099 and its accompanying instructions. The participating FFI is not required to provide the withholding agent with the withholding certificate or other documentation for each recipient.

SECTION 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS

.01 Adjustments for Overwithholding by Withholding Agent. A participating FFI may request a withholding agent to make an adjustment for amounts paid to the participating FFI on which the withholding agent has overwithheld (as defined in § 1.1474–2(a)(2)) under chapter 4 by applying either the reimbursement procedure or the set-off procedure described in this section 10.01. Nothing in this section 10 requires a withholding agent to apply these procedures.

(A) Reimbursement Procedure. A participating FFI may request a withholding agent to repay the participating FFI for any amount overwithheld under chapter 4, and for the withholding agent to reimburse itself under the reimbursement procedures under § 1.1474–2(a)(3), by making a request to the withholding agent prior to the earlier of the due date for filing Form 1042 and Form 1042–S (without regard to extensions), or the actual filing of Form 1042–S, for the calendar year of overwithholding. In such a case, the participating FFI must provide the withholding agent with sufficient information to determine the correct amount of withholding and to correctly report the payment as required under § 1.1474–1(d)(4). See section 4.02 of this agreement for the circumstances in which a withholding agent may withhold on behalf of the participating FFI with respect to its account holders or payees.

(B) Set-off Procedure. A participating FFI may request a withholding agent repay the participating FFI by applying the amount overwithheld under chapter 4 against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to the participating FFI under the set-off procedures of § 1.1474–2 (a)(4). A participating FFI must make the request before the earlier of the due date for filing Form 1042–S (without regard to extensions), or the actual filing of Form 1042–S, for the calendar year of overwithholding.

.02 Adjustments for Overwithholding by Participating FFI. A participating FFI may make an adjustment for amounts paid to its account holders and payees for which it has overwithheld tax under chapter 4 (as defined in §1.1474–2(a)) by applying either the reimbursement procedures or the set-off procedures described in §1.1474–2(a)(3) or (4), respectively.

.03 Repayment of Backup Withholding. If a participating FFI erroneously withholds (as defined in § 31.6413(a)–3) an amount under section 3406 from an account holder or payee, such participating FFI may refund to such person the amount erroneously withheld as provided in § 31.6413(a)–3.

.04 Collective Credit or Refund Procedures for Overpayments. If there has been an overpayment of tax with respect to an account holder or a payee of a participating FFI resulting from tax withheld under chapter 4 on a payment made to such account holder or payee during a calendar year, and the amount withheld has not been recovered under the reimbursement or set-off procedures described under section 10.01 or 10.02 of this agreement, the participating FFI may request a credit or refund of the amount of tax overwithheld to the extent permitted under § 1.1471–4(h). The participating FFI must follow the procedures set forth under § 1.1471–4(h)(4) to request the credit or refund on behalf of its account holders. No credit or refund will be allowed after the expiration of the statutory period of limitations for refunds under section 6511 with regard to the account holder or payee for whom the refund or credit is sought.

.05 Adjustments for Underwithholding. If a participating FFI knows that an amount should have been withheld under chapter 4 from a previous payment to an account holder or a payee but was not withheld, the participating FFI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property of such person over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of Form 1042 (without regard to extensions) for the calendar year in which the underwithholding occurred. A participating FFI's responsibilities will be met under this section 10.05 if it informs the withholding agent from whom the participating FFI received the payment of the underwithholding, and the withholding agent satisfies the underwithholding.

.06 Underwithholding after Form 1042 Filed. If, after Form 1042 has been filed for a calendar year (or the due date for filing Form 1042 if no Form 1042 was filed), a participating FFI or the IRS determines that the participating FFI has underwithheld tax for such year, the participating FFI must file an amended Form 1042 (or original Form 1042 if no Form 1042 was filed) to report and pay the underwithheld tax. A participating FFI must pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing such amended (or original) Form 1042. If a participating FFI fails to file a return (if required under section 6.06 of this agreement or this section 10.06), the IRS will make such return under section 6020 and assess such tax under the procedures set forth in the Code.

SECTION 11. FFI GROUP

.01 FFI Group

(A) In General. Each FFI that is a member of an FFI group, other than an exempt beneficial owner, must obtain its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI. In addition, the participating FFI and each FFI that is a member of the participating FFI's FFI group must comply with the requirements of a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. If the participating FFI is a member of an FFI group, the participating FFI will cease to be a participating FFI after the earlier of (1) the beginning of the third calendar quarter following the date that a member of the FFI group that was a limited FFI, ceases to be a limited FFI, unless the member becomes a participating or registered-deemed compliant FFI, or (2) the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471–4(e)(3)(iv), unless each limited FFI in the group becomes a participating or registered deemed-compliant FFI and no member of the FFI group (including the participating FFI) maintains a limited branch. An FFI and its FFI Group may register on the FATCA registration website.

(B) Special Rule for a Reporting Model 2 FFI. A reporting Model 2 FFI that has a limited branch or is a member of an expanded affiliated group that includes a limited FFI or FFI member with a limited branch will not cease to be a reporting Model 2 FFI solely due to the expiration of the transitional rule for limited branches or limited FFIs under § 1.1471–4(e)(2) or (3), respectively, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such limited branches and limited FFIs.

(C) Limited FFIs. A participating FFI that is a member of an FFI group that includes one or more limited FFIs must treat such FFIs as nonparticipating FFIs for withholding and reporting purposes. See sections 4.03(C), 6.04, and 6.05(E) of this agreement for the participating FFI's requirements with respect to limited FFIs under this agreement.

.02 Lead FI

(A) Designation of the Lead FI. If the participating FFI designates a lead FI to initiate its FATCA registration, the participating FFI must authorize the lead FI to fulfill the responsibilities described in section 11.02(B) of this agreement.

(B) Responsibilities of the Lead FI. A participating FFI that is designated as the lead FI by one or more FFIs that are members of an FFI group agrees to meet the following responsibilities with respect to such FFIs in addition to its other obligations under this agreement:

(1) Identify itself as the lead FI as part of the registration process and to delete its status as lead FI upon termination of such status;

(2) Identify all FFIs that have designated the participating FFI as their lead FI as part of the participating FFI's registration process;

(3) Monitor the FFI group information by accessing the FATCA registration website every six months to review the information provided and, if needed, update the information provided with respect to any members of the FFI group;

(4) Inform the IRS within 90 days of an acquisition or sale of a member of the FFI group by updating the FFI group information on the FATCA registration website to add or delete such member;

(5) Inform the IRS within 90 days of a change affecting the chapter 4 status of any member of the FFI group, including when any member of the FFI group ceases to comply with (or that does not otherwise comply with) the requirements of either a participating FFI or a registered deemed-compliant FFI by updating the member FFI's chapter 4 status on the FATCA registration website; and

(6) Inform the IRS within the time period prescribed under § 1.1471–4(e)(3)(iv) that a member of the FFI group ceases to be a limited FFI and designate on the FATCA registration website the status for which such FFI will register.

SECTION 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT

.01 Term of Agreement. This agreement begins on its effective date and expires on December 31, 2016, unless terminated under section 12.03 of this agreement. This agreement may be renewed as provided in section 12.08 of this agreement.

.02 Modification. This agreement may be modified by the IRS before the expiration date indicated in section 12.01 of this agreement. This agreement will only be modified through published guidance. Any such modification will in no event become effective until the later of 120 days after the IRS issues published guidance of such modification or the beginning of the next calendar year following such published guidance. In no event will the IRS modify this agreement for any year before 2017 to expand the class of payments for which withholding or reporting is required under this agreement or to include additional requirements for a participating FFI.

.03 Termination of Agreement. This agreement may be terminated by either the IRS or the participating FFI prior to the end of its term by delivery of a notice of termination to the other party in accordance with section 12.06 of this agreement.

(A) In General. The IRS will not terminate this agreement unless there has been a significant change in circumstances (as defined in section 12.04 of this agreement) or an event of default (as defined in section 12.05 of this agreement), and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this agreement. The IRS will not terminate this agreement in the event of default if the participating FFI can establish to the satisfaction of the IRS that all events of default for which it has received a notice (described in section 12.06 of this agreement) have been cured within the specified time period agreed to with the IRS.

(B) Reporting Model 2 FFI. In the case of a reporting Model 2 FFI, the reporting Model 2 FFI will not be treated as a nonparticipating FFI unless the U.S. Competent Authority has provided the Competent Authority of a Model 2 IGA jurisdiction in which the reporting Model 2 FFI is located notice of significant non-compliance with the terms of this agreement, as modified by the applicable Model 2 IGA, and the matter is not resolved within the 12-month period following the notice of significant non-compliance.

.04 Significant Change in Circumstances. For purposes of this agreement, a significant change in circumstances includes—

(A) An acquisition of all, or substantially all, of a participating FFI's assets in any transaction in which the participating FFI is not the surviving legal entity;

(B) A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this agreement, materially affects the provisions contained in this agreement, or materially affects the participating FFI's ability to perform its obligations under this agreement;

(C) A ruling of any court that materially affects the validity of any provision of this agreement;

(D) A case in which a participating FFI (other than a reporting Model 2 FFI) maintains a limited branch that cannot fulfill the requirements for participating FFI or deemed-compliant FFI status after the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471–4(e)(2)(v) or a participating FFI (other than a reporting Model 2 FFI) is a member of an expanded affiliated group that includes a limited FFI after the expiration of the transitional rule for limited FFIs and limited branches under § 1.1471–4(e)(3)(iv); and

(E) A significant change in a participating FFI's business practices that materially affects the participating FFI's ability to meet its obligations under this agreement.

.05 Event of Default. For purposes of this agreement, an event of default occurs if a participating FFI fails to perform any material duty or obligation required under this agreement or if the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement. In addition to the occurrences enumerated in § 1.1471–4(g)(1), an event of default also includes the occurrence of the following:

(A) The participating FFI fails to inform the IRS within 90 days of any significant change in circumstances; or

(B) If the participating FFI is designated by one or more FFIs that are members of an FFI group as a lead FI, the FFI fails, without reasonable cause, to inform the IRS within 90 days of an acquisition, sale, or change affecting the chapter 4 status of an FFI in the FFI group for which it is acting as lead FI, including that such FFI ceases to comply with (or does not otherwise comply with) the requirements to maintain its status as a participating or registered deemed-compliant FFI.

.06 Notice of Event of Default. Following an event of default known by, or disclosed to, the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default and requesting that the participating FFI remediate the event of default as described in § 1.1471–4(g)(2). See § 1.1471–4(g)(3) for the remediation process for an event of default.

.07 Termination Procedures

(A) Procedure to Appeal Notice of Termination. If a participating FFI receives a notice of termination of this agreement from the IRS, the participating FFI may appeal the determination within 90 days by sending to the address specified in section 13.05 of this agreement a written notice explaining why this agreement should not be terminated. If a participating FFI appeals the notice of termination, this agreement will not terminate until the appeal is decided. If a participating FFI does not provide a notice of appeal within 90 days, this agreement will terminate on the date specified in the notice of termination.

(B) Termination of Agreement. If the participating FFI seeks to terminate this agreement, it is required to provide notice to the IRS through the FATCA registration website. If the FFI's status as a participating FFI is terminated, the FFI must send notice of the termination within 30 days after the date of termination to all withholding agents and FFIs to which it has provided a withholding certificate pursuant to section 9.01 of this agreement. Shortly after receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List.

(C) Termination of Status as Compliance FI or Lead FI.

(1) If a participating FFI seeks to terminate its status as either a compliance FI or lead FI, it is required to provide notice of termination on the FATCA registration website in accordance with its instructions or as provided in later published guidance. A lead FFI's notice of termination of its lead FI status will require designation of a new lead FI on the FATCA registration website in accordance with its instructions or as provided in later published guidance.

(2) A compliance FI that terminates its status as a compliance FI will still be required to serve as the point of contact for the IRS with respect to the certification periods (as defined in § 1.1471–4(f)(3)(i)) during which the FFI acted as a compliance FI unless the FFI designates another FI that will act as the compliance FI for such periods and that has full access to the information that relates to such periods.

.08 Renewal. If a participating FFI intends to renew this agreement, it may do so via the FATCA registration website available at *www.irs.gov/fatca* in accordance with its instructions or as otherwise provided in later published guidance. This agreement will be renewed only upon the agreement of both the participating FFI and the IRS and is subject to modifications to this agreement as the IRS prescribes pursuant to procedures described in section 12.02 of this agreement.

.09 Treatment of Reporting Model 2 FFIs. Notwithstanding anything to the contrary in this agreement, a reporting Model 2 FFI is not entering into a binding agreement by agreeing to comply with the terms of this agreement, except to the extent that such an FFI is entering into an agreement on behalf of one or more of its branches in order for each such branch to be treated as a participating FFI. For the avoidance of doubt, compliance with the terms of this agreement requires compliance with the requirement to recertify on the FATCA registration website that the reporting Model 2 FFI shall comply with the terms of any renewed agreement, including any modified terms pursuant to section 12.02 of this agreement.

SECTION 13. MISCELLANEOUS PROVISIONS

.01 Waiver. Any waiver of a provision of this agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this agreement or the same provision at a later date.

.02 Governing Law. This agreement is governed by the laws of the United States. Any legal action brought under this agreement will be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, the participating FFI agrees to submit to the jurisdiction of such United States court.

.03 Notices. Except as otherwise provided on the FATCA registration website, notices provided under this agreement are to be mailed via registered, first class airmail. All notices sent to the IRS must include the participating FFI's name and GIIN and the name of the participating FFI's responsible officer. Such notices should be directed as follows:

To the IRS:

Internal Revenue Service
Office of Foreign Payments
290 Broadway
New York, New York 10007

To the participating FFI:

The participating FFI's responsible officer (or the responsible officer of the compliance FI for issues related to the participating FFI's compliance with this agreement). Such notices should be sent to the address indicated in the FFI's registration (as may be amended).

SECTION 6. EFFECTIVE DATE

The effective date of this revenue procedure is January 1, 2014.

SECTION 7. PAPERWORK REDUCTION ACT

This revenue procedure refers to a collection of information in the following sections of the FFI agreement (set forth in section 5 of this revenue procedure): Section 3 regarding the due diligence requirements for account holder and nonparticipating FFI payee identification and documentation; Section 4 regarding withholding requirements; Section 5 regarding deposit requirements; Section 6 regarding information reporting and tax return obligations; Section 7 regarding the legal prohibitions on reporting U.S. accounts and on withholding; Section 8 regarding compliance procedures; Section 9 regarding the participating FFI withholding certificate; and Section 10 regarding adjustments for overwithholding and underwithholding and refunds. Responses to these collections of information are required for an FFI to comply with the terms of the FFI agreement and not be subject to withholding under section 1471. The likely respondents are individuals, businesses, other for-profit institutions, and certain non-profit institutions.

The estimated information collection burden referred to in this revenue procedure will be reflected in the Forms 8957, W–8BEN, W–8BEN–E, W–8ECI, W–8EXP, W–8IMY, W–9, 1040NR, 1042, 1042–20–F, 1099, and 8966, as well as Form 843 and various income tax returns filed for purposes of claiming a refund of tax. The information collection burden relating to the Section 8 compliance procedures will be reflected in future IRS guidance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Tara N. Ferris of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Ferris or Kamela Nelan at (202) 317-6942 (not a toll free call).

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[2] Unless otherwise provided, all citations in this revenue procedure and the FFI agreement are to the Internal Revenue Code of 1986 and to the Income Tax Regulations thereunder.

Prev Up Next
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