April 17, 2013

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Re: Proposed Technical Corrections to LLDIE Definition in Final FATCA Regulations

Ladies and Gentlemen:

The Loan Syndications and Trading Association ("LSTA") and the Securities Industry and Financial Markets Association ("SIFMA") are jointly submitting this letter in order to request certain technical corrections to the "limited life debt investment entity" definition in the final regulations issued to implement the provisions of the Foreign Account Tax Compliance Act ("FATCA") that were included in section 501 of the Hiring Incentives to Restore Employment Act.[1] The LSTA and SIFMA together represent banks, investment managers and trustees that are responsible for creating, managing and administering the types of special purpose securitization vehicles of the kind described herein.

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[1] The LSTA is a not-for-profit trade association that is made up of a broad and diverse membership involved in the origination, syndication, and trading of commercial loans. The over 300 members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers, and other institutional lenders, as well as service providers and vendors. The LSTA undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable marketplace principles and to encourage cooperation and coordination with firms facilitating transactions in loans. Since 1995, the LSTA has developed standardized practices, procedures, and documentation to enhance market efficiency, transparency, and certainty. Additional information about the LSTA may be found at www.lsta.org.

SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. Our mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

The LSTA and SIFMA appreciate the consideration that the Department of the Treasury and the Internal Revenue Service have given to alleviating the potential for market disruption in connection with offshore securitization vehicles, including issuers of collateralized loan obligations ("CLOs"). In particular, the treatment of a limited life debt investment entity ("LLDIE"), as defined by Treasury regulation section 1.1471-5(f)(2)(iv), as a certified deemed-compliant FFI for a transitional period could in principle provide significant and welcome relief that would ensure that appropriate information on CLO investors is made available to the Service while avoiding the imposition of withholding on payments to CLOs in amounts that might cause them to terminate prematurely.

Looking forward, we would urge the Treasury and IRS to consider a more expansive approach, similar in broad concept to the rules for sponsored entities or the special provisions in Annex II, Section C of the United States-Ireland intergovernmental agreement for certain collective investment vehicles. Those rules, very generally, permit a FFI to be treated as FATCA-compliant provided that its interests are held by a reporting financial institution (that is, a PFFI, registered deemed-compliant FFI, or U.S. financial institution) or all information otherwise required to be provided is provided by such an institution. We believe those conditions are sufficient to assure that appropriate information with respect to any investor in an investment vehicle who is subject to FATCA reporting will be provided to the IRS. In view of the limited time available before FATCA withholding tax will be imposed, however, this letter addresses only certain proposed changes to the LLDIE definition.[2]

The LSTA and SIFMA believe that the regulations' transition rule for LLDIEs appropriately applies only to securitization vehicles:

- with a limited investment mandate;
- that are in existence as of a certain cut-off date;
- whose assets were acquired primarily for the purpose of holding them, rather than actively trading them;
- that sell securities to investors that are not related to each other, such as family members;
- which securities (other than ordinary voting shares[3]) mature within a stated period of time; and

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[2] The government of the Cayman Islands has announced that it intends to enter into a "Model 1" intergovernmental agreement with the United States in order to address FATCA issues. We attach for your information a letter addressed to Maples & Calder, a leading law firm in the Cayman Islands, from our outside counsel on our behalf proposing LLDIE provisions for that IGA. As with the technical corrections that we describe in this letter, those provisions have been drafted taking into account the urgency of concluding that IGA soon, given the large number of CLO issuers and other structured finance vehicles organized in the Cayman Islands.

[3] These securities have nominal economic value and are typically held under the terms of a declaration of trust by a trust company regulated by the Cayman Islands Monetary Authority.

- substantially all payments on which are made through a clearing organization, trustee or other paying agent that is a reporting financial institution.

As described in more detail below, however, the regulations' LLDIE definition has certain requirements that cannot be satisfied by most CLOs, or by similar special purpose investment vehicles with limited investment parameters that issue primarily debt securities with a fixed maximum term. Accordingly, in order to achieve the objectives described above, we are proposing a number of corrections and other limited changes to the definition of the term LLDIE.

Among the most significant concerns with the LLDIE definition is the requirement that the FFI's organizational documents "do not permit amendments to the organizational documents, including the trust indenture, without the agreement of all of the FFI's investors." As is the case for other types of debt securities, most CLOs permit amendments to their debt securities without the agreement of *all* of the FFI's investors unless those amendments would expressly change the timing or amount of payments on the securities or other similarly fundamental terms of the securities. Moreover, as a practical matter, the tranching of the securities issued by a CLO means that different classes of investors have different and often adverse interests, as litigation stemming from the financial crisis with respect to other types of securitization vehicles has demonstrated. In particular, the class of CLO investors that often controls any vote – the most senior class outstanding – generally would be affected the least by any withholding tax on assets, and may even welcome an early retirement of their securities. Even if the terms of CLO securities provide for majority vote, the most senior class is likely to control or significantly influence the outcome as it is typically large in size. If many CLOs terminate early, however, not only may junior securityholders be adversely affected, but the market for loans of U.S. borrowers may be disrupted as a result of the need for those CLOs to dispose of their assets within a short period of time.

Accordingly, as a practical matter a CLO that does not now have terms in its trust indenture that permit compliance with FATCA generally will be unable to compel investors to provide the required information, or to allocate the cost of non-compliance to the recalcitrant investors. We respectfully submit that if all payments on the CLO's debt and equity securities, other than those on the *de minimis* ordinary shares, are made through a clearing organization, trustee or similar financial institution that is a reporting financial institution, it should not matter that the CLO itself cannot provide reporting.[4]

We also request that certified deemed-compliant status be available to a LLDIE that was in existence as of December 31, 2013. There are markets outside the United States where participants have been waiting for the final FATCA regulations before agreeing to take on any measure of responsibility for FATCA compliance. Those markets are taking longer to digest and start to implement the regulations than U.S.-oriented markets. Moreover, there are negotiations over IGAs under way in many jurisdictions where special purpose vehicles tend to be formed, which further contributes to delay in implementation. Accordingly, we believe that a

[4] In such a case, the reporting financial institution would provide the reporting pursuant to its own obligations under FATCA, rather than on behalf of the CLO. We understand that trustees are not willing voluntarily to provide reporting on behalf of CLOs, because typically trustees are entitled to payment only for the costs of actions specified in the indenture or required by law.

2013 year-end cut-off date for certified deemed-compliant status is reasonable. We also request that that status continue until a LLDIE liquidates rather than terminating on January 1, 2017, as there are CLOs now in existence that will not liquidate by that date.

Other more technical changes we have proposed include:

- clarifying that a LLDIE issues securities under a trust indenture or similar document, and that it is that document that sets the outer bounds of the LLDIE's normal operating life, by requiring that the entity pay investors what they are owed by a specified date;
- clarifying the meaning of the term "unrelated" as it applies to investors;
- including entities formed as a shelf entity and later used as a CLO issuer, and entities that acquire assets through a contribution rather than by purchase, or a combination thereof;
- acknowledging that CLOs formed for the purpose of investing in debt securities may acquire some other related assets, for example by entering into interest rate swaps to hedge the gap between their floating rate assets and fixed rate liabilities; and
- clarifying that various requirements do not apply to the nominal ordinary shares issued by a CLO issuer.

The LSTA and SIFMA appreciate your consideration of their collective views and concerns. Please do not hesitate to contact one of us with any questions at the phone number or e-mail address set forth below.

Very truly yours,

THE LOAN SYNDICATIONS AND TRADING ASSOCIATION

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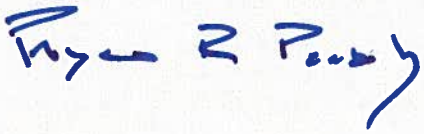

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Attachments

Proposed revised LLDIE definition
Letter to Maples & Calder

April 17, 2013

Proposed revised definition of LLDIE for FATCA regulations

1.1471-5-5(f)(2)(iv) *Limited life debt investment entities (transitional).* – An FFI is described in this paragraph (f)(2)(iv) if the FFI is the beneficial owner of the payment (or of payments made with respect to the account) and the FFI meets the following requirements. An FFI that meets the requirements of this paragraph (f)(2)(iv) will be treated as a certified deemed-compliant FFI.

(A) The FFI is a collective investment vehicle that issues one or more classes of interests pursuant to a trust indenture or similar fiduciary arrangement, and that is an FFI solely because it is an investment entity that offers interests primarily to investors that are not related to each other.

(B) The FFI was in existence as of December 31, 2013, and the FFI's trust indenture or similar agreement requires that on or prior to a specified date, the FFI pay to investors representing substantially all of the interests in the FFI all amounts that such investors are entitled to receive.

(C) The FFI was formed or used for the purpose of acquiring (and did in fact acquire) primarily specific types of indebtedness and holding those assets (subject to reinvestment only under prescribed circumstances) until the termination of the asset or the vehicle.

(D) All payments made to the investors of the FFI (other than holders of *de minimis* interests) are cleared through a clearing organization that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution or made through a trustee, fiscal agent, custodian or similar paying agent that is a participating FFI, reporting Model 1 FFI, or U.S. financial institution.

(E) The FFI's trust indenture or similar fiduciary arrangement, or other core governing documents, do not expressly authorize any person (absent an amendment to those documents) to fulfill the obligations that a participating FFI is subject to under §1.1471-4 on behalf of the FFI.

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April 17, 2013

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Re: Proposed IGA Language for CLOs and Other Structured Finance Vehicles

Dear Mr. Robertson,

On behalf of the Loan Syndications and Trading Association ("LSTA") and the Securities Industry and Financial Markets Association ("SIFMA"), I am attaching language that we have discussed with you for proposal to the government of the Cayman Islands in connection with the government's negotiations with the U.S. Treasury Department on a "Model 1" intergovernmental agreement to implement FATCA (an "IGA"). This letter briefly describes the purpose of the language. We would be pleased to provide any additional information that you would find helpful.

By way of background, under the "Foreign Account Tax Compliance" ("FATCA") provisions of the U.S. Internal Revenue Code, investment vehicles organized in the Cayman Islands such as issuers of collateralized loan obligations ("CLO issuers") will be subject to U.S. withholding tax on interest and other payments on loans of U.S. borrowers that they hold, unless they carry out certain diligence, reporting and withholding with respect to their investors. Many existing CLO issuers do not have contractual provisions that permit them to comply with these requirements.

The final regulations under FATCA include a provision dealing with "Limited Life Debt Investment Entities" ("LLDIEs") that we understand was intended to address that problem. Unfortunately the LLDIE definition is very narrow and would not apply to most CLO issuers or other Cayman Islands structured finance vehicles. Accordingly, we have discussed with you providing a similar, but broader, provision in the U.S.-Cayman Islands IGA. The proposed language would apply both to new and existing CLO issuers and similar entities.

The attached proposed IGA language has several goals:

1. *Compliance through trustee (Annex I, Section I.D).* As noted above, many existing CLO issuers do not have provisions in their trust indenture or other governing documents that address FATCA compliance. As a practical matter it is also typically not possible to amend those documents in order to remedy that problem. Accordingly, the proposed language is intended to require trustees to act on the CLO's behalf in this regard. This is feasible in light of the fact that all payments to investors are made through a trustee, provided that the obligation is mandated rather than voluntary, so that the trustees are entitled to compensation for their service.

2. *Limit reporting burdens for CLOs with solely book-entry securities (Annex II, Section IV.B(i)).* If all of a CLO's securities (other than ordinary voting shares[1]) are held through a financial institution that will provide FATCA reporting on payments that it makes, like a clearing organization, trustee or other reporting financial institution, which should always be the case if the securities are in book-entry form, the proposed language treats the CLO as a certified deemed-compliant FFI.[2] The theory for such treatment is that since the reporting financial institutions are reporting all payments, there is no need for the CLO to do any additional reporting.

3. *Limit reporting burden for CLOs with certificated securities (Annex I, Section I.D, and Annex II, Section IV.A).* Because there are legal reasons why some CLOs must issue certificated securities (that is, securities held in physical form), the proposed language treats such CLOs as reporting Model 1 FFIs as long as reporting is provided with respect to payments on those securities (referred to as "Reportable LLDIE Interests"). Such CLOs would be required to report information with respect to investors in the certificated securities to the Cayman Islands Tax Information Authority, but would not be required to provide any reporting with respect to book-entry securities held through a reporting financial institution, because that reporting would be duplicative.

4. *Limit the burden of registering with the IRS and obtaining GIINs (Annex II, Section IV.B(i)).* Because there are a large number of existing CLOs and other similar entities with very limited investment purposes that issue primarily debt or trust securities with a limited life, the proposed language treats such entities as certified deemed-compliant FFIs if they were in existence prior to December 31, 2013, as long as payments on all of the

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[1] These securities have nominal economic value and are typically held under the terms of a declaration of trust by a CIMA regulated trust company.

[2] A certified deemed-compliant FFI generally is not required to report information on investors in its securities to the U.S. Internal Revenue Service, or to register with the IRS and obtain a GIIN.

CLO's securities are made through a reporting financial institution (as described in paragraphs 2 and 3 above). We recommend a cut-off date of December 31, 2013 because the final regulations were issued only recently, and different segments of the market outside the United States are at different stages in adapting their documentation to provide for FATCA compliance on a going-forward basis.[3]

Alternatively, if an earlier cut-off date is adopted, we have provided for an extra year (through the end of 2015) for LLDIEs to register with the IRS. *(Annex II, Section IV.A flush language).*

5. *Revise LLDIE definition (Annex I, Section IV.B).* The proposed language provides a definition of an LLDIE that is modeled on the definition of that term in the final FATCA regulations, but has been modified in a way that would apply to actual CLOs, notably by deleting the requirement that CLO documents cannot be amended without the consent of all of its investors, and by making other more technical changes. Those changes include:

   - clarifying that a LLDIE issues securities under a trust indenture or similar document, and that it is that document that sets the outer bounds of the LLDIE's normal operating life, by requiring that the entity pay investors what they are owed by a specified date;

   - clarifying the meaning of the term "unrelated" as it applies to investors;

   - including entities formed as a shelf entity and later used as a CLO issuer, and entities that acquire assets through a contribution rather than by purchase, or a combination thereof;

   - acknowledging that CLOs often enter into interest rate swaps to hedge the gap between their floating rate assets and fixed rate liabilities, or may have acquired economic exposure to debt securities through a credit default swap (for example, in the case of a "synthetic CDO"); and

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[3] We have taken into account in considering the appropriate cut-off date that language agreed to between the Cayman Islands and the United States may be used as a model for IGAs with other countries, and that the language will apply to entities that may fall within the definition of LLDIE but are not CLOs. An example of such an entity is a "repack vehicle," which typically is a special purpose vehicle that buys a single debt instrument, enters into a swap or option with a financial institution, and sells a limited-life debt security or trust certificate to a small number of investors, often a single investor. The proposed language also provides that in the case of an entity organized in "cell" form, such as a Cayman Islands segregated portfolio company, the definition of LLDIE, and therefore the IGA's obligations, apply on a cell-by-cell basis.

- clarifying that various requirements do not apply to the nominal ordinary shares issued by a CLO issuer.

Please do not hesitate to let me know of any questions you may have with respect to this proposal.

Very truly yours,

Erika W. Nijenhuis

Attachment

cc: Tess Virmani, LSTA
Payson Peabody, SIFMA

Proposed Additions to "Model 1" Intergovernmental Agreement
between the United States and the Cayman Islands to Address
Issuers of Collateralized Loan Obligations and Other Structured Finance Vehicles

Add new Section I.D of Annex I:

The Cayman Islands shall require that any LLDIE Trustee of a Limited Life Debt Investment Entity that is incorporated or formed under the laws of the Cayman Islands

a) carry out the due diligence procedures contained in this Annex I to identify any Reportable LLDIE Interests that are U.S. Reportable Accounts or accounts held by Nonparticipating Financial Institutions,

b) report information on behalf of the Limited Life Debt Investment Entity with respect to any such Reportable LLDIE Interests, and

c) satisfy the other obligations set forth in section 1 of Article 4 hereof with respect to such Reportable LLDIE Interests, in each case in a manner such that the Limited Life Debt Instrument Entity will qualify as a Reporting Cayman Islands Financial Institution.

The United States shall take such measures as may be required by Article 5, section 4 (Prevention of Avoidance) to prevent any LLDIE Trustee that is a Reporting U.S. Financial Institution from circumventing the reporting required under this Section I.D, and shall treat any Limited Life Debt Investment Entity described in Section IV of Annex II as described therein.

Additional definitions to be added to Section VI.B of Annex I:

oo) The term "**Limited Life Debt Investment Entity**" means an FFI that (i) is an investment vehicle that issues one or more classes of debt securities or trust certificates pursuant to a trust indenture (or other LLDIE Core Document), and that is an FFI solely because it is an investment entity that offers interests primarily to investors that are not related to each other; (ii) the FFI's trust indenture (or other LLDIE Core Document) requires that on or before a specified date, the FFI pay to investors representing substantially all of the interests in the FFI all amounts that such investors are entitled to receive; (iii) was formed or used for the purpose of acquiring (and did in fact acquire) primarily specific types of debt instruments or interests therein (such as credit default swaps) or hedges thereof and holding those assets (subject to reinvestment only under prescribed circumstances) until the termination of the asset or the vehicle; and (iv) all payments to the investors of the FFI (other than holders of a *de minimis* interest) are cleared through a Reporting Clearing Organization or are made through a Reporting Paying Agent. In the case of an entity that is organized in the form of multiple series or cells or similar arrangements, each such series or cell shall be treated as a separate entity for purposes of this definition.

pp) The term "**LLDIE Core Documents**" means the organizational or constitutional documents, trust indenture or similar operating agreement, trust agreement, deed of covenant, custodial agreement and other documents that govern the operations of a Limited Life Debt Investment Entity.

qq) The term "**LLDIE Trustee**" means a Custodial Institution that acts as the trustee (or similar service provider) under the LLDIE Core Documents for a Limited Life Debt Investment Entity.

rr) The term "**Reportable LLDIE Interests**" means any interest in an LLDIE (other than a *de minimis* interest) that is not held through a Reporting Clearing Organization or a Reporting Paying Agent.

ss) The term "**Reporting Clearing Organization**" means a clearing organization that is a Participating FFI, Reporting Model 1 FFI, or U.S. Financial Institution, as such terms are defined by relevant U.S. Treasury Regulations implementing FATCA.

tt) The term "**Reporting Paying Agent**" means a trustee, fiscal agent, custodian or similar paying agent that is a Participating FFI, Reporting Model 1 FFI, or U.S. Financial Institution, as such terms are defined by relevant U.S. Treasury Regulations implementing FATCA.

Modify the title of Annex II so that it reads as follows:

NON-REPORTING FINANCIAL INSTITUTIONS AND PRODUCTS, AND OTHER SPECIAL ENTITIES

Add new Section IV to Annex II:

IV. **Other Special Entities**

A. Reporting Limited Life Debt Investment Entities

The following entity shall be treated as a *Reporting Cayman Islands Financial Institution*:

A Limited Life Debt Investment Entity that is incorporated or formed under the laws of the Cayman Islands and that meets the following requirements:

i. the information required to be reported by the Limited Life Debt Investment Entity under the Agreement with respect to Reportable LLDIE Interests is reported by the Limited Life Debt Investment Entity; and

ii. the Limited Life Debt Investment Entity satisfies the other obligations set forth in section 1 of Article 4 hereof.

For this purpose, references to a Limited Life Debt Investment Entity shall include references to a LLDIE Trustee or other person acting on behalf of the Limited Life Debt Investment Entity.

A Limited Life Debt Investment Entity shall not be required to register with the U.S. Internal Revenue Service as such prior to December 31, 2015.

B. Certified Deemed-Compliant Limited Life Debt Investment Entities

The following entities shall be treated as certified deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code (and shall not be treated as Reporting Cayman Islands Financial Institutions):

A Limited Life Debt Investment Entity that is incorporated or formed under the laws of the Cayman Islands and that meets the following requirements:

i. all interests in the FFI (other than *de minimis* interests) are held through a Reporting Clearing Organization or a Reporting Paying Agent and all payments on such interests are made through a Reporting Clearing Organization or Reporting Paying Agent; or

ii. the Limited Life Debt Investment Entity was formed on or before December 31, 2013.