April 30, 2012

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Dear Ms. Corwin, and Messers. Danilack and Musher,

The undersigned trade associations[1] appreciate the opportunity to comment on the regulations proposed (the "Proposed Regulations") under the Foreign Account Tax Compliance Act ("FATCA").

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The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States and virtually all internationally. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

The Securities Industry and Financial Markets Association - SIFMA brings together the shared interests of securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

We support the objective of FATCA to combat tax avoidance, and applaud the Treasury and the IRS's efforts in developing regulations to achieve such objective while addressing the concerns of taxpayers.

While we believe the Proposed Regulations have greatly improved upon the guidance provided earlier in various notices, we are nevertheless concerned with many aspects of the Proposed Regulations. In our discussions with members of our organization, as well as other organizations, a number of common themes have emerged.

One such theme is the importance of developing regulations that are sufficiently flexible to accommodate the many ways different countries approach various industries such as retirement planning. For example, the provisions under the current Proposed Regulations for pensions and other retirement plans do not work well with the pensions and other retirement plans in place in other countries. Many countries have different requirements for their pension and retirements plans, and accommodating such differences may be accomplished without sacrificing the efficacy of the FATCA rules.

The varying impact of some rules for different industries is a second theme that the regulations should consider. For example, rules that work well in the banking industry often do not work well in the insurance industry. Although banks often maintain an ongoing relationship with their customers, many insurance companies have minimal contact with policyholders. Updating information is often more challenging for insurance companies, with little impact on preventing tax avoidance. Furthermore, some industries are inherently less susceptible to serving as vehicles for tax avoidance, and where the potential for tax avoidance is lower, the requirements imposed on members of such industry should be lower as well.

Finally, the difficulties and costs of developing the systems and procedures for FATCA compliance cannot be underestimated. A number of the proposed effective dates should be reconsidered.

We fully support the letters submitted by the Canadian Life and Health Insurance Association Inc. (the "CLHIA Letter"), the American Council of Life Insurers (the "ACLI Letter"), the Securities Industry and Financial Markets Association, the European Banking Federation and the Institute of International Bankers, the British Bankers' Association, and the captive finance companies affiliated with manufacturers. Many of the comments in this letter are also addressed in such letters, and we repeat some of the comments that were particularly noteworthy.

Comments Applicable to Foreign Financial Institutions

1. We agree that Intergovernmental Agreements ("IGAs") are an excellent approach to addressing the laws of other countries. However, such IGAs will not be in effect by the time many of the FATCA provisions take effect. Therefore, we urge the IRS to allow foreign financial institutions ("FFIs") in countries where there is not an IGA in place and the local laws prohibit the transmittal of personal information be deemed-compliant until such time as the U.S. government reaches a solution with such countries. In cases where countries are in negotiations with the United States to develop an IGA, FFIs should be

deemed-compliant until some time after either such IGA is adopted or the countries have concluded that they cannot agree to an IGA. In either event, some period of time should be provided for FFIs to develop systems that reflect the terms of such IGA (or in the case of a failure to reach agreement, the FATCA provisions generally). It would be a tremendous waste of resources to develop systems before the resolution of IGA negotiations.

2. We urge that all of the effective dates be reevaluated for extensions, as the complexity and uncertainties of the FATCA rules require substantial resources and time to properly address.

3. Grandfather protection should be extended to certain transactions under existing ISDA master agreements that are in effect on January 1, 2013, so long as such agreements terminate within a limited time (e.g., four years from January 1, 2013). Thousands of existing ISDA master agreements do not contemplate FATCA withholding, and it will be extremely difficult for market participants to renegotiate all such agreements by January 1, 2013.

4. An FFI that is a U.S. payor should be allowed to elect to be treated as just an FFI. Under the Proposed Regulations, an FFI that is a U.S. payor would be required to comply with reporting obligations applicable to both FFIs and U.S. payors. This duplicative obligation would place FFIs owned by U.S. financial groups on an uneven playing field as compared to foreign-owned FFIs operating in the same markets, which is both unfair and unnecessary.

5. The final regulations should contain a certified deemed-compliant FFI exemption for certain types of existing securitization vehicles (including vehicles that own collateralized loan obligations). These vehicles generally lack mechanisms to allow them to enter into or comply with an FFI agreement.

6. The "reason to know" standard and account balance calculation should not require aggregation of information (including balances) that was not linked through computerized systems or that was obtained by an agent for different principals. It will not be practicable for U.S. financial institutions or FFIs to consult all possible documentation to which they may in theory have access. Further, it will not be possible, or in many cases legal, for an agent to share with one principal information obtained for another principal.

7. The Proposed Regulations should be revised to allow a financial institution to rely upon documentary evidence or other applicable information obtained from a source that may be relied upon under the AML/KYC rules applicable to the financial institution, to the same extent as if obtained directly from the account holder, subject to a condition that the financial institution does not have reason to know that the information or documentation is incorrect.

8. The Proposed Regulations would potentially disqualify all participating FFIs in an expanded affiliated group if a single FFI in the group failed to comply with FATCA. It is not unusual for a large financial institution to set up small entities for special purposes, which entities might be overlooked. The Proposed Regulations should be revised to prevent such inadvertent failures from endangering the status of an entire group (e.g., by allowing an inadvertent failure to be cured within a reasonable time of discovery).

9. The exception to the definition of FFIs in Proposed Treas. Reg. § 1.1471-5(e)(5)(iv) for hedging/financial centers of non-financial groups should be expanded to include captive financing subsidiaries. Such captive financing subsidiaries are as unlikely to be used as vehicles for tax avoidance as hedging/financial centers of non-financial groups.

10. Transferrable certificates of deposits that are traded on a regulated market or an over-the-counter market should be excluded from the definition of "depository account" unless the value of such deposits is determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments.

11. The regulations should be revised to provide that gross proceeds from stocks and securities will not be withholdable payment if the dividends or interest that such stocks and securities may produce would be effectively connected income. Providing different treatment between gross proceeds from the sale of an asset and the income produced by the asset would require expensive systems to separately categorize the same asset without producing a meaningful gain in FATCA compliance.

Comments Applicable to Insurance Companies

1. Additional categories of deemed-compliant FFIs are needed for insurance companies. Policies in most jurisdictions are not subject to private negotiation, and the local insurance regulators must approve the language in the contract before it may be offered for sale. Insurance contracts often cannot be changed once issued, and possibly cannot be changed for new policies without the consent of the local regulator. Cancelling contracts held by recalcitrant holders will be impractical or illegal in many jurisdictions. Therefore, we urge the adoption of additional categories of deemed-compliant FFIs for insurance companies and would support any of the approaches recommended by the CLHIA Letter or the ACLI Letter. In addition, no insurance or reinsurance company should be treated as a financial institution unless it is engaged, as a substantial portion of its business, in the issuance of cash value life insurance contracts or annuities. Such an exclusion from the definition of FFI is consistent with Congress's intent to limit the impact of FATCA on insurance companies.

2. The definitions of "annuities" and "life insurance contracts" should refer to the definitions provided in the jurisdiction in which such contracts are issued.

3. All reinsurance contracts, and all term life, property & casualty, disability and health insurance contracts, should be explicitly excluded from treatment as financial accounts. The approach currently taken by the Proposed Regulations, which is to assume that such contracts would be excluded from treatment as financial accounts because they lack cash value, is not a reliable basis for excluding such contracts from treatment as financial accounts, and reflects a lack of understanding of the standard terms of commercial insurance and reinsurance transactions. In the case of reinsurance contracts, the account holder is not an individual but rather an insurance company or reinsurance company.

4. "Cash value insurance contracts" should be defined as the amount that a policyholder is entitled to receive upon the termination or surrender of the contract. We believe that a simple administrable definition for cash value is needed for uniform enforcement.

5. The scope and definition of "term life insurance contracts" should include life insurance contracts that provide coverage for a stated duration and the amount paid upon

termination cannot exceed aggregate premiums paid for the contract. It is unnecessary to exclude contracts where premiums are unequal or are not payable at least annually if the contract cannot be terminated or cancelled for an amount that exceeds the aggregate premiums paid.

6. The $50,000 *de minimis* exception for deposits should also apply to cash value insurance contracts. Such an exception would provide relief to many insurance companies that only issue low cash value insurance products. Cash value insurance contracts have lower tax avoidance potential than deposits, and should not be treated worse than deposits in this respect.

7. The requirement for review of documentary evidence every three years should be eliminated and replaced by a requirement to review documentary evidence when a change in circumstances revealing objective indicia of U.S. taxpayer status occurs. Insurers generally do not have the regularity or frequency of contact with their policyholders that banks and investment funds have.

8. The definition of life insurance and annuity contracts that qualify as grandfathered obligations should be clarified to indicate that the definitions include life insurance contracts that are payable upon surrender or death and annuity contracts whose term-certain include lifetime payouts. Such contracts also have a definable term, and should be treated similarly to other obligations.

9. Depository account should not be defined to include "any amount held by an insurance company under an agreement to pay or credit interest thereon." The Proposed Regulations as written would likely result in all insurance and reinsurance companies being treated as financial institutions, which is inconsistent with Congress's intent to limit the impact of FATCA on insurance companies.

10. For purposes of determining when a foreign corporation has a substantial United States owner, the Proposed Regulations should not apply a zero threshold to shareholdings by insurance companies.

11. Life insurance and annuity contracts are unique in that they often cannot be purchased on the same terms at a later date due to changes in the health or age of the covered individual. As such, insurers should not be required to close the accounts of recalcitrant account holders.

12. Insurance premiums should not be included in the definition of withholdable payments. There has been a longstanding exception for insurance premiums from Chapter 3 withholding based on the fact that insurance premiums are subject to federal excise tax withholding. Without a similar exception from FATCA, we believe there will be a significant amount of unnecessary compliance required for payments with little or no tax avoidance risk.

13. Within the definition of an "active non-financial foreign entity," passive income is defined to include amounts received from or with respect to a pool of insurance contracts if the amounts received depend on the performance of the pool. The Proposed Regulations should be clarified to exclude the underwriting results of an insurer or reinsurer in the ordinary course of business.

14. The definition of "specified U.S. persons" should exclude an insurance company as defined in the Proposed Regulations.

Comments Applicable to Pensions and Retirement Plans

1. Proposed Treas. Reg. § 1.1471-5(f)(2)(ii)(A)(1)(ii) requires that in order for a broad-based retirement or pension fund to be qualified as a deemed-compliant FFI, no single beneficiary may have a right to more than 5% of the assets of the pension fund. Many government designed broad based retirement and pension funds do not track such percentages, although the broad-based nature of such pension funds would make such tracking unnecessary.

2. Proposed Treas. Reg. § 1.1471-5(b)(2)(i)(A)(1) provides that an account held by a retirement or pension fund is not treated as a financial account. Foreign pension systems may, however, provide for different forms of beneficiary distributions. We request that the exemption for retirement and pension accounts be extended to afford the same treatment to converted accounts funded with monies transferred directly from mandatory pension accounts.

3. Some restrictions surrounding the exclusion of pension and retirement accounts should be modified or removed to provide meaningful relief for such accounts. The $50,000 annual contribution limit and the restriction of contributions of earned income to retirement accounts should be removed from the final regulations, as such provisions are inconsistent with many countries' retirement plans. Thus, Proposed Treas. Reg. §1.1471-5(b)(2)(i)(A)(2) should be modified to include pension and retirement accounts in jurisdictions where such limitations do not exist by law.

4. Proposed Treas. Reg. §1.1471-6(f)(1) provides that retirement funds need to be exempt from tax to qualify. However, some retirement funds such as Australian superannuation funds are subject to low tax rates (15%). We recommend that the exemption from taxation requirement be amended to retirement funds qualify if it is either "tax exempt or concessionally taxed" or "tax favored."

5. The Proposed Regulations should be revised to permit cross-border retirement plans to qualify as deemed-compliant FFIs. Many plans are established as legal entities in one jurisdiction but provide benefits on a multijurisdictional basis or otherwise to employees in another jurisdiction, and such plans should be permitted to qualify as deemed-compliant FFIs.

6. The retirement plan deemed-compliant FFI rule should be extended to benefit plans without financial accounts (e.g., flexible spending health plans, housing plans). Such benefit plans serve a purpose similar to retirement plans and do not pose a risk for tax avoidance.

Comments Applicable to Investment Funds

1. U.S. mutual funds should be placed on an even playing field with comparable foreign funds. In that regard, U.S. mutual funds should be allowed to apply a passthru payment percentage similarly to comparable foreign funds. Furthermore, FATCA withholding for U.S. mutual funds should begin at the same time as withholding for comparable foreign funds (which begins in 2017).

2. Non-U.S. publicly-traded funds and investment trusts ("PTFs") in some jurisdictions such as the United Kingdom and Australia will face substantial difficulties complying with their reporting and withholding obligations if such obligations apply to interests other than financial accounts. Although shares in such PTFs (which are treated as mutual funds) are listed and traded on various stock exchanges, such shares are acquired through brokers and upon acquisition, investors have the right to have their shares entered into the PTFs' registry (rather than through a clearing house such as the Depository Trust Company). Such PTFs lack the control and the ability to ensure compliance from the investors, and brokers that effect acquisitions of the shares are in a far better position to ensure FATCA compliance. The Proposed Regulations should be clarified to provide that such PTFs will not have FATCA reporting or withholding obligations for interests that are not financial accounts. By limiting their FATCA obligations to financial accounts, such PTFs would not be required to report and withhold with respect to shares that are regularly traded on an established securities market. Shifting the burden of FATCA compliance to the brokers, who are better situated to report with respect to their customers and withhold on payments if required, would still achieve the objectives of FATCA.

Please feel free to reach out to the any of the undersigned trades for further comment and discussion.

Sincerely,

ACLI

The Financial Services Roundtable

The Securities Industry and Financial Markets Association

The US Chamber of Commerce