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April 17, 2014

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Re: SIFMA Request for FATCA Transitional Relief

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association ("SIFMA")[1] welcomes the opportunity to comment on the Temporary and Proposed Regulations published March 6, 2014 (collectively referred to as the "2014 Regulations") that substantially revise the obligations of

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[1] 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. A full list SIFMA's 567 members can be found at http://www.sifma.org/about/memberdirectory.aspx.

financial institutions with respect to the Foreign Account Tax Compliance Act ("FATCA"), as well as Chapters 3 and 61 and Section 3406 of the Internal Revenue Code (the "Harmonization Rules").

SIFMA understands the extraordinary challenges that Treasury and the Internal Revenue Service ("IRS") faced in developing the 2014 Regulations, while simultaneously negotiating Intergovernmental Agreements ("IGAs") and drafting final versions of Forms W-8, 1042, 1042-S, 8966, and related instructions. Although we acknowledge the government's efforts, and we greatly appreciate Treasury's recent announcement of countries that will be treated as having IGAs in effect, the consensus of SIFMA members is that it will not be possible for the global financial services industry to fully implement the FATCA regulations and the Harmonization Rules by July 1, 2014.

The 2014 Regulations include numerous changes that will affect client onboarding and withholding requirements. It is simply not feasible in less than three full months for all of the impacted domestic and foreign financial institutions to complete detailed implementation plans, prepare written procedures, train personnel, educate clients, and develop and test the systems changes required for compliance with the voluminous changes issued this late in the process. While our membership is supportive of the goals of FATCA and is familiar with the regulatory foundation upon which FATCA is built, the IRS has estimated that there are as many as 600,000 foreign financial institutions ("FFIs") that may be required to register.[2] Only a small fraction of these institutions has the expertise to adequately comply with FATCA on such short notice. Moreover, although SIFMA greatly appreciates Treasury's recent use of its discretion in this area, and the network of IGA countries has grown rapidly over the past several months, it is important to recognize that several significant economies have not signed an IGA and many thousands of financial institutions still will be required to establish their FATCA status or register by May 5th in order to avoid the risk of a substantial disruption in financial markets. According to SIFMA's review of gross domestic product figures published by the United Nations, more than 40 percent of global gross domestic product outside the United States is generated in countries that currently do not have an IGA Model 1 or Model 2 agreement in place.

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[2] Dean Marsan, "The FATCA Registration Process - - A Primer on the IRS FFI Net," Tax Notes, September 6, 2013, p. 1217.

Financial institutions worldwide will have even less time to address the significant changes included in the final versions of Forms W-8BEN-E and W-8IMY, once those forms and their accompanying instructions are released.[3]

Member institutions continue to work vigorously to implement FATCA. However, the amount of time remaining to achieve the effective, full implementation of FATCA is woefully inadequate. If banks and securities firms are not afforded sufficient time for an effective implementation of FATCA, SIFMA believes that adverse consequences could include severe disruptions to global and U.S. financial markets. Based on our past experiences in executing similarly complex projects, it is our belief that overly ambitious implementation timetables may cause market participants to implement contingency plans that rely largely on manual processes, possibly resulting in either (i) excessive withholding on accounts, or (ii) withholding agents, primarily banks and securities firms, assuming inordinate risks for failure to withhold on such accounts. Not only is this highly troubling to market participants and their customers, this should be equally troubling to Treasury. If financial institutions are forced to apply FATCA withholding based on hurried contingency plans, investors may choose to avoid the U.S. financial markets and instead invest elsewhere.

SIFMA continues to believe that a six-month extension of the FATCA effective dates is necessary and appropriate in light of the risks to financial markets and, indirectly, to the U.S. economy. However, understanding that Treasury may already have weighed these considerations, SIFMA would like to offer the following proposal for transitional relief targeted to accounts held by and payments made to foreign entities.

<u>Retain July 1, 2014 effective date for individuals and provide transitional relief for accounts held by and payments made to foreign entities</u>

An alternative approach to postponing FATCA's initial effective date would be to provide for transitional relief targeted only to ***<u>new accounts opened for entities</u>***. Under this approach, the full implementation of FATCA would be postponed until January 1, 2015 ***<u>only for</u>***

[3] The IRS published the final Form W-8BEN-E on March 28, 2014, but has not yet issued accompanying instructions.

accounts held by and payments made to entities.[4] Specifically, an account opened by an entity would be considered a preexisting obligation if it is opened prior to January 1, 2015. The requirements for obtaining documentation to establish the FATCA status of entity accounts, and the potential for applying Chapter 4 withholding, would not begin before January 1, 2015. If an account for an entity is opened prior to July 1, 2014 and is identified as a prima facie FFI, the entity's FATCA status would still need to be established by January 1, 2015 to avoid Chapter 4 withholding. The FATCA status of an account opened for a prima facie FFI after June 30, 2014 and before January 1, 2015 would need to be established by July 1, 2015 to avoid Chapter 4 withholding as of that date. The requirements for entity accounts opened prior to January 1, 2015 that are not prima facie FFIs would continue to be subject to FATCA documentation requirements and potential Chapter 4 withholding as of July 1, 2016. The foregoing would also apply with respect to an entity that does not hold a financial account, but is a payee of a FATCA withholdable payment (such as a vendor or counterparty).

Under this approach, the onboarding, withholding, and reporting requirements for ***new accounts opened for individuals*** would continue to be effective as of July 1, 2014. We believe that such a transitional approach would strike a reasonable balance between ensuring that U.S. individuals pay their U.S. income tax and the implementation burdens facing financial institutions and their entity clients. An account opened for an individual before July 1, 2014, would also be subject to the FATCA due diligence withholding and reporting requirements based on current timelines (e.g., participating FFI remediation of high-value accounts by June 30, 2015).

This approach also would require Qualified Intermediaries (QIs) to enter into new agreements, effective July 1, 2014, that would apply FATCA standards (onboarding, withholding, reporting) to individual accounts according to the same principles described above opened after that date. A QI (other than one that has assumed primary withholding responsibility) would generally be required to identify a pool of any recalcitrant account holders as part of its withholding statement, resulting in withholding by upstream payors. However, entity accounts opened by QIs would be eligible for the transitional relief described above. Similarly, this approach would require a nonqualified intermediary or other intermediary that is a

[4] The requirements and timelines for FFIs to register would be unchanged.

participating FFI (or is subject to an IGA) to identify a pool of any recalcitrant account holders, again generally resulting in withholding by upstream payors.

If a withholding agent receives a Form W-8 from an entity that includes information required by Chapter 4, the withholding agent would be allowed to rely on those portions of the form that do not relate to Chapter 4 for payments made prior to January 1, 2015. Withholding agents would not be required to report Chapter 4 information on Forms 1042-S for entity account holders with respect to payments made prior to January 1, 2015.

Expanded Affiliate Group Issues

The industry continues to have concerns related to identifying all instances where financial institutions own greater than 50 percent of investment entities that would require those entities to be included in the expanded affiliated group ("EAG") of their owner. In order to have sufficient time to analyze the FATCA classification and ownership structure of investment entities as it relates to inclusion in a financial institution's EAG, it is critical that relief be provided. There is also uncertainty whether Responsible Officers can provide an unqualified FATCA compliance certification upon registration of EAG entities due to questions regarding (i) when group entities that have local law restrictions should be limited; (ii) jurisdictions where local entities cannot register even as local FFIs; and (iii) identification and legal authority to ensure FATCA compliance of EAG members. Therefore, we request that guidance be issued specifying that the failure to include investment entities created prior to July 1, 2014 (or entities subject to local law restrictions) in a financial institution's EAG prior to January 1, 2015 will not jeopardize the EAG status of the financial institution.

Offshore Payments of U.S. Source FDAP

SIFMA is also very concerned about the financial impact of the new limitation on transitional rules for interest on deposits maintained at foreign branches of U.S. financial institutions to retail customers. This limitation is both surprising and its application unclear. U.S. financial institutions should not be expected to change their FATCA implementation plans at this late date to accommodate this unexpected change in the 2014 Regulations.

SIFMA recognizes and appreciates the effort that the Treasury and IRS have put into FATCA thus far. However, the 2014 Regulations and the Forms W-8 are extraordinarily complex, particularly as applicable to entities. In light of this and the fact that critical forms, instructions and other guidance has not yet been issued, SIFMA believes that a six month transitional period from July 1, 2014 to January 1, 2015 for implementation related to new entity accounts and payments made to foreign entities will contribute toward more efficient transition from the current information reporting and withholding process to the new FATCA regime. SIFMA appreciates your consideration of this request. Please do not hesitate to contact me at (202) 962-7300 or ppeabody@sifma.org if you have any questions or if we can be of further assistance.

Sincerely,

Payson R Peabody

Payson R. Peabody
Managing Director & Tax Counsel
Securities Industry and Financial Markets Association

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