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Invested in America

March 26, 2015

Mr. Mark Mazur
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Mark.Mazur@treasury.gov

Dear Mr. Mazur,

The Securities Industry and Financial Markets Association ("SIFMA")[1] is writing with respect to the Foreign Account Taxpayer Compliance Act ("FATCA") frequently asked question issued February 2, 2015 by the Internal Revenue Service ("IRS") regarding whether financial institutions ("FIs") operating in intergovernmental agreement ("IGA") jurisdictions are permitted to open new individual accounts without obtaining a self-certification from such account holders, known as FAQ 10.[2]

Our members greatly appreciate the Treasury Department's willingness to respond to the concerns of our members in past guidance, including, *inter alia*, the decision to delay certain FATCA implementation deadlines originally scheduled for to go into effect on July 1, 2014, the

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] Q10: If a Reporting Model 1 FFI or a Reporting Model 2 FFI that is applying the due diligence procedures in section III, paragraph B, of Annex I of the IGA cannot obtain a self-certification upon the opening of a New Individual Account, can the FFI open the account and treat it as a U.S. Reportable Account?

No. Pursuant to section III, paragraph B, of Annex I of the IGA, the FFI must obtain a self-certification at account opening. If the FFI cannot obtain a self-certification at account opening, it cannot open the account.

Internal Revenue Service, *FATCA FAQs*, Q10, (Feb. 2, 2015), http://www.irs.gov/Businesses/Corporations/Frequently-Asked-Questions-FAQs-FATCA--Compliance-Legal#General

two year forbearance period in which penalties will not be assessed against financial institutions making a good faith effort to comply with FATCA; the delayed implementation of FATCA's pass-thru payment and gross proceeds withholding requirements; and the IGA process itself. Nevertheless, our members have serious concerns about the manner in which FAQ 10 was adopted and its inconsistency with local guidance published in several Model 1 IGA jurisdictions.

As you know, our members operate in many one of the more than 100 Model 1 and Model 2 IGA jurisdictions. The Treasury Department's decision to enter into a network of IGA agreements was a critical accommodation that allowed foreign financial institutions ("FFIs") and U.S. financial institutions ("USFIs") located in IGA jurisdictions to comply with FATCA in jurisdictions where local laws and policies were in conflict with FATCA's U.S. statutory requirements. Without the IGA process, the market disruption and impact on the value of U.S. assets caused by FATCA could have been far more severe. The Treasury Department properly recognized that widespread imposition of the FATCA tax would be counter-productive to the goals of FATCA that SIFMA continues to support.

Therefore, all of our members greatly appreciated the willingness of U.S. Treasury to enter into a highly ambitious and innovative effort to negotiate IGAs with more than 100 jurisdictions that allows local FFIs and USFIs that operate in such jurisdictions to comply with FATCA primarily by interacting with local tax authorities. We believe this effort was an important reason the negative market impacts that SIFMA and many others were concerned about did not materialize or were less severe than would otherwise have been the case.

Because of our support for the IGA process and our recognition of their importance and effectiveness in ensuring fluid markets, we believe it is critical to have an orderly process for resolving interpretive disputes about the meaning of the IGAs. It is our understanding that the guidance in FAQ 10 - - which refers to Model 1 IGAs - - is inconsistent with the published guidance of several IGA countries, including the United Kingdom and Canada. In particular, we understand that both the Government of the United Kingdom and the Canadian Government have taken the position that FIs (including USFIs) operating within the UK and Canada are not required to refuse to open or close a new individual account in the event they are not able to

obtain a self-certification. Instead, under the UK and Canadian guidance, FIs are instructed to treat such accounts as reportable accounts.[3]

SIFMA does not wish to take a position on the meaning of the relevant provisions of the IGA, i.e. whether the UK and Canadian interpretation or FAQ 10 is a more accurate interpretation of the text of the IGA. While we recognize the importance of this issue to Treasury and the potential compliance risk that could emerge as a result of failure to obtain self-certification in a timely matter, nevertheless we are concerned about the apparent disagreement and the lack of any information about how this dispute and similar disputes over the meaning of important IGA terms will be resolved in the future. Accordingly, SIFMA would strongly recommend that the competent authorities of the relevant jurisdictions should meet to resolve this disagreement and, if necessary, amend the relevant provisions of the IGAs as appropriate. In addition, once the disagreement is resolved, financial institutions should be given an adequate period of time to make necessary updates to their processes and procedures to comply with any new guidance and/or changed interpretation.

Many SIFMA members are USFIs that operate in the United States and in the United Kingdom, Canada, or one of the other jurisdictions not requiring new individual accounts to be closed when a self-certification cannot be obtained. Inconsistent guidance in multiple jurisdictions places our members in the position of not knowing which authority to observe. To the extent that U.S. financial institutions are required to follow a more restrictive rule, this will place their foreign operations at an unfair competitive disadvantage in countries that allow local FFIs to follow a less restrictive rule.

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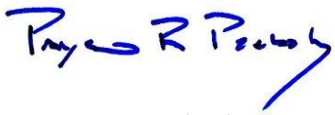
[3] Government of the United Kingdom, H.M. Revenue & Customs, *Implementation of The International Tax Compliance (United States of America) Regulations 2014 Guidance Notes*, Section 6.4 (Aug. 28, 2014), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357542/uk-us-fatca-guidance-notes.pdf ; Canada Revenue Agency, *Guidance on enhanced financial accounts information reporting, Part XVIII of the Income Tax Act*, Paragraph 9.15 (Dec. 22, 2014) , available at http://www.cra-arc.gc.ca/tx/nnrsdnts/nhncdrprtng/gdnc-eng.pdf .

SIFMA appreciates your consideration of its recommendation regarding this issue, and we would be happy to come in to address this further at any time. Please do not hesitate to contact me at (202) 962-7300 ppeabody@sifma.org if you have any questions or if we can be of further assistance.

Sincerely,



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