

16 March 2015

Dr. Achim Pross
Head of the International Co-operation and
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Centre for Tax Policy and Administration
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Dear Dr. Pross,

Re: Implementation of the Common Reporting Standard Background

On behalf of the Global Financial Markets Association (GFMA) and its regional members, the Securities Industry and Financial Markets Association (SIFMA), the Association for Financial Markets in Europe (AFME), and the Asia Securities Industry and Financial Markets Association (ASIFMA)¹, I am writing to express our members' concerns regarding the current timeframe for both implementing and ensuring compliance with the Common Reporting Standard (CRS) for automatic exchange of information on financial accounts.

Since October 2014, GFMA and its regional members have convened a global working group of our members who are experts in information reporting from a wide range of global financial institutions. Our members have spent a significant amount of time in recent years on the implementation of the US Foreign Account Tax Compliance Act

¹ The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit <http://www.gfma.org>. 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>. AFME represents a broad range of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks and other financial institutions. AFME advocates stable, competitive and sustainable European financial markets, which support economic growth and benefit society. For more information, visit <http://www.afme.eu>. ASIFMA is an independent, regional trade association with over 70 member firms comprising a diverse range of leading financial institutions from both the buy and sell side. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region's economic growth. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. www.asifma.org

(FATCA) and the Model 1 Intergovernmental Agreement (IGA), on which the CRS is based, and are the individuals who will be leading their firms on CRS implementation.

In line with our previous communications to the OECD Secretariat, you will appreciate that GFMA and its regional members fully support the policy goals of the CRS and are committed to ensuring its efficient and effective implementation. We believe, however, such goals will be undermined if implementation is forced to occur without appropriate guidance and sufficient time for financial institutions to incorporate that guidance into their systems and processes.

We are therefore writing to request that the timeline for implementation be revisited, either through a delay or “soft landing” approach. This would allow for early adopter jurisdictions to issue necessary guidance and for both governments and financial institutions to establish the systems to efficiently and accurately process the information to ensure compliance with the Standard. We would prefer that the effective date be delayed, for the reasons discussed below. The alternative of a soft landing period is a second-best option, in our view.

Need for delay in effective date

The GFMA appreciates the challenges involved in providing financial institutions with guidance on the many issues involved in CRS implementation from both the OECD and governmental level. Our members believe, however, that a delay in the application of the CRS provisions is necessary and warranted.

The 1 January 2016 effective date allows for a short implementation period at a time when financial institutions and many competent authorities are very busy with the implementation of FATCA. Additionally, only one agreement under the CRS has been signed between early adopter nations for exchange of information under CRS, but more significantly there has not been a single early adopter that has adopted the local law changes necessary to facilitate compliance with the CRS requirements set out by the OECD.

There are severe challenges concerning the practical difficulties in implementing aspects of CRS by 2016. The challenges relate to the time to develop compliance and reporting systems necessary to comply with CRS. In addition, complying with a number of requirements may require coordination with a number of governments and specific administrative and legal challenges must be addressed in this regard. Put simply, CRS creates the need for significant modifications to the information management systems of financial institutions. It is only reasonable to allow sufficient time for this.

It is quite likely that banks and other entities have put in place new account opening procedures consistent with FATCA and now will have to revamp their procedures to conform to the CRS provisions, as interpreted by local law. It is important to note that substantial work still remains to be done and can only be undertaken after each local government issues final and comprehensive guidance on CRS implementation.

The systems development process involves a series of steps, including: defining the scope of the project, development and documentation of technical requirements, design and coding of program changes, testing to ensure compliance with technical requirements, finalization of programming changes, and scheduling the release of systems changes. Each of these steps requires a substantial commitment of time and resources and they must be undertaken sequentially. Nine months is simply too short a time to accomplish all these steps, especially for a large bank that has fixed dates to make changes to the software environment - typically many months in advance of the rollout of any such changes.

Specifically, we would ask that participating jurisdictions provide advance guidance on CRS implementation at least one year before the relevant requirements take effect.

Soft landing alternative

In the case that a delay is not provided, we propose an initial 3 year soft landing period, similar to the IRS's enforcement transition period under FATCA. This approach would ensure that as guidance is released, market issues are identified and dealt with, and that financial institutions would not be unfairly penalized for any noncompliance that may occur despite their best efforts to comply.

We would expect such a "soft landing" would cover, as a minimum, the following areas:

- The timetable for pre-existing account due diligence: Ensuring accurate due diligence is performed in respect of this population of accounts represents one of the biggest operational challenges to financial institutions. If an institution is making a good-faith effort in this regard, it should not be penalized for taking longer than is required by local rules. This is especially true given that the number of accounts subject to review for CRS purposes is far greater than the number for FATCA purposes.
- Reporting: Similarly, meeting the current reporting timeline will place a significant burden on financial institutions. A light-touch approach to enforcement during the soft landing period would be reasonable if an institution is acting in good faith.
- Penalties and compliance: This relates to the assessment of a financial institution's compliance with CRS requirements, and related procedural issues. During the soft landing period, competent authorities should be prepared to be lenient in cases where noncompliance has not been wilful.

If the soft landing approach is adopted, then, for each particular compliance requirement for the CRS, the 3-year period should begin on the effective date for that particular element of compliance.

Challenges of implementation with little or late guidance

The European Union has required, in the Directive for the CRS, that necessary guidance and any law changes will need to be adopted by 31 December 2015. In the worst case scenario, this might allow for only one day of implementation time before the early adopters' effective date for CRS. At the same time, critical OECD guidance is still under development and most early adopter jurisdictions have yet to issue their own legislation and guidance. In this environment, our members increasingly are concerned that they will lack guidance sufficient to prepare for compliance.

Such a rigid timeline will not only create confusion for our customers but may ultimately produce a vast quantity of information which the relevant competent authorities are unlikely to be in a position to receive and/or analyse in order to achieve the desired purpose of the Standard.

Through our regional members, SIFMA, ASIFMA, and AFME, we have already been in discussions with the OECD Secretariat and participating CRS jurisdictions regarding the issues involved in implementing the CRS, along with considering the requirements of the CRS and the changes to both operational and IT requirements for multi-national financial institutions. The white paper authored by our regional trade associations is attached as an appendix to this letter and identifies issues and outlines recommendations relating to critical elements of the CRS to help achieve effective implementation. We hope that these recommendations will be considered for inclusion in future regulations and guidance as appropriate.

Experiences from FATCA implementation

Our experience in recent years in preparing for compliance with FATCA informs our view of the time that will be required to prepare for compliance with CRS in all of the jurisdictions where we conduct business.

The implementation of FATCA has been extremely challenging for financial institutions with international operations. It has been difficult to create the necessary IT systems and implement staff training programs within the timeline for FATCA implementation. In recognition of this, and of the fact that it was unable to produce the necessary guidance by its own deadlines, the US government agreed to defer certain FATCA deadlines, in some cases with very little lead time before aspects of FATCA became effective. In order for the CRS to be effective, if any necessary changes to the timeline are to be made, it is important that these are communicated as early as possible to allow all affected parties an adequate amount of time to adapt.

Collaboration is the key to successful implementation

By working collaboratively with the OECD and participating jurisdictions on implementing guidance, we hope to make constructive use of the experience of our members. Similarly it is important for early adopter governments to embrace a collaborative process between government and financial institutions in developing clear and workable CRS rules. Such a process requires adequate time for governments to issue

draft legislation and regulations, and for financial institutions to provide comments before guidance is finalized.

* * *

We look forward to continuing to work with you in developing appropriate guidance that will enable CRS to be successfully implemented in all relevant jurisdictions.

Kind regards,

A handwritten signature in black ink, appearing to read 'David Strongin', with a stylized flourish at the end.

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