

November 18, 2013

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**RE:        *Request for Additional Extension of the FATCA Phased Timeline***

Dear Ladies and Gentlemen:

The American Bankers Association (“ABA”), The Clearing House Association L.L.C. (“The Clearing House”), the Institute of International Bankers (the “IIB”), and the Securities Industry and Financial Markets Association (“SIFMA”) (collectively, the “Associations”)<sup>1</sup> appreciate the considerable efforts of the Department of the Treasury (the “Treasury”) and the Internal Revenue Service (the “IRS” or the “Service”) in issuing regulations implementing the provisions of the Foreign Account Tax Compliance Act (“FATCA”) earlier this year and the consideration of the banking and securities industries’ comments to clarify the application of the statute and aid in the efficient implementation of FATCA. The Associations also appreciate the continuing consideration of industry views, including actions by Treasury and the IRS to modify and extend the phased FATCA timeline for implementation as provided in Notice 2013-43, I.R.B. 2013-31 (July 29, 2013) (the “Notice”).<sup>2</sup>

The timing of Final Guidance and additional IGAs is critical to the implementation of FATCA. We recognize and appreciate that the Treasury and IRS are working diligently to provide final forms and instructions, final Chapter 4 regulations (including all substantive changes and corrections), and the final FFI agreement (and amended QI, WFP and WFT agreements) and to harmonize the rules under Chapters 3, 4 and 61 of the Code (collectively, the “Final Guidance”) as quickly as possible, bearing in mind the impact of the recent

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<sup>1</sup> Information about the signatories is set forth in the Annex to this letter.

<sup>2</sup> The Notice included extensions to the phased FATCA timeline by six months for withholding on income and due diligence procedures for new and pre-existing accounts, as well as the date for issuing or entering into grandfathered obligations, modified the due date for initial reporting by participating FFIs with respect to U.S. accounts, and announced Treasury’s intent to make consistent changes to model Intergovernmental Agreements (“IGAs”) (such provisions, collectively, the “Phased FATCA Timeline”).

government shutdown. We also recognize and appreciate the significant effort being made to conclude and publish additional IGAs. Nevertheless, all Final Guidance has not yet been issued, and there has been limited progress in the signing of IGAs.

Like the Treasury and IRS, banks and securities firms are working diligently to implement FATCA. However, without the Final Guidance firms cannot complete their implementation plans, finalize budgets, prepare needed written procedures, hire and train internal personnel, educate clients, and develop and test the systems changes required for compliance with FATCA's requirements. There also remain significant gaps in guidance and numerous unanswered implementation questions<sup>3</sup> that must be addressed by the Service. Further, as discussed below, implementing the requirements of IGAs presents significant additional challenges. Under the current timeline, there is less than 8 full months between now and July 1, 2014, the first scheduled FATCA implementation date. The Associations respectfully submit that this is insufficient time to achieve the effective, full implementation of FATCA.

For the reasons described herein, the Associations believe that it would be appropriate to extend further certain milestone dates in order to help ensure a smooth transition to the FATCA regime and minimize the prospects of over withholding as well as the potential for significant disruption to financial markets. Specifically, and subject to provision of all Final Guidance by December 31, 2013, the Associations request the following modifications to the Phased FATCA Timeline:

**Timeline for Withholding** – an additional six-month extension for withholding that is scheduled to take place beginning on July 1, 2014, so that withholding begins with payments made after December 31, 2014. In addition, we would request the definition of a grandfathered obligation (including associated collateral) be extended to obligations outstanding as of January 1, 2015.

**Expiring Withholding Documentation** – an additional six-month extension for withholding documentation set to expire on June 30, 2014 pursuant to the Notice, so that such documentation would expire on December 31, 2014. Since information reporting and withholding systems are based on the calendar year, we have a strong preference for January 1 effective dates. The mid-year effective date for withholding and due diligence procedures, as well as the mid-year expiration date for Forms W-8, presents an additional and unexpected challenge for FATCA implementation teams.<sup>4</sup> We are concerned that this one-time deviation will confuse both our members' customers and the processing of the returns at the IRS.<sup>5</sup>

**Due Date for Reporting** – FATCA reporting for 2014 (via Form 8966) should apply only to accounts designated by a participating FFI as held by a U.S. citizen or resident on December 31, 2014<sup>6</sup>, and

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<sup>3</sup> For instance, Final Guidance has not been issued to clarify the duplicate withholding and reporting responsibilities of foreign branches and controlled foreign corporations of USFIs that result from the inclusion of the FATCA rules in the Code.

<sup>4</sup> For example, the draft Form W-8BEN-E is a highly complex 8-page form that will require significant employee training on how to validate the form. Banks and securities firms, as requesters of withholding certificates, will play an integral part in the education of their non-U.S. clients and will need time to educate clients on the completion and use of the new Form W-8 series once the forms and instructions are issued in final form.

<sup>5</sup> Most banks and securities firms program their systems to automatically change the withholding status and the resulting tax rate of customer accounts on January 1 for any customer that fails to renew an expiring Form W-8. Such systems would require a one-time change, or manual process to accommodate the mid-year expiration date provided in the Notice. In addition, a mid-year FATCA or Chapter 3 withholding rate can result in different rates on one account and payment type during the calendar year reporting period, requiring two Forms 1042-S to be filed for the same account in a single year.

<sup>6</sup> See Treas. Reg. §1.1471-4(c)(5)(iv)(B)(i). This request assumes that the FFI Agreement would have a December 31, 2014, effective date, and conforming changes would be made to IGAs. The requested extension would align with public comments by IRS and Treasury officials indicating that reporting is the critical feature of FATCA. Providing this information for 2014 would mitigate the impact of delaying other FATCA requirements until 2015.

identifiable via electronic search. We also request that reporting for calendar year 2014 be delayed one year so that reporting for calendar years 2014 and 2015 would be provided by March 31, 2016. Under this approach, firms would be permitted to voluntarily report earlier in order to test the reporting systems. All other FATCA-related reporting requirements<sup>7</sup> should be postponed to be effective for payments made beginning in calendar year 2015.

**Date of New Account Opening Procedures** – a six-month extension to January 1, 2015 to implement new account opening procedures. However, firms should have the authority under guidance to be issued to implement new account on-boarding procedures before that date (removing those accounts from the preexisting account remediation pool).

**Obligations on Preexisting Accounts** – due diligence for prima facie FFI should be required by July 1, 2015.

The Associations recognize and appreciate that the FFI registration web site is now open and can be explored prior to January 1, 2014, when the IRS plans to start issuing Global Intermediary Identification Numbers (“GIINs”). Given the IRS’s goal of identifying Reporting Model 1 FFIs well before the FFIs’ December 31, 2014 deadline for obtaining a GIIN, and bearing in mind practical challenges that might be encountered in connection with implementing a new registration system, the Associations recognize the benefits of proceeding with registration as currently scheduled (i.e., July 1, 2014).<sup>8</sup> However, the realization of these benefits is critically dependent on providing financial institutions sufficient time to implement FATCA requirements and there being a significant number of jurisdictions treated as having an IGA in effect by that time.

FATCA implementation has been further impacted by the lengthy process of negotiating IGAs between Treasury and foreign governments. Not only will global financial institutions doing business in IGA jurisdictions be required to implement certain aspects of FATCA under IRS regulations, they will also be required to comply with varying IGA requirements in the approximately 80 jurisdictions expected to enter into IGAs. Moreover, of the ten IGAs that have been executed as of the date of this letter, only the United Kingdom has issued comprehensive guidance for implementation. While it is helpful that signed IGAs can be recognized as being in effect, banks and securities firms still are faced with the prospect of being required to program their systems for the FATCA regulations and then having to subsequently reprogram these systems and revise their procedures on a country-by-country basis as IGAs are implemented and local guidance is released. Therefore, the Associations believe that additional time is needed for the Treasury and foreign jurisdictions to conclude the new IGAs and enable financial institutions operating in those countries to implement FATCA just once.

In summary, we respectfully request that the Phased FATCA Timeline effective dates be delayed as discussed above -- provided that all Final Guidance is released by December 31, 2013. While this would not provide the desired and previously requested 18-24 month time frame needed by the industry to be ready for implementation, it will provide at least a more manageable amount of time between the issuance of the Final Guidance and the first implementation dates, and help minimize certain disruptions or difficulties associated with the implementation of FATCA.

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Thank you for your consideration of these views. We would welcome the opportunity to discuss our concerns and requests further with you. In the meantime, please feel to contact Francisca Mordi at 202-663-

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<sup>7</sup> Enhanced Form 1042-S requirements for U.S. FDAP, Form 8966 reporting for U.S.-owned foreign entities and owner-documented FFIs, etc.

<sup>8</sup> The Associations believe that requiring FFIs to register before the time that withholding applies will allow financial institutions more time to determine the FATCA classification of their account holders and payees, and gain a better understanding of their withholding and related gross-up obligations. With this information, institutions will be better able to manage withholding tax risks in advance.

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Sincerely,




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## **Annex**

### ***American Bankers Association***

The ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees.

### ***The Clearing House Association L.L.C.***

Established in 1853, The Clearing House is the oldest banking association and payments company in the U.S. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at [www.theclearinghouse.org](http://www.theclearinghouse.org).

### ***Institute of International Bankers***

The Institute of International Bankers (IIB) is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

### ***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.