Japanese Bankers Association (ZENGINKYO)

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June 7, 2011

Internal Revenue Service
CC: PA: LPD: PR (NOT-121556-10)
Room 5203
P. O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Comments on Foreign Account Tax Compliance Act Provisions

Dear Sir/Madam:

The Japanese bankers Association ("JBA") appreciates the opportunity to provide these comments in response to Notice 2011-34 (the "Notice") concerning regulatory and administrative interpretation and implementation of the Foreign Account Tax Compliance Act ("FATCA"), which was enacted on March 18, 2010 as part of the Hiring Incentives to Restore Employment ("HIRE") Act (Pub. L. 111-147).

The JBA is an association that represents and works on behalf of banks which have headquarter and branches in Japan, bank holding companies, and regional bankers associations in Japan and currently has 248 member institutions. The JBA conducts various activities both domestically and internationally in order to contribute to a sound and successful banking system that benefits the growth of Japanese economy, and the JBA also promotes compliance of the member banks, proper banking transactions, and advocates consumer protections. Almost all banks conducting banking business in Japan are its members.

The JBA understands that, within the framework of Organization of Economic Cooperation and Development ("OECD"), the needs for international cooperation to prevent tax evasion have been increasing, triggered by the incident where a financial institution had engaged in a business of encouraging U.S. persons to evade taxes. Such needs should be realized through the processes that each country establishes its own domestic laws cooperatively with other countries, with the international consensus made through discussion among the governments. Also, there is more elaborated framework called "The Convention on Mutual Administrative Assistance in Tax Matters." We believe that it is sufficiently possible to prevent tax evasion by utilizing these existing frameworks including OECD and the above mentioned Convention.

The JBA understands that the purposes of FATCA are to resolve problems between U.S. tax authorities and U.S. taxpayers, and we do not intend to deny the purposes at all. As we have mentioned repeatedly, we understand that the Internal Revenue Service ("IRS") requests cooperation to foreign financial institutions ("FFIs") in order to accomplish the purposes, and we are willing to fully cooperate to the extent possible. However, in order to accomplish its purposes, FATCA imposes strict obligations and severe penalties to FFIs by changing the U.S. domestic laws. The JBA is seriously concerned about the requirements of FATCA currently proposed since they appear to be far more burdensome and costly than what FFIs have been required to do

in their ordinary course of business. Because FATCA requires that FFIs perform extensive due diligence procedures and comply with reporting requirements regardless of whether a country in which an FFI is operating is considered a tax haven or not, we are afraid that the cost and burden on the FFI appears to far exceed the benefit enjoyed by the IRS. In addition, we would like to remind the IRS that computer systems deployed at banks are primarily designed to handle acceptance of deposits and execution of loans, not to track down tax evaders.
The ultimate purposes of FATCA cannot be sufficiently accomplished without cooperation of FFIs. In order to achieve the purposes of FATCA, it should be more important than anything to secure the practical feasibility for FFIs, including the definition of computer system requirements. Accordingly, the JBA strongly requests that the IRS seriously and urgently consider the comments and requests submitted by industry associations and financial institutions of each country including the JBA.

In addition, the requirements of FATCA is so burdensome that it might bring FFIs negative incentive to refrain from doing business with U.S. persons, whether or not a U.S. person is cooperative to identify himself or to allow FFIs to provide the IRS with his information. We strongly request that when the IRS discusses the above mentioned comments and requests, not only from the point of view of the tax authorities but from the view of the U.S. government as a whole, the IRS should consider if the possibility that U.S. persons are excluded from transactions with FFIs is consistent with the spirit of FATCA and the HIRE Act.

The United States and Japan have long enjoyed mutual economic dependency, and many Japanese financial institutions have been actively conducting business in the U.S. We anticipate that U.S. tax reforms concerning foreign direct investment in the U.S., such as FATCA, have a significant impact on Japanese financial institutions, in light of the fact that the direct investment in U.S. financial assets by Japanese banks was approximately 26 trillion Japanese Yen (approximately US$ 321 billion, converted at the rate of US$1 =81 Japanese Yen. All subsequent amounts in Japanese yen are converted at the same rate) at the end of 2009. In addition, only 52,000 U.S. citizens (as of 2009) stay in Japan, and this represents only 0.04% of the approximately 128,062,000 population of Japan (as of November 2010). It would, therefore, be extremely burdensome and costly for Japanese banks, especially banks that have only a small number of or almost no specific U.S. persons, to conduct due diligence as dictated by FATCA to identify specified U.S. persons (as defined by section 1473(3)) with respect to approximately 800 million bank accounts (as of September 2010) maintained by the banks in Japan.

While we greatly appreciate the fact that the U.S. Department of Treasury (the “Treasury”) and the IRS considered the cost and burden FATCA potentially places on financial institutions around the world and provided various measures that would help minimize the burdens of the FFIs in Notice 2010-60 followed by the Notice, we make the following requests to the new withholding and information reporting requirements under FATCA with an emphasis on how Japanese financial institutions can efficiently comply with such requirements without compromising the principles of FATCA.

1. Section I

The JBA appreciates that the IRS has fully modified the due diligence procedures to identify U.S. accounts amongst preexisting individual accounts, considering the comments submitted from all over the world for Notice 2010-60. However, despite this modification, a number of problems

still exist in the proposed due diligence procedures. We would like the IRS to know that the modified procedures lack feasibility and we are submitting comments for further improvement of the efficiency and the feasibility.

1) Definitions

i) Preexisting individual accounts

[Proposal 1] Exclusion of "everyday banking" accounts

"Everyday banking" accounts shall be excluded when FFIs perform identification steps for preexisting individual accounts.
"Everyday banking" accounts are the accounts that meet both of the following conditions:

(i) Accounts that are used on a daily basis in order to pay expenses that incur periodically (e.g. utility bills) or to receive salaries and wages through direct debit / direct credit transactions,

(ii) Accounts that do not generate interest or generate smaller interest compared with other deposit accounts such as savings accounts and time deposits.

We note that the Notice adopted the risk-based approach by introducing a separate and strict due diligence procedures with respect to private banking accounts. While this approach is favorable, the lower risk accounts should also be accorded similar treatments based on the risk-based approach. Accordingly the JBA proposes to introduce the concept of everyday banking accounts, which are in the opposite of private banking accounts.

In Japan, ordinary accounts are the most commonly used bank deposit accounts and are equivalent to checking accounts in the U.S., except that individuals in Japan rarely make out checks. Fund transfers and bank transfers are widely used in lieu of checks. It is a common practice in Japan that employers ask their employees to open a bank account at a specific bank so that they can have salaries and wages directly deposited into the designated accounts. Ordinary accounts are deeply rooted in the daily lives of the Japanese people and are used for routine settlement with very low interest rates (0.02% in the national average as of May 2011). Accordingly, it is highly unlikely that ordinary accounts used for tax evasion. Therefore, we propose that those bank accounts are of low risk and for everyday use by customers should be classified as "everyday banking" accounts and should be excluded from the definition of "financial accounts."

Because of an extremely small fraction of U.S. persons living in Japan as mentioned earlier in this comment, it is expected that the number of U.S. accounts will be minimal shoud due diligence be performed by Japanese banks. Therefore, we are so concerned that the processes of identification would be too burdensome and affect to the original banking business of Japanese banks if they are forced to conduct due diligence on all customers including those who only have accounts that are used for "everyday banking" purposes.

[Proposal 2] Implementation of Residency Provisions

Steps 3 through 6 shall not be required to be performed by the FFI, if the FFI strictly categorizes accounts into resident accounts and nonresident accounts in compliance with the local tax law of the country in which the FFI is established and all of the following conditions are satisfied:

(i) There is an income tax treaty in force between the U.S. and the country in which the FFI is established, and the treaty includes the Information Exchange Article and the Limitation of Benefits Article

(ii) Pursuant to the local tax law and/or other laws/regulations of the country in which the FFI is established, withholding and/or reporting obligation is imposed on payments made by the FFI with respect to interest, dividend, gross proceeds on sales of securities, and other similar items of income, and the local tax law applies different tax rates and requires documentary evidence depending on whether the beneficial owner of income is resident or nonresident.

(iii) The FFI collects and maintains pertinent records to establish the classification of its accounts under (ii) above

The JBA proposes that the IRS further pursue the risk-based approach and that residency provisions under the local tax law of the jurisdiction in which an FFI is established be respected and utilized in the identification steps for preexisting individual accounts. Specifically, our proposal is that nonresidents in a country in which a FFI is located is considered to have higher risk of tax evasion than residents, and should be subject to the steps for identification procedures , while residents are considered to have lower risk of tax evasion, and should not be subject to the steps for identification procedures. In other words, it is worth consideration that in cases where a FFI organized in one of the U.S. treaty partners strictly manages residents and nonresidents differently under its local tax law or foreign currency regulations, only accounts of nonresidents subject to due diligence of Step 3 (for private banking accounts), Step 4 (electronic information search), and Step 5 (for high value accounts), and accounts of residents are excluded because they pose low risk of tax evasion by U.S. persons.
In Japan, distinction based on residency is adopted under income tax laws, and residents and nonresidents are defined as follows.

[Definition of residents and nonresidents]
A resident is defined as an individual with address in Japan or have resided in Japan for more than one year continuously up until now. A resident is classified into two categories, “residents other than non-permanent residents” and “non-permanent residents”. A nonresident is defined as an individual other than a resident.

(1) “Residents other than non-permanent residents”
All income earned by residents other than non-permanent residents is subject to tax regardless of the location of generating such income.

(2) Non-permanent residents
Non-permanent residents are defined as individuals who are residents of Japan without Japanese nationality, and who had address or abode in Japan more than 5 years in aggregate during the

preceding 10 years. Non-permanent residents are subject to tax for the income generated in Japan (Japanese source income) and income generated outside Japan (foreign source income) to the extent paid in Japan or remitted to Japan.

(3) Nonresidents
Nonresidents are subject to tax for the income generated in Japan (Japanese source income).

In Japan, resident aliens are also subject to Basic Resident Registration Law which imposes registration requirements for all Japanese nationals. The Basic Resident Registration Law was partially amended in July 2009 in order to foster convenience for resident aliens and to promote efficient administrations in local authorities. The amended provisions are scheduled to take effect in July 2012. Thanks to this amendment, residency registration is required to be made for resident aliens who stay legally in Japan and have an address in Japan for more than three months except for short stay travelers such as tourists. Accordingly, control of aliens by local authorities are expected to be more efficiently and effectively done, compared with the current requirements under the Alien Registration Act and the Immigration Control and Refugee Recognition Act.

We understand the primary purpose of FATCA is to prevent tax evasion by U.S. persons regardless of their residency in foreign jurisdictions. However, considering the fact that residents in Japan are classified to be subject to tax as we discussed previously, we believe that the U.S persons classified as residents under the Japanese tax pose low risk of tax evasion.

In the event that the IRS needs information regarding U.S. persons who are classified as residents in Japan, it is appropriate to obtain such information from the competent authority in Japan pursuant to the information exchange provisions of the U.S.-Japan income tax treaties. Furthermore, we also think that the reliability of the local residency requirements proposed above should be evaluated for each applicable jurisdiction through the discussion between the IRS and the competent authority in the country concerned.

[Requests for Further Clarification]

- Determination of preexisting accounts

We request clarification that when conducting due diligence to determine if an account is a preexisting account or a new account (which is supposed to be determined whether or not the account exists on the day the FFI agreement becomes effective), it is conducted on a holder-by-holder basis, not on an account-by-account basis. If it is conducted on an account-by-account basis, banks have to conduct due diligence procedures every time the same account holder opens another account after the date the FFI agreement becomes effective. This means that banks have to repeat the same due diligence procedures over the same customer, and it may seriously affect the quality of service provided to the customers.

- Determination of new accounts

We request clarification that we perform due diligence procedures only when a customer opens an account for the first time after the date that the FFI agreement becomes effective, and we do not need to perform another due diligence if the customer opens additional accounts thereafter.

ii) Private banking accounts

[Proposal 3]
The mere fact that the term "private banking" is used as part of the name of a department or a division of an FFI should not be a determining factor when determining if an account is classified as a private banking account. Alternatively, we propose the following.

The following factors should be considered when determining if an account is classified as a private banking account:

- Each FFI determines whether an account is classified as a private banking account regardless of how a department, unit, division, or similar part of the FFI is referred to, and IRS should respect such determination.

Or,

- The IRS should focus on the substance of the services rendered / activities performed in a department, unit, division, or similar part of the FFI and should provide a threshold amount of the asset managed (e.g. at least US$1,000,000 or more in an account) or how the fees charged to the account holders are determined.

- Definition

The JBA appreciates the fact that the Notice provided the definitions of "private banking accounts," "private banking department," and "private banking relationship manager" in light of elaborating the risk-based approach. However, we request further clarification of those definitions as we still see some ambiguity in those definitions.
For example, in the banking industry in Japan, "private banking" in general means services that provide each customer with comprehensive solutions including customized financial plans for asset management. Nevertheless, the private banking department (and as well as departments with similar names) at each bank is expected to be in charge of different types of clientele, depending upon each bank's customer base, the asset size of customers and strategies, etc. In other words, a department called "private banking" might not represent a department which takes care of customers who are supposed to be subject to detailed due diligence. Thus it is hard for us to accept the idea to focus the fact that "referred to by the FFI as a private banking". The JBA proposes that the determination as to whether an account is classified as a private banking account under FATCA regardless of how it is referred to by each FFI and the IRS should respect such determination and classification of private banking accounts by each FFI.

Alternatively, the IRS should focus on the substance by setting an objective standard such as a dollar threshold of asset managed, or by looking to a method used by the FFI in determining fees charged to customers.

iii) Documentary Evidence [Requests for Further Clarification]

The Notice defines "documentary evidence" as "any valid document issued by an authorized governmental body that includes the individual's name and address and is typically used for identification purposes." The Notice also defines "documentary evidence establishing non-U.S.

status" as "documentary evidence that includes the account holder's name and indicates citizenship or residence outside the United States." Taking these definitions into account, documentary evidence issued by a non-U.S. authorized governmental body that includes the account holder's name and address (e.g. Japanese driver's license issued by Committee of Public Safety in each prefecture of Japan) should also be considered as valid documentary evidence under FATCA. We would like the IRS to clarify that the term "documentary evidence" includes any valid document issued by an authorized governmental body of a jurisdiction in which the FFI is operating that includes the individual's name and address and is typically used for identification purposes.

2) Procedures for Identification by Participating FFIs of Preexisting Individual Accounts

The JBA appreciates that the Notice modifies the procedures for preexisting individual accounts proposed in Notice 2010-60 as it shows the IRS's willingness to accept opinions from industries including the JBA.
However, while the IRS introduced the new procedures (Step 3) regarding private banking customers and high value accounts (Step 5), drastic simplification has not been sought for other steps, thus the burden for financial institutions still remains significant. We think that introducing special procedures for private banking customers has some effect considering the fact that FATCA's purpose is to capture the information on offshore financial assets held by U.S. taxpayers. However, for due diligence procedures for many other accounts, we would like to request further consideration regarding the points below for further improvement of efficiency and simplification based on the risk-based approach.

i) Consolidation of accounts by each account holder [Requests for Further Clarification]

The Notice indicates that for purposes of determining the balances of accounts, an FFI will be required to treat all accounts maintained by the FFI or its affiliates that are associated with one another due to partial or complete common ownership of the accounts under the FFI's existing computerized systems as a single account. However, even within a company or between affiliated companies, this may not be permissible completely in some cases where protection of personal privacy information, firewalls, and limitation of the computer systems prevent the FFI from consolidating accounts. Therefore, consolidation of accounts by account holder under FATCA deemed to be sufficient at each bank's best effort in consideration of limitations of the local laws and computer systems which each FFI faces. Specifically, if the existing computer system does not allow the FFI to consolidate accounts by each account holder, our understanding is that the FFI would be deemed to be compliant with the consolidation requirements so long as the FFI can consolidate the accounts with respect to sub-sets of the accounts for which the FFI can reasonably consolidate the accounts (e.g. consolidation by the company level or by each branch level, etc.)

ii) Extent of individual accounts [Requests for Further Clarification]

Different due diligence procedures are specified for individual accounts and entity accounts. We request clarification whether sole proprietors are classified as individuals or entities. The classification under the U.S. tax system is not necessarily consistent with the classification in other countries where FFIs are operating. Accordingly, each FFI's classification in the ordinary course of business should be respected rather than the flat classification across the board.

iii) Threshold

[Proposal 4] Threshold

Increase of the current threshold of US$50,000.
The threshold should be set at US$250,000, which is the maximum coverage amount of U.S. deposit insurance, if a flat threshold is to be applied universally.

Or,

The threshold should be set separately for each country according to the country's coverage amount of deposit insurance.

Step 1 and 2 provide that the FFI may treat an account as a non-U.S. account if the balance or value of the account does not exceed $50,000. As we requested in our previous comments dated November 1, 2010, the JBA continues to request that the threshold of $50,000 be increased. The primary purpose of FATCA is to prevent tax evasion committed by U.S. persons. The effect caused by implementation of FATCA on account holders (mostly, domestic customers of FFIs who do not owe tax liabilities to the U.S.) should be minimized. In other words, FFIs' average and ordinary domestic customers should not be subject to due diligence of FATCA, and the JBA has no objection to adopting the threshold principle that treats accounts with certain amount or less as non-U.S. accounts, except that the currently proposed flat threshold does not reflect the economic situation of each country and we feel that it is not practicable.
We propose that more flexible approach be taken in light of the actual economic situations of each country.
We think that each country's coverage amount of deposit insurance[1] or the average balance of deposit accounts can be used as a benchmark to determine the accounts of "average and ordinary domestic customers." In light of the goal of deposit insurance which is to protect the deposits of average and ordinary depositors, we would like the IRS to consider an increase of the threshold amount reflecting the coverage amount of deposit insurance in each country, or alternatively, use USD 250,000 if the universal threshold is more appropriate. For your reference, the proposed threshold amount of $50,000 is significantly lower than Japan's coverage amount of deposit insurance (10 million Japanese Yen = approximately US$123,456) and the average balance of deposit accounts in Japan (16,380,000 Japanese Yen ＝approximatelyUS$202,222 per household with two or more household members).

[Requests for Further Clarification]

- Accounts subject to the threshold amount

We request clarification that accounts to which the threshold amount is applied in Step 2 of the Notice include any financial accounts such as depositary accounts, custodial accounts, and any

[1] USD 250,000 in the U.S., CAD100,000 in Canada, EUR100,000 in EU.

equity or debt interest in financial institutions other than interests which are regularly traded on an established securities market.

- Exchange rate used for determining the threshold amount

The Notice provides that the amount used to determine if an account meets the threshold amount is year-end balances. However, they must be converted from foreign currencies such as Japanese Yen to U.S. dollars as the threshold amount is shown in the U.S. currency in the Notice. We would like to have a clear standard of the exchange rate used for this purpose. Alternatively, each FFI should be allowed to quote an exchange rate that each FFI deems reasonable.

iv) Step 3: Private Banking

For Japanese banks, the distinction between products and services provided to ordinary retail customers and private banking customers is marginal, compared with those provided by banks in Europe and the U.S. Most Japanese banks, according to a survey conducted by the JBA, consider their private banking business as a kind of extended consulting services for ordinary retail customers. In addition, in practice, Japanese banks provide private banking services only to residents of Japan, and the likelihood that Japanese banks enter into private banking business with wealthy U.S. persons, at whom FATCA is potentially targeting, are extremely remote, if at all exists. We understand the perspective shown in the Notice that FFIs should perform detail review for private banking customers of private banking department whose main customers are wealthy individuals, based on the risk-based approach. However, we would like to propose the following detailed proposals for your consideration.

[Proposal 5] Accounts that are not private banking accounts

As for accounts that are not private banking accounts, Step 5 (due diligence for high value accounts with the balance of US$500,000 or more) is not to be performed because the purpose of FATCA is accomplished by searching electric database in Step 4.

Because diligent review is performed for private banking accounts, due diligence for other accounts (accounts that are not private banking accounts) should be simplified in light of the risk-based approach. More precisely, even if the residency provision previously mentioned is not incorporated, the purpose of FATCA should be accomplished by searching electric database in Step 4 with regard to accounts that are not private banking accounts. Accordingly, Step 5 (due diligence for high value accounts with the balance of US$500,000 or more) and Step 6 (Annual retesting) should not be warranted, and all accounts with no US indicia in Step 4 should be treated as non-US accounts.

[Proposal 6] Family members

As for family members of a private banking customer, due diligence should be performed only with respect to the family members whom the private banking relationship manager knows of.

The Notice provides that family members of a customer who is determined to be a U.S. person as a result of due diligence should be generally treated as U.S. persons. We think that further clarification of the definition of "family members" is necessary. Compared with the private banking business in Europe and the U.S. that offer comprehensive customized services by combining all family members' accounts, the private banking business of Japanese banks is merely an extended services for ordinary retail customers. Therefore, it is not common in Japan to provide comprehensive asset management services to banks' customers and their families as a unit, including all members' assets in the scope of the services provided by the banks. Furthermore, Japanese banks do not necessarily maintain records based on family relationship with respect to pre-existing customers, and thus do not maintain information on family relationship among their customers. Granted that family members are subject to due diligence, we request clarification that due diligence procedures should be conducted only with respect to family members whom the private banking relationship manager is aware of.

[Proposal 7] Customer Files

Information that is subject to a diligent review for private banking customers should be limited to related information of a customer in the computer system or documents that are obtained when the customer opened an account.

A private banking relationship manager is supposed to perform a diligent review of account files and other records including paper and electronic data with respect to customers whom they are in charge of as a private banking relationship manager, and to identify each customer if they have U.S. indicia. In some cases, this procedure requires FFIs to review a tremendous volume of customer files diligently and would create an excessive burden for FFIs. Accordingly, we propose that the information that is subject to a diligent review be limited to related information of a customer in the data system and documents that are obtained when the customer opened an account.

[Requests for Further Clarification]

- Standing instructions to transfer funds to an account maintained in the U.S.

We think that clarification of the definition of "standing instruction" is necessary. We believe that "standing instruction" generally means that an FFI and a customer enter into a contract in advance and the FFI remits money to a designated account in the U.S. periodically (e.g. at the end of every month) based on the contract. We understand that standing instruction does not include money transfers that a customer submits an application each time of the transaction, and we would like you to clarify that.

- Directions regularly received from a U.S. address

We believe "directions regularly received from a U.S. address" include directions for an account maintained outside the U.S. (e.g. withdrawal or purchases and sales of investment products from

such accounts); however, we would like the IRS to provide us with some examples of directions that are subject to diligent review. In a case where a U.S. bank is a remitting bank and a Japanese bank is a receiving bank, a payment order of the remittance is sent by the U.S. bank to the Japanese bank through SWIFT. We would like to have clarification that such payment orders are not considered "direction."

- Treatment of customers with no U.S. indicia

We request clarification that accounts without U.S. indicia can be treated as non-U.S. accounts.

- Documentary evidence

In Step 3, depending upon the classification of information collected regarding U.S. indicia, a non-U.S. passport or other similar government-issued evidence establishing the client's citizenship in a country other than the United States must be requested. We request clarification whether the documentary evidence requested here and the documentary evidence defined under §I.(6) are the same or not, and if not, we request clarification what the specific difference between the two is.

-Retention period

In Step 3, the Notice provides that the FFI must ensure that all of the written requests and responses related to the search are retained by the FFI for ten years. On the other hand, Section IV.B (Reporting U.S. accounts, Gross Receipts and Withdrawals) provides that the FFI Agreement will provide that if the FFI retains copies of statements sent to holders of U.S. accounts in the ordinary course of its business, such statements must be retained for a period of five years and must be provided to the IRS upon request. We would like to have the same retention periods as two different retention periods confuse FFIs' practices.
Also, as an alternative, we propose that retention period implemented by each FFI should be respected where a particular retention period is prescribed under the local laws or regulations. For instance, "Act on Prevention of Transfer of Criminal Proceeds" of Japan requires that identification records and transaction records to be retained for seven years after the corresponding transactions.
FATCA will force Japanese banks to retain customer documentation for ten years, which is longer than the retention period set by the Japanese local law. For this reason, we request a shorter retention period, or alternatively, we request that FFIs can follow its own country's AML or KYC rules with regard to retention period.

- Written explanation regarding the customer's renunciation of U.S. citizenship or reason that the customer did not acquire U.S. citizenship at birth

Step 3 and 4 require that the private banking relationship manager will be required to obtain a written explanation from a customer who established non-U.S. status despite having a U.S. birthplace regarding the customer's renunciation of U.S. citizenship or a reason that the customer did not acquire U.S. citizenship at birth. In Japan, historically, information regarding nationality has been handled sensitively, and not only is it difficult for banks to request customers for such a written explanation but it could also induce unnecessary troubles between banks and customers.

Therefore, we request that this requirement be removed or a feasible procedure that imposes fewer burdens on both FFIs and their customers (e.g. a question on a standard form is filled).

v) Step 4: Accounts with U.S. indicia

A large number of accounts are subject to Step 4 because accounts that are not excluded at Step 1 through Step 3 are subject to Step 4. As private banking accounts which are considered to pose high risk are subject to Step 3, Step 4 should be simplified by incorporating the residency provisions (referred to our Proposal 2) based on the risk-based approach. Should the above mentioned proposal not be adopted, we still think that comprehensive verification for all the preexisting accounts is inconsistent with the risk-based approach and urge that certain measures be taken, such as increasing the threshold (from US$50,000 to US$250,000 as previously explained), to limit the number of accounts subject to Step 4.

[Requests for further clarification]

-Utilizing existing information system

We understand that participating FFIs are required to search electric information in existing customer data management systems. We request clarification that FFIs do not need to develop their computer systems or build a new system only for the purpose to comply with FATCA.

-Standing instructions to transfer funds to an account maintained in the U.S.

As mentioned earlier, we think clarification of the definition of "standing instruction" is necessary. We believe that "standing instruction" generally means that an FFI and a customer enter into a contract in advance and the FFI remits money to a designated account in the U.S. periodically (e.g. at the end of every month) based on the contract. We understand that standing instruction does not include money transfers that a customer submits an application each time of the transaction, and we would like you to clarify that. Also, for standing instructions subject to Step 4, we request that the risk-based approach be ensured and the burden for participating FFIs be lightened by setting the threshold amount of US$ 50,000, for example.

-Documentary evidence

In Step 4, depending upon the classification of information collected regarding U.S. indicia, a non-U.S. passport or other similar government-issued evidence establishing the client's citizenship in a country other than the United States must be requested. We request clarification whether the documentary evidence requested here and the documentary evidence defined under §I.(6) are the same or not, and if not, we request clarification what the characteristic difference between the two is.

vi) Step 5: High value accounts with the balance of US$500,000 or more

A diligent review for high value accounts with the balance of US$500,000 or more is required under the currently proposed procedures. However, in light of the significant roles played by deposits in Japan, an account with the balance of US$500,000 (approximately 40 million Japanese Yen) is not necessarily a high value account. Therefore, a large number of accounts will

be subject to Step 5. Considering the principle that genuinely high risk accounts should be subject to diligent review, we request that the higher threshold (such as $1 million =approximately 81,000,000 Japanese Yen) be used.

Also, we request further clarification of the term "account files" used to describe the information that is subject to a diligent review. If the IRS intends that "account files" include the same type of information subject to diligent review in Step 3, then we request that the term "account files" be limited to "customer-related data stored in the FFI's existing information system" and "documents that were obtained when the customer opened an account.

[Requests for Further Clarification]

-Foreign currency

Contrary to the threshold amount described in Step 1 and 2, there is no such expression as "or the equivalent in foreign currency." We would like to confirm that this is merely an omission.

- Treatment of customers with no U.S. indicia

We request clarification that in Step 5, we can treat accounts with no U.S. indicia as non-U.S. accounts.

vii) Step 6: Annual Retesting

[Proposal 8] Annual Retesting

-The threshold for the accounts that are subject to annual retesting should be US$1,000,000.

-The frequency of the retesting should be once in three years, rather than annual.

Beginning in the third year following the effective date of the FFI Agreement, Step 6 requires FFIs to apply Step 5 annually to all preexisting individual accounts that did not previously satisfy the account balance threshold to check the account balance on the last day of the preceding year. As explained previously, in light of the significant roles played by deposits in Japan, we are concerned that a significant number of accounts will be subject to annual retesting, and that would create serious burden on FFIs. Therefore, we request an increase of the threshold amount currently proposed to be US$500,000, and the extension of the frequency of retesting (e.g. from annual to every three years).

As we have mentioned repeatedly, we request that the information that is subject to a diligent review be limited to "customer-related data stored in the FFI's existing data system" and "documents that were obtained when the customer opened an account."

[Requests for Further Clarification]

- Account holders with no U.S.indicia
We request clarification that accounts with no U.S. indicia may be treated as non-U.S. accounts.

viii) Treatment of grace period (until documentation is submitted)

In the procedures of due diligence on preexisting individual accounts, due dates to submit their documents are set forth for account holders. We interpret these procedures that a grace period is set forth until the ultimate due date of obtaining documents. During such a period, a customer's status is still unknown (neither a U.S. account nor a recalcitrant account). Therefore, such a customer should not be subject to annual reporting or withholding with regard to passthru payments.

3) Certification of Completion of Customer Identification Procedures

According to the Notice, a person who is responsible for FATCA compliance should be "the Chief Compliance Officer ('CCO') or another equivalent-level officer of the FFI." We would like the IRS to clarify if "another equivalent-level officer of the FFI" can be any executive officer who is in charge of the compliance department, regardless of his or her title.
We understand the necessity of FFIs' certification to some extent; however, we have some difficulty in understanding the necessity for certification by CCO for FATCA purposes, which is a foreign law. In order to ensure compliance of FATCA procedures, we believe that an external verification should be sufficient. The JBA requests that choice be made available to participating FFIs; certification by CCO or an external verification.
Furthermore, according to the Notice, certification is required with respect to the fact that "FFI management personnel did not engage in any activity assisting account holders with respect to strategies for avoiding identification of their accounts as U.S. accounts." We would like to confirm that we only need to certify the fact that we "had written policies and procedures in place" to avoid such activities, and we only need to certify the fact that we did our best effort based on the risk-based approach for other areas subject to certification. It is practically impossible for a CCO to identify and confirm all of the facts subject to certification, and therefore we need clarification of the above requirements.

2. Section II

1) Definition of Passthru Payments as Proposed in the Notice

[Proposal 9] Definition of Passthru Payments as Proposed in the Notice

The definition of passthru payments as proposed in the Notice should be withdrawn because of legal and practical limit of its adoption.

The JBA appreciates that the Notice clarified the interpretation of the term "passthru payment," as we had no clue as to the meaning of such term. However, we note that the definition of the term "passthru payment" was significantly expanded in the Notice. It appears to us that the scope of income subject to Chapter 4 has been significantly expanded in the Notice, and the JBA is very concerned about legal issues resulting from this change. We are also disappointed at the practical aspects of the broadened definition of "passthru" payments, since it would not be possible for Japanese banks to implement withholding based on the new definition and to comply with the

passthru percentage requirements. Accordingly, the JBA urge that the definition of passthru payments as proposed in the Notice be withdrawn because of legal and practical limit of its adoption.

2) JBA's Approach to Passthru Payments

Considering the economic connection between Japan and the U.S., even small-sized financial institutions are likely to own U.S. assets in their proprietary accounts, and it is also likely that income generated by such U.S. assets could be a source of interests paid to account holders. Based on the definition provided in the Notice, such payments would also be subject to withholding on passthru payments; however, we believe that it is inappropriate. Payments that are obviously non-U.S. source income (e.g. depository interests FFIs pay to its own customers) are included in passthru payments and therefore subject to withholding. We request a clear explanation as to why such payments are subject to U.S. taxing power. We are afraid that the Japanese banks would be held accountable for improper withholding in light of existing contractual obligations and responsibility as deposit institutions to the customers, if the concept of passthru payment, including the ultimate refund procedures for the withheld tax, cannot be clear and reasonably explained.

Furthermore, the proposed concept of passthru payments would unfairly penalize those FFIs that made a valid business decision to withdraw their funds from U.S. assets and not to act as participating FFIs. Suppose such non-participating FFI has deposits with a participating FFI that has some U.S. assets, a portion of interest earned on the deposit would be subject to the 30% withholding to the extent of the participating FFI's passthru payment percentages. This means that FATCA would virtually be enforced against all FFIs in the world and place unreasonable burden on FFIs, despite the fact that FATCA would only be enforced through the agreement between a participating FFI and the IRS on surface.

Therefore, the JBA propose the following:

[Proposal 10] Passthru Payments

The concept of passthru payments should be as follows:

-The concept of passthru payments shall not be applied to transactions ordinarily preformed by commercial banks including, but not limited to, wire transfers and deposits.

-Payments attributable to a withholdable payment should be payments that are either withholdable payments or directly traceable to withholdable payments.

The concept as proposed in the Notice would not simply work in the context of certain types of payments handled by commercial banks as part of their ordinary course of business (e.g. wire transfers), it is impossible for the banks to know the details and the purpose of the payments. For example, when a U.S. non-financial business entity pays to a Japanese business entity for a purchase of goods, the U.S. entity asks its bank in the U.S. to remit the money to the Japanese entity. In Japan, the Japanese entity's bank (participating FFI) receives the money remitted by the U.S. bank, then deposits the money into the Japanese entity's account. In this case, if the

Japanese entity is a recalcitrant customer and if the remittance is determined to be a "withholdable payment" under FATCA, the Japanese receiving bank must withhold taxes. In reality, transactions like this example occur routinely and voluminously, and it is impossible for FFIs to determine if the payment is withholdable or not. If IRS determines that transactions like this example are subject to FATCA, general business transactions are tremendously impacted and that would cause confusion in the business practices. Thus, we seriously request that simple remittances be excluded from passthru payment as it does not work in a practical manner. We think such payments can be captured by U.S. financial institutions by performing review and verification.

As we have asserted so far, it is not realistic to apply the principle of passthru payment as proposed in the Notice in the commercial banking context through such transactions as wire transfers and payments of deposit interest. Accordingly, the passthru payment should only be limited to a payment attributable to a withholdable payment, and should be defined as payments that are either withholdable payments or directly traceable to withholdable payments.

2) Calculation of Passthru Payment Percentage

As we explained previously, we disagree with the basic concept of passthru payments proposed by the IRS in the Notice. In addition, we do not believe that the concept of passthru payment will work practically even if the IRS adopts the concept regardless of disagreement by industries. Considering the calculation of passthru payment percentage, for example, there are many problems such as the definition of U.S. assets, the required frequency of calculation, and the methodology to obtain information on passthru payment percentage of other FFIs. Thus we have to say that the method provided by the Notice is unrealistic.

According to the Notice, the passthru payment percentage is determined by dividing the sum of U.S. assets by the sum of total assets. However, it is extremely difficult to strictly identify U.S. assets based on the definition provided in the Notice. It is our concern that FFIs would be required to deploy a significant amount of labor to identify U.S. assets solely to comply with FATCA, and that the benefit brought by such effort is limited. Most financial institutions do not maintain their assets separately whether it is U.S. asset or not, or whether it is issued by an FFI as defined under FATCA or not. It is practically difficult to classify assets as such in order to calculate passthru payment percentage. In addition, calculating passthru payment percentage using the passthru payment percentage of lower tier FFIs will be extremely burdensome. Considering the timing and frequency of updating the information on lower tier FFIs, it is almost impossible to calculate passthru payment percentage quarterly. Financial institutions' business relationships are very complicated, and that makes calculation of U.S. assets (which is a basis of calculation for passthru payment percentage) extremely difficult. For example, when a financial institution attempts to calculate its passthru payment percentage, it is a prerequisite that other financial institutions' passthru payment percentages have already been calculated. However, it is possible that such "other financial institutions" are also waiting for other financial institutions updated passthru payment percentages. Thus, in a case where multiple FFIs own shares and non-custody accounts of the other FFIs mutually, neither financial institution is able to calculate passthru payment percentage because it cannot be calculated until the other financial institutions calculate their passthru payment percentages under the rules provided in the Notice. Such chains of relationships are quite common in the financial industry.

As such, calculation of passthru payment percentage contains a lot of difficult issues in a practical sense. Therefore, the JBA disagrees with the basic concept of passthru payment.

The JBA believes that the IRS will consider our comments and rescind the concept of passthru payment which was proposed in the Notice. Even if the IRS challengingly enforces such a concept of pass thru, we request that our proposals explained below be sincerely considered.

[Proposal 11] Calculation of Passthru Payment Percentage

- Limit the U.S. assets used for the purpose of calculating passthru payment percentage to major asset categories (e.g. categories of principals of marketable securities, loans, and deposits, etc.) to simplify the process dramatically.

-The total assets to be used in computing passthru payment percentage should be that of the balance sheet prepared in accordance with the accounting principles generally accepted in the jurisdiction in which the FFI is organized.

-The frequency of calculation should be at least annually, not quarterly.

-Shares and the balance of non-custody financial accounts of lower tier FFIs should be disregarded in calculating U.S. assets for the calculation of passthru payment percentage.

-The IRS should compile and make available a list of passthru payment percentage along with the list of participating FFIs and deemed-compliant FFIs.

First of all, we propose that the U.S. assets used to calculate passthru payment percentage should be limited to the accounts of major asset (e.g. *categories of principals of marketable securities, loans, and deposits, etc.*). From a practical point of view, we think that there is no other realistic way to handle the calculation of U.S. assets other than this approach by limiting accounts of asset to be used for the calculation. Similarly, in order to make the process workable for participating FFIs, the total assets to be used in computing passthru payment percentage should be the total assets of the balance sheet prepared in accordance with the accounting principles generally accepted in the jurisdiction in which the FFI is organized.
Further, we also propose that an option of fixed ratios, which are determined by the size of FFIs and/or the countries in which FFIs are located, can be used as a simpler alternative method.
In addition, we request that the frequency of the calculation be reduced from quarterly to annually.
We also request that shares and the balance in non-custodial financial accounts of lower tier FFIs be disregarded when determining U.S. assets for the purpose of calculation of passthru payment percentages, as they impose significant burden on FFIs.
At the very least, we request clarification that publicly disclosed data of lower tier FFIs' passthru payment percentages in the previous quarter or at the end of the preceding year can be used to calculate the FFI's own passthru percentage for a given quarter. Lastly, we request that the IRS compile and make available a list of passthru payment percentages for all participating FFIs and deemed-compliant FFIs for public use, because it is immensely inefficient to search for passthru payment percentages on each FFI's web site.

3. Section III

1) Deemed-Compliant FFI Provisions

The JBA appreciates that Notice provided the some directions of the deemed-compliant FFI provision. However, we have to admit that there are still many problems in the provisions described in the Notice.
First, in order for an FFI to obtain the deemed-compliant FFI status, it must satisfy certification requirements every three years. In order to reduce burden for the IRS and participating FFIs, we propose that certification should only be required every six years in light of the fact that current QI status is renewed every six years.
Furthermore, the Notice provides specific criteria for types of institutions eligible for the deemed-compliant status. We are afraid that the provision would not have any reality to be relied on as there is no financial institution meeting the requirements of the provision. The following are our comments on each item proposed.

i) Certain Local Banks

[Proposal 12] Certain Local Banks

The requirement (5) should be removed. Instead, incorporate universal criteria below and redefine certain local banks (combine the conditions as needed).

(i) Domestic standards are used by the FFI for calculation of the capital adequacy ratio

(ii) Application forms for opening an account, brochures advertising services for customers, services provided over-the-counter, and web sites, etc. are prepared and maintained primarily in the language of the country in which the FFI is organized

(iii) The FFI's business is conducted within the framework designed for local banks (or similar institutions) determined by the financial regulators of the country in which the FFI is organized

To begin with, the Notice provides that each FFI in an expanded affiliated group will be treated as a deemed-compliant FFI if it meets the five conditions provided in the Notice. We agree with the IRS' approach to treat local banks, which in fact have no transaction with U.S. persons, as deemed-compliant FFIs under the same universal criteria. However, the scope under the current proposal is too narrow and as a result, the financial institutions that should be treated as deemed-compliant FFIs in essence would not so qualify. Especially, an FFI "in the expanded affiliated group implements policies and procedures to ensure that it does not open or maintain accounts for nonresidents, non-participating FFIs, or NFFEs (other than excepted NFFEs that are organized and operating in the jurisdiction where all members of the expanded affiliated group are organized)" can be interpreted as a local bank that does not do business with "NFFEs other than excepted NFFEs" (i.e. general corporations and business entities). We believe that further clarification be required for the meaning of "excepted NFFEs." The Notice does refer to "excepted NFFEs as defined in Notice 2010-60;" however, it is not entirely clear what is encompassed by such definition. Notice 2010-60 includes one category of excepted NFFEs described in section 1472(c), while "entities engaged in active trade or business" can also be treated as excepted NFFEs as part of the identification procedures for entity accounts.

Suppose the meaning of "excepted NFFEs" is limited to those as defined in section 1472(c), deemed-compliant FFIs could only do business with publicly traded companies (and members of their expanded affiliated group). In reality, such local banks do not exist. We are certain that U.S. local banks also have a large number of transactions with so-called "mom and pop stores" in the U.S., and it would be extremely difficult to find local banks that meet the criteria as currently provided in the Notice.
On the other hand, suppose the term "excepted NFFEs" is designed to include entities "engaged in active trade or business," deemed-compliant FFIs would only need to implement policies and procedures to ensure that accounts are not opened and maintained with the entities not engaged in active trade or business. However, in order to satisfy such requirement, the deemed-compliant FFI must perform the account identification procedures required under Notice 2010-60, and such requirement appears to be inconsistent with the intent of the Congress that provided the deemed-compliant FFI category.
Furthermore, considering the possibility that the identification procedures for entity accounts described in Notice 2010-60 could be significantly modified and clarified just as the Notice superseded the identification procedures for pre-existing individual accounts, there appears to be significant uncertainty as to how the definition of "excepted NFFEs" interacts with the eligibility criteria for deemed-compliant FFIs as described in the Notice.
The core business of banks is to accept deposits, and on the one hand, to loan funds to customers. Provided that, the criteria in (5), especially the clause "it does not open or maintain accounts for NFFEs" does not go along with the business of typical commercial banks and the purpose of the deemed-compliant FFI provision. Therefore, we strongly request that the criteria of (5) be removed.

Alternatively, we propose the following criteria that we think are more acceptable universally. By combining each of the following criteria as needed, more universal and effective definition of "local banks" can be established.

(i) Domestic standards are used for calculation of capital adequacy ratio (In Japan, financial institutions that are subject to "domestic standards" are financial institutions that do not fall under "Internationally Active Bank" of the Basel II Framework. We assume that U.S. financial authorities are familiar with the discussion for the framework of Basel Committee on Banking Supervision.).

(ii) Application forms for opening an account, brochures advertising services for customers, services provided over-the-counter and web sites, etc. are prepared and maintained only in the language of the country in which the FFI is organized.

(iii) Business is conducted within the framework designed for local banks as determined by the financial regulators of the country in which the FFI is organized.

In Japan, there are multiple "supervisory guidelines" provided by the Financial Services Agency of Japan, for different types and scales of financial institutions. Thirteen financial institutions are subject to the supervisory guideline for major banks, while approximately five hundred fifty financial institutions are subject to the supervisory guideline for small and medium-sized and regional financial institutions. Approximately nine hundred cooperative savings institutions exist, in addition. For your reference, while average balance of deposits for major banks as of the end

of March 2010 was 38 trillion Japanese Yen (approximately US$ 470 billion), the average deposit balance for small and medium-sized and regional institutions was 760 billion Japanese Yen (approximately. US$ 9.4 billion) and for other cooperative savings institutions was 110 billion Japanese Yen (approximately. US$ 1.4 billion) for other cooperative savings institutions. The differences in the size between major banks and the other two classes of institutions are very clear.

[Requests for Further Clarification]

-Treatment of stand-alone FFIs

In the Notice, it is assumed that an FFI must be part of an expanded affiliated group in order to be treated as a deemed-compliant FFI. However, we request clarification that a stand-alone FFI, which is not part of an expanded affiliated group, is treated as a deemed-compliant FFI so long as it meets the criteria provided in the Notice.

ii) Local FFI Members of Participating FFI Groups

[Proposal 13] Local FFI Members of participating FFI groups *The requirement (3) and (4) should be removed*

According to Section III.B, in order for a local FFI member of a participating FFI group to be treated as a deemed-compliant FFI, it must: (1) maintain no operations outside its country of organization; (2) not solicit account holders outside its country of organization; (3) implement the pre-existing account and customer identification procedures required of participating FFIs to identify the following types of accounts: (a) U.S. accounts; (b) accounts of non-participating FFIs; and (c) accounts of NFFEs (other than excepted NFFEs that are organized and operating in the jurisdiction where the FFI member maintains the account); and (4) agree that, if any of the types of accounts described in clause (3) above are found, it will transfer such accounts to an affiliate that is a participating FFI or close such accounts.

We believe that these requirements are made to lighten the burden on participating FFIs; however, the requirements are so strict that they may not actually reduce the burden on participating FFIs. Thus, we request that the requirements be limited to (1) and (2) only.

[Requests for Further Clarification]

-About Requirement (3)

In a case where our request explained above is not accepted, FFIs are required to perform the Requirement (3) above if FFIs satisfy such requirement. We request clarification whether the Requirement (3) asks verification of identification for new accounts and new customers as well as pre-existing customers.

4. Section IV

1) Reporting of U.S. Accounts (Account Balance or Value, and Gross Receipts and Withdrawals)

According to the Notice, FFIs must report the gross amount of "dividends and interest" paid or credited to U.S. accounts. We request that "dividends and interest" only include payments made by the bank which maintains the account and dividends that are generated from securities held as part of acting in a custodial capacity. For example, a customer, who owns securities in Security Firm A's account, designates Bank B's account to receive dividends, and Security Firm A sends dividends to the account in Bank B. In this case, we would like clarification that Bank B has no reporting obligation. Also, we believe that the reporting requirement under FATCA before the modifications by the Notice was the reporting of gross receipts and withdrawals. We request that more options be available in terms of reporting requirements so that participating FFIs can choose between the two methods (i.e., gross receipts and withdrawals vs. dividend, interest, etc.) whichever is easier depending upon each FFI's situation.

2) Branch Reporting Election and Reporting by Affiliates

The JBA appreciates that the Notice provides an option for participating FFIs to report information with respect to U.S. accounts by each branch. We look forward to a future guidance that gives more details on this option.

3) Concerns Regarding Annual Reporting

i) U.S. Taxpayer Identification Number ("TIN")

Annual reporting with regards to U.S. accounts requires the name of a specified U.S. person or a substantial U.S. owner, his or her address and TIN. We request that the TIN requirement be relaxed in the event that the participating FFI is unable to obtain the TIN timely despite its reasonable effort to obtain it. FFIs do not usually obtain their customers' TINs in ordinary course of business, and imposing such a requirement on FFIs to obtain and report TINs results in an excessive burden on FFIs. Accordingly, we request that the participating FFI not be treated as having violated the terms of the FFI agreement if a TIN could not be timely obtained and failed to file the annual report in timely manner, so long as the FFI reasonably continues to attempt to obtain the TIN, we strongly request a relief be granted in such a situation.

ii) Reporting Currency

Notice 2010-60 provides that U.S. dollars must be used for annual reporting submitted to the IRS. On the other hand, Notice 2011-34 provides each country's tax principles (or the generally accepted accounting principles in each country) can be used when determining the balance of U.S. accounts subject to annual reporting. Thus, we naturally believe that each country's own currency can be used when determining amounts and reporting. We request clarification that the currency used for reporting be not necessarily U.S. dollars. Considering the purposes of FATCA, the IRS needs the information such as balances of accounts, etc., and it is not important in essence whether the balance is in U.S. dollars or in other currencies. Accordingly, in order to lighten the burden on FFIs, the currency used for reporting should be at each FFI's discretion.

iii) Treatment of Substantial U.S. Owners

When the owner of a U.S. account is a U.S.-owned foreign entity, reporting of the details of the substantial U.S. owner is required. With regards to the relationship with substantial U.S. owners (shareholders for account holders) who do not even have business relationship with FFIs, it is practically impossible to request cooperation with identification or waiver of the right so that FFIs can disclose information to the IRS. For these reasons, we request that due diligence procedures and annual report requirements not be applied to participating FFIs.

iv) Electronic Filing

We understand that electronic filing is under consideration for annual reporting to the IRS. The most important purpose of FATCA is to obtain necessary information, and the method of reporting is fundamentally not important. In the case of Japanese banks, we anticipate that the number of U.S. accounts that will be subject to reporting will be very small. Therefore, building a system capable of electronic filing would be costly. In terms of reducing the cost incurred by FFIs, electronic filing should be optional.

5. Section V

According to Notice 2011-34, FFIs currently acting as QIs will be required to become participating FFIs. We expect that an elaborated guidance will be issued as soon as possible.

6. Section VI

1) Lead FFIs

The IRS introduces the concept of "lead FFIs" in the Notice. We are concerned, practically speaking, that it will be a significant burden for the leading financial institutions in the affiliated group if they handle an application processes on behalf of all the member financial institutions in an expanded affiliated group as a lead FFI. Generally speaking, an FFI Agreement is made between the IRS and each FFI, and the FFI owes obligations based on the agreement. Therefore, depending upon the situation of each FFI group, it would not be efficient to make it mandatory to designate a lead FFI which represents the entire group. However, we still envision some situations where designating a lead FFI would practically work. Accordingly, it should be made available as an option just as the designation of Compliance FFI is optional.

2) Centralized Compliance Option for FFI Groups

We would like to make sure that an appointment of a Compliance FFI is not mandatory but optional.

3) Concerns Regarding Expanded Affiliated Groups

Under FATCA, FFIs' obligation to meet the requirements and to report annually is supposed to be applied to an expanded affiliated group including U.S. accounts of non-participating FFIs in the group. We understand that the intension of the IRS is to impose collective responsibilities on the member FFIs within the same expanded affiliated group. However, it is realistically impossible to request information from customers of another FFI, which is a different legal entity, for cooperation with identification procedures and to perform involuntary termination of accounts.

Therefore, despite FATCA's rules, we think that requirement to all the FFIs in an expanded affiliated group to become either a participating FFI or a deemed-compliant FFI is sufficient. We are also concerned that a participating FFI performing verification of identification on customers of non-participating FFIs in order to comply with the requirements of FATCA could violate confidentiality obligation and the Act on the Protection of Personal Information (and its guideline) that are imposed on Japanese banks to comply.

7. Requests to Clarify Other Important Points That Are Not Addressed in Notice 2011-34

The foregoing paragraphs have addressed our proposals and requests for further clarification regarding the issues dealt with in the Notice. There are, however, many additional areas in which the JBA requests the prompt issuance of guidance and requires further clarification and consideration. Especially, we would like the IRS to pay special attention to the following issues:

1) Definition of FFI

In Notice 2010-60, there is a discussion of holding companies that primarily engage in a trade or business other than that of a "financial institution". There is no elaborated definition with regard to bank holding companies. We request clarification that bank holding companies not fall under the definition of financial institutions under FATCA. If the IRS assumes that bank holding companies are included in the definition of financial institutions, we request that they be removed from such a definition. The scope of business of bank holding companies in Japan is limited to "the management of its subsidiary banks and its accompanying business," and it is obvious that the business does not fall under the definition of holding "financial accounts." Holding shares of subsidiary banks is for management purposes only, and such management purpose is definitely different from the purpose of investment and trading as business.

2) Definition of Financial Accounts

As for the definition of financial accounts which is defined under Section 1471(d)(2), "the term 'financial account' means any equity or debt interest in any financial institution (other than interests which are regularly traded on an established securities market)," it seems to include preferred stocks issued by publicly-traded financial institutions and common stocks issued by non-public banks controlled by publicly-traded bank holding companies. Thus, we request that (3) be limited to interests in investment vehicle such as funds.

3)Public Purpose Organizations / Non-profit Organizations

FATCA provides excepted NFFEs as a class of organizations that are deemed to pose low risk of tax evasion by U.S. persons. Generally, certain classes of entities, such as public purpose (charitable) entities, are accorded tax-exempt status in many jurisdictions provided that prescribed conditions are satisfied. In some cases, a list of such qualifying organizations may be published by taxing authorities. The JBA proposes that those types of organizations be treated as excepted NFFEs since it is highly unlikely that they are used for tax evasion by U.S. persons.

4) Consistency With Domestic Laws

Under FATCA, a participating FFI is required to obtain a waiver from account holders when privacy protection law in the local jurisdiction would prevent the FFI to report any of the information required to be reported to the IRS, and to classify account holders who do not waive the right under the local law as recalcitrant account holders and may ultimately be required to close such accounts. Notwithstanding the above, the JBA requests that the requirements to involuntarily close the accounts of recalcitrant account holders be removed from the requirements under the FFI agreement. Should this be not attainable, we urge that, at the minimum, preexisting accounts should not be subject to involuntary closure under the terms of the FFI agreement.

Under the Act on the Protection of Personal Information (and its guideline), Japanese banks may be deemed to be in violation of the confidentiality requirements, if account information is provided to the IRS.
Under FATCA, Japanese banks are obligated to obtain a waiver of rights provided under the Act from the account holders, and when a waiver cannot be obtained, the banks are obligated to close such accounts. However, we need to be "extremely careful" when executing involuntary termination of accounts, because deposit accounts are deeply rooted in the daily lives of the Japanese people and are part of essential settlement infrastructure in Japan. Under both business customs and under the contractual terms currently in effect, involuntary termination of accounts is supposed to be permissible only when such accounts are known to be used for illegal activities. Account holders who do not agree to provide a waiver are considered to be subject to involuntary termination of accounts. However, when they opened their accounts originally, they provided sufficient identifying information under the local KYC/AML rules. It would be inappropriate to treat such account holders in the same manner as those who engage in illegal activities on the grounds that the required waiver under FATCA could not be obtained.

Notice 2010-60 provides that, for entity accounts which FFIs cannot verify the fact that the entity is engaged in an active trade or business, documentary evidence such as Form W-9 should be obtained from a substantial U.S. owner, and the account holders would be classified as recalcitrant account holders if such documentary evidence cannot be obtained. For the same reason as described in the foregoing paragraph, it would be excessively burdensome for a participating FFI to terminate an account of a U.S.-owned foreign entity on the grounds that its substantial U.S. owner, who is not even an account holder of the FFI, is recalcitrant. It would be virtually impossible for participating FFIs to comply with such a burdensome requirement.

5) Issues Related to Tax Treaties

Under FATCA, not only interest and dividends that are generally subject to withholding as income but also sales proceeds of bonds etc. (including equivalent amount to the principal) are subject to withholding when non-participating FFIs receive payments subject to withholding. We request clarification why the sales proceeds, which is generally not treated as income, is subject to U.S. taxation power. As for tax treaties, we request clarification how it is justified that imposition of taxing power is unilaterally reinforced only on residents of one contracting state (and domestic corporations of the corresponding contracting state).

When a non-participating FFI receives withholdable payments and the withholding tax is deducted under FATCA, the non-participating FFI is entitled to claim a refund to the extent of the reduced tax rate accorded under treaties. Generally speaking, tax treaties set reduced tax rates for interests and dividends that are treated as income for tax purpose, and there are no such rules that

govern tax issues for sales proceeds. In such cases, we think that it is appropriate to make clarification that the tax rate for sales proceeds should be 0 percent and claim of refund should be available. If the IRS intends not to grant refund for the withholding of such sales proceeds, the IRS should re-consider such treatment and allow a claim of refund. The reason why there are no rules that govern tax issues for sales proceeds is because it should not be subject to tax in the first place. If the IRS includes the sales proceeds to the definition of withholdable payments, rules for refund procedure should be set forth. If the IRS intends not to grant a refund for sales proceeds, we think that the IRS should explain clearly how it is justified that imposition of taxing power is unilaterally reinforced only on residents of one contracting state (and domestic corporations of the corresponding contracting state) and why it is possible by amending the domestic laws of one contracting state. If the IRS intends not to grant a refund for sales proceeds, withholding at 30 percent rate for transactions is made every time financial institutions buy and sell assets in order to generate operating funds in ordinary course of business. That would cause a serious drought of the liquidity of cash for financial institutions all over the world, and would result in the jeopardy in the global financial system.

Also, we request that the IRS collect information through governments of each country under information exchange agreements (including information exchange provisions under the treaties) made between the U.S. and other countries' governments instead of annual reporting made by FFIs. As we have already pointed out, if FFIs are obligated to submit annual reports to the IRS, FFIs would face serious problems which cannot be resolved easily, such as violation of privacy protection laws and involuntary account termination. For these reasons we believe that the IRS should make the most of the information sharing frameworks between government bodies.

6) New Individual Accounts

Due diligence procedures for new individual accounts are provided in Notice 2010-60. On the other hand, due diligence procedures for preexisting individual accounts are entirely revised by Notice 2011-34. Because of the revision, there are some discrepancies in due diligence procedures between new individual accounts and preexisting individual accounts. Thus, we request that a revision be made for due diligence procedures for new individual accounts as well and that such revision be announced at your earliest convenience.

7) Procedures for Entity Accounts

As we repeatedly explained in our previous comment and at meetings, procedures for entity accounts are an extremely important topic for Japanese banks. We request that guidance regarding entity accounts be announced as soon as possible, by reflecting comments of the JBA and other industry groups、such as the use of dollar threshold amount in the identification steps. The JBA urge that procedures to ascertain whether an entity account holder is engaged in active trade or business and to verify the status of owners of entity account holders be developed so as to minimize the administrative burden of participating FFIs.

8) Refund Procedure

Under FATCA, if a final beneficiary of withholdable payments is an FFI, such an FFI is entitled to claim a refund to the extent allowable under the reduced tax rate based on tax treaties. We

request clarification if a recipient is limited to an FFI and a claim of refund is not allowed in a situation where the recipient is a recalcitrant account holder.

9).Effective Date of FATCA

We appreciate that the Notice provides the concept of the effective date of FFI Agreement. However, obligations and responsibilities that come with FFI Agreement are still not clear and the circumstances for FFIs to enter into FFI Agreement are not ready for financial institutions. In terms of time frame to develop systems, it is impossible to be 100 percent FATCA compliant by January 2013. Therefore, we request a flexible approach to secure an ample transition period.

Conclusion

Again, the JBA requests that the Treasury Regulations be developed in a manner that minimizes the compliance burden on financial institutions by taking into account of the risk of U.S. tax evasion. As stated before, Japan has been an important partner of the United States, and the direct investment in U.S. financial assets such as U.S. securities by Japanese banks reached approximately 26 trillion Japanese Yen (approximately US$321 billion) at the end of 2009. In order to maintain the significant source of capital for the U.S. financial market and to prevent the Japanese financial institutions from withdrawing their investment from U.S. financial assets, and to avoid unnecessary troubles in the financial industries both in Japan and the U.S., the JBA sincerely requests the IRS develop the Treasury Regulations in a utilitarian and fair manner.

We look forward to providing assistance to you when you consider our comments we explain by this letter, as well as throughout the implementation of the FATCA provisions. We would also be willing to meet with the IRS with pleasure to discuss any alternative solutions on this matter.

Very truly yours,

Japanese Bankers Association

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