

August 14, 2012

MEMORANDUM TO OUR INVESTMENT MANAGEMENT CLIENTS AND FRIENDS

**PROPOSED FATCA REGULATIONS REQUIRE OFFSHORE FUNDS TO DOCUMENT
THE IDENTITY OF INVESTORS AND REPORT NAMES OF U.S. TAXABLE
INVESTORS TO THE INTERNAL REVENUE SERVICE**

A. Introduction

On February 8, 2012, the Internal Revenue Service (“IRS”) issued proposed regulations (the “Proposed Regulations”) which will implement the provisions of the Foreign Account Tax Compliance Act (“FATCA”). FATCA was enacted in 2010 as part of the Hiring Incentives to Restore Employment Act. FATCA requires a “foreign financial institution” (“FFI”) to enter into an agreement with the IRS to report information about “financial accounts” held by U.S. taxpayers or by certain foreign entities in which U.S. taxpayers hold an ownership interest (collectively, “Reportable Accounts”).¹ For this purpose, an FFI includes an investment fund formed under the laws of a foreign country (a “Fund”), and a “financial account” includes an equity interest in such a Fund. If an FFI, such as a Fund, does not enter into such an agreement, the FFI will be subject to a 30% U.S. withholding tax on any “withholdable payment,” including U.S. source dividends and interest and gross proceeds from the sale of U.S. securities. The FATCA withholding provisions are effective for payments made to an FFI after December 31, 2013. All capitalized terms not defined herein will have the meaning ascribed to such terms in Appendix A.

In order to avoid the FATCA withholding tax, a Fund must enter into an agreement with the IRS (an “FFI Agreement”) to identify Reportable Accounts, report certain information to the IRS regarding such Reportable Accounts, and withhold tax on certain payments to Nonparticipating FFIs and account holders who are unwilling to provide the required information.

The Proposed Regulations provide a phased implementation timeline for FATCA and delayed the dates for complying with its requirements as follows:

- The IRS has indicated that it will publish a model FFI Agreement in the late summer or early autumn of 2012;
- The IRS has indicated that it will make available an online process for entering into an FFI Agreement no later than January 1, 2013;

¹ In general, a “financial account” held by a foreign entity would be treated as a Reportable Account if a Specified U.S. Person owns more than 10% of the interests in such foreign entity. However, if the foreign entity is an investment fund, a “financial account” held by such foreign entity would be treated as a Reportable Account if a Specified U.S. Person owns any interest in such foreign entity. The Proposed Regulations require certain NFFEs to provide a statement regarding its U.S. ownership to a Fund.

- An FFI will be required to enter into an FFI Agreement by June 30, 2013 in order to ensure that it can be identified as a Participating FFI in time to avoid the imposition of the FATCA withholding tax;
- Participating FFIs will be required to disclose the identity of holders of Reportable Accounts with respect to 2013 beginning in 2014;
- Payments of U.S. source interest and dividends to Nonparticipating FFIs become subject to 30% withholding effective January 1, 2014;
- Payments to Nonparticipating FFIs of gross proceeds from the sale of U.S. securities become subject to 30% withholding effective January 1, 2015;
- Participating FFIs will be required to disclose income associated with Reportable Accounts with respect to 2015 beginning in 2016; and
- Participating FFIs will be required to report Passthru Payments beginning January 1, 2015 but will not be required to withhold on Passthru Payments prior to January 1, 2017.

The first deadline that FFIs should be focusing on now is the mid-2013 deadline to enter FFI Agreements with the IRS over sharing information on their Reportable Accounts so as to avoid 30% withholding on payments to them of U.S. source interest and dividends in 2014.

We note that the Proposed Regulations are in proposed form and that the IRS still has a fair amount of work to do in terms of FATCA implementation. For example, the IRS (i) will be required to finalize revised Forms W-8 to comport with the FATCA Status categories,² (ii) must release a standard FFI Agreement, (iii) must create the FFI registration system, and (iv) must finalize the Proposed Regulations after taking into account industry comments. It is expected that final regulations will be issued in early autumn 2012, at which time we will provide further guidance. Although Fund managers should begin to familiarize themselves with the steps that will be necessary to comply with FATCA, the concrete work of performing account due diligence (as described in detail below) will have to wait until the IRS completes some of the above steps.

This memorandum describes the procedures that a Fund that enters into an FFI Agreement should take in order to comply with the account identification and documentation requirements of the Proposed Regulations. At a later date, we will distribute another memorandum addressing the FATCA information reporting and withholding requirements for a Fund that enters into an FFI Agreement.

Most private Funds are offered only to U.S. tax-exempt investors and non-U.S. investors. Although these Funds generally will still be required to follow the procedures outlined in this memorandum, the primary focus for these Funds should be obtaining Forms W-9

² The IRS may also revise Form W-9 to enable a U.S. person to certify that it is not a Specified U.S. Person (and therefore that an account held by such U.S. person is not subject to FATCA reporting).

and W-8 from their investors³ and, based on a review of such forms as well as other information in their possession, determining whether there are any Reportable Accounts.

B. Executive Summary

As described in more detail below, in order to comply with FATCA, a Fund will be required to enter into an agreement with the IRS to report certain information about its Reportable Accounts. In order to determine whether it has any Reportable Accounts, a Fund will generally be required to determine the FATCA Status (as defined below) of each of its investors (who are referred to herein as “account holders”). In order to make this determination, a Fund generally will be required to obtain a Form W-9 from its U.S. account holders or Form W-8 from its non-U.S. account holders on which the account holder will certify its FATCA Status under penalties of perjury. In the event that the Form W-8 provided by the account holder to the Fund or other information collected by the Fund as part of its account opening process contains indicia that the account holder may be a U.S. person (e.g, the Form W-8 has a U.S. address or there is an indication of a U.S. place of birth), the Fund also will be required to obtain additional documentary evidence to confirm that the account holder is not a U.S. person.

The Proposed Regulations effectively require all Funds to implement the procedures described therein in order to determine the FATCA Status of each investor in the Fund. These procedures are similar to (but not the same as) the “know your customer” procedures that are often used for anti-money laundering compliance, but there are important differences. These procedures will initially be time-consuming.

This memorandum approaches FATCA from the perspective of assisting the compliance department of a Fund to create a platform to collect and maintain the data necessary to comply with FATCA.

First, in Section C, we will discuss the general approach and goals of FATCA compliance.

Second, in Section D, we will describe the procedures to be followed by a Fund in order to identify and document accounts held by entities (as opposed to individuals).

Third, in Section E, we will describe the procedures to be followed by a Fund in order to identify and document accounts held by individuals.

Fourth, in Section F, we will describe the requirements for validity of Forms W-9 and Forms W-8.

³ A U.S. person uses a Form W-9 (Request for Taxpayer Identification Number and Certification) to certify, among other things, its U.S. status. A non-U.S. person uses a Form W-8 to certify, among other things, its non-U.S. status. There are several types of Form W-8. The most frequently encountered in the Fund context are Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding) and Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding).

Fifth, in Section G, we will discuss the circumstances under which a Fund may not rely upon a Form W-9 or Form W-8 because such form is unreliable.

Sixth, in Section H, we will discuss the application of the presumption rules which must be applied in circumstances where a Fund cannot reliably associate an account holder with a withholding form and Documentary Evidence.

Seventh, in Section I, we discuss certain other requirements of FATCA.

Eighth, in Section J, we describe two potential exceptions to FATCA compliance that may be available for certain funds.

Finally, in Section K, we discuss the recent joint pronouncement of the United States and certain foreign governments regarding a potential intergovernmental framework for FATCA compliance and whether this framework will be helpful to Funds.

Appendix A contains certain key definitions that are used throughout this memorandum.

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C. Approaching FATCA Compliance

1. General. The ultimate goal of FATCA compliance is to determine the FATCA Status of an account holder. A Fund must base its determination of the FATCA Status of an account holder on documentation (e.g., Form W-9, Form W-8, Documentary Evidence) that the Fund can reliably associate with such account holder. In determining the FATCA status of an account holder, a Fund must (1) determine whether the account holder is an entity or an individual, (2) if the account holder is an entity, determine the account holder's entity type, and whether it is an intermediary, (3) associate the account holder with the relevant documentation, and (4) determine the FATCA status of the account holder based on such documentation.

2. Determination of Account Holder. First, a Fund should determine whether an account holder is an entity or an individual. If the account holder is an entity, then the Fund may rely upon a person's entity classification contained in a valid Form W-8 or Form W-9 if the Fund has no reason to know that the entity classification is incorrect. With respect to an Offshore Account, a Fund may also rely upon a written notification provided by the account holder, regardless of whether such notification is signed, that indicates the account holder's entity classification, unless the Fund has reason to know that the entity classification indicated by the account holder is incorrect. A Fund generally may not rely on a person's claim of classification other than as a corporation if the person's name indicates that the person is one of the entities listed on Appendix B.

3. Determining Whether an Account Holder is an Intermediary. If the account holder is an entity, a Fund must determine whether the account holder is an intermediary or a beneficial owner. A Fund may treat an account holder as an intermediary if the Fund can reliably associate the account with a valid Form W-8IMY on which the account holder claims to be an intermediary. A Fund may rely on such Form W-8IMY as determinative of such person's status as an intermediary, unless the Fund knows or has reason to know that the form is incorrect. A Fund that receives a Form W-8BEN from an FFI may treat the FFI as the beneficial owner (as opposed to an intermediary), unless the Fund has information in its records that would indicate otherwise or the form contains information that is not consistent with beneficial owner status (e.g., sub-account numbers or additional names). If the FFI also acts as an intermediary, the Fund may request that the FFI furnish two certificates, that is, a Form W-8BEN for the amounts it receives as a beneficial owner, and a Form W-8IMY for the amounts it receives as an intermediary. A Fund that cannot reliably associate an account with documentation sufficient to treat the account holder as an intermediary must follow the Presumption Rules to determine whether the Fund must treat the account holder as an intermediary.

4. Associating an Account with Documentation. A Fund must then reliably associate an account with valid documentation. A Fund may associate an account with valid documentation if it holds valid documentation appropriate to the account holder's FATCA Status as described in the following sections of this Memorandum (either directly or through an agent) and the Fund does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. A Fund may rely on information and certifications contained in Forms W-9, Forms W-8, or other documentation without having to inquire as to the truthfulness of the information or certifications, unless the Fund knows or has reason to know that the information or certifications

are untrue. A Fund is considered to have reason to know that a claim of FATCA Status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the Form W-9, Form W-8 or other documentation is such that a reasonably prudent person in the position of the Fund would question the claims made. For accounts opened on or after January 1, 2013, a Fund is also considered to have reason to know that a claim of FATCA Status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the account holder's claim of FATCA Status.

D. Identification Procedures and Documentation for Entity Accounts

1. General. Unless the Fund knows or has reason to know otherwise, a Fund may rely on the following procedures to determine the FATCA Status of an account holder that is an entity. Except as otherwise provided below, a Fund is required to obtain a valid Form W-8 or Form W-9 from each account holder that is an entity in order to identify whether or not the Fund's accounts are U.S. accounts. For a Pre-Existing Account, a Fund must perform the required identification procedures and obtain the appropriate documentation (i) within one (1) year of the effective date of its FFI Agreement for any account holder that is a Prima Facie FFI, (ii) and within two (2) years of the effective date of its FFI Agreement for all other entity accounts.

2. U.S. Person. A Fund must treat an account holder as a U.S. person if the Fund has a valid Form W-9 associated with the account holder or if the Fund can presume the account holder is a U.S. person under the Presumption Rules.

3. Participating FFI. A Fund may treat an account holder as a Participating FFI only if the Fund has a valid Form W-8 identifying the account holder as a Participating FFI and the Form W-8 contains an FFI-EIN for the account holder that is verified against the published IRS FFI list in the manner described below. A Form W-8 that identifies the account holder as a Participating FFI but does not provide the account holder's FFI-EIN or provides an FFI-EIN that does not appear on the published IRS FFI list within ninety (90) calendar days after the date the claim is made, will be treated as invalid for FATCA purposes and the account holder will be treated as an undocumented account holder beginning on such date until other valid documentation or a correct FFI-EIN is provided. Prior to January 1, 2017, with respect to a Pre-Existing Account, a Fund may treat an account holder as a Participating FFI if the Fund has a valid Form W-8 from the account holder, the account holder has provided the Fund, either orally or in writing, with its FFI-EIN, and the Fund has properly verified the FFI-EIN.

4. Nonparticipating FFI. In general, a Fund must treat an account holder as a Nonparticipating FFI if the Fund can reliably associate the account holder with a valid Form W-8 identifying the account holder as a Nonparticipating FFI, the Fund knows or has reason to know the account holder is a Nonparticipating FFI, or the Fund is required to treat the account holder as a Nonparticipating FFI under the Presumption Rules.

5. Other. The Proposed Regulations provide special procedures to be followed by a Fund in determining whether an account holder is a Deemed-Compliant FFI, an Exempt Beneficial Owner, or an NFFE.

E. Identification Procedure and Documentation for Individual Accounts

1. General. Except as otherwise provided below, a Fund is required to: (i) collect a Form W-9 or Form W-8 from each individual account holder in order to identify its U.S. accounts and accounts other than U.S. accounts, and (ii) review all information collected with respect to the opening or maintenance of each account, including documentation collected as part of its account opening procedures and documentation collected for other regulatory purposes to determine if an account holder has U.S. indicia. In the case of an individual Offshore Account, the requirement to obtain a Form W-8 to establish foreign status does not apply if the Fund obtains “Documentary Evidence”. The rules for obtaining Documentary Evidence are discussed in Appendix B.⁴

However, if a Fund has documented an individual account holder as a U.S. person for other U.S. withholding purposes and such account holder is a Specified U.S. Person, the account holder’s account will be treated as a U.S. account for FATCA purposes.

2. U.S. Indicia. An account holder is treated as having U.S. indicia if the information required to be reviewed by the Fund with respect to the account includes any of the following:

- (i) identification of an account holder as a U.S. resident or citizen;
- (ii) U.S. place of birth;
- (iii) U.S. resident address or U.S. mailing address (including a U.S. P.O. box);
- (iv) U.S. telephone number;
- (v) standing instructions to transfer funds to an account maintained in the U.S.;
- (vi) power of attorney or signatory authority granted to a person with a U.S. address; or
- (vii) an “in-care-of” address or “hold mail” address that is the sole address the Fund has identified for the account holder.

3. Documentation for U.S. Indicia. If an account holder has one or more of the U.S. indicia described above, the Fund is required to obtain the following documentation to establish whether the account is a U.S. account:

⁴ An electronic search for U.S. indicia generally is all that is required for a Pre-Existing Account that (i) is an Offshore Account, (ii) is held by an individual, and (iii) has a value of not more than \$1 million. Accounts with a value in excess of \$1 million (“High Value Accounts”) require more, including inquiry of the relationship manager and certain review of other customer files and documents to the extent that electronic files do not provided sufficient information about the account holder.

(a) If the account holder is identified as a U.S. resident or citizen, the Fund must request a Form W-9 and a Waiver, if necessary, from the account holder.

(b) If the account holder information unambiguously indicates a U.S. place of birth, the Fund must either request (i) a Form W-9 and a Waiver, if necessary, from the account holder, or (ii) a Form W-8BEN and a non-U.S. passport or other government-issued identification evidencing citizenship in a country other than the U.S. In addition, to establish the foreign status of such account holder, the FFI must obtain a copy of the individual's Certificate of Loss of Nationality of the United States or Form I-407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(c) If the account holder information contains a U.S. address, U.S. mailing address or telephone number in the U.S., the Fund must either request (i) a Form W-9 and a Waiver, if necessary, from the account holder, or (ii) a Form W-8BEN and a non-U.S. passport or other government-issued identification evidencing citizenship in a country other than the U.S.

(d) If the account holder information contains standing instructions to transfer funds to an account maintained in the U.S., the Fund must either request (i) a Form W-9 and a Waiver, if necessary, from the account holder, or (ii) a Form W-8BEN and Documentary Evidence establishing foreign status.

(e) If the account holder information contains a power of attorney or signatory authority granted to a person with a U.S. address or has "in-care-of" address or "hold mail" address that is the sole address identified for the account holder, the Fund must either request (i) a Form W-9 and a Waiver, if necessary, from the account holder, or (ii) a Form W-8 or Documentary Evidence establishing foreign status.

F. Requirements for Validity of Forms W-9, Forms W-8

1. Form W-9. A valid Form W-9 must contain the account holder's name and taxpayer identification number ("TIN"), and be signed and dated under penalties of perjury by the payee or a person authorized to sign for the payee.

2. Form W-8BEN. A Form W-8BEN is valid only if its validity period has not expired,⁵ it is signed under penalties of perjury by a person with authority to sign for the person whose name is on the form, and it contains:

- (i) The person's name, permanent residence address, and TIN (if required);
- (ii) The country under the laws of which the person is created, incorporated, or governed (if a person other than an individual);
- (iii) The entity classification of the person;

⁵ Unless the Fund is aware of a change in circumstance that makes the information on the form incorrect, a Form W-8BEN is valid until the last day of the third calendar year following the year in which the form was signed.

(iv) The FATCA Status of the person; and

(v) Such other information as may be required by the FATCA regulations or by the form or the accompanying instructions in addition to, or in lieu of, the information described above.

3. Form W-8IMY. A Form W-8IMY is valid for FATCA purposes only if it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired,⁶ and it contains the following information, statements, and certifications:

(i) The name and permanent residence address of the person;

(ii) The country under the laws of which the person is created, incorporated, or governed;

(iii) The person's FATCA Status;

(iv) The person's entity classification;

(v) An FFI-EIN, in the case of a Participating FFI or a Registered Deemed-Compliant FFI, or an EIN in the case of a QI, WP or WT that is not an FFI;

(vi) In the case of an intermediary, a certification that, with respect to accounts listed on the withholding statement, the intermediary is not acting for its own account;

(vii) With respect to a withholding certificate of a QI, a certification that it is acting as a QI with respect to the accounts listed on the withholding statement;

(viii) A withholding statement prepared in accordance with the instructions to Form W-8IMY; and

(ix) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described above.

4. Reliance on a Prior Version of a Form W-9 or Form W-8. Upon the issuance by the IRS of an updated version of a Form W-9 or Form W-8, a Fund may continue to accept the prior version of the form for six months after the revision date shown on the updated form, unless the IRS has issued guidance that indicates otherwise, and may continue to rely upon a previously signed prior version of the form until its period of validity expires.

⁶ Unless the Fund is aware of a change in circumstance that makes the information on the form incorrect, a Form W-8IMY remains valid indefinitely.

G. Circumstances Under Which a Fund Has Reason to Know That a Form W-9 or Form W-8 is Unreliable

1. General. A Fund has reason to know that a Form W-9 or Form W-8 is unreliable or incorrect if the form is incomplete with respect to any item on the form that is relevant to the claims made by the account holder, the form contains any information that is inconsistent with the account holder's claim of status, the Fund has other account information that is inconsistent with the account holder's claim of status, or the form lacks information necessary to establish entitlement to an exemption from withholding for FATCA purposes.⁷

2. U.S. Address or Phone Number. A Fund has reason to know that a Form W-8 provided by an account holder is unreliable or incorrect if the form has a current permanent residence address in the U.S., the form has a current mailing address in the U.S., the Fund has a current residence or mailing address as part of its account information that is an address in the U.S., or the account holder notifies the Fund of a new residence or mailing address in the U.S. (whether or not provided on a Form W-8). A Fund also has reason to know that a Form W-8 provided by an account holder is unreliable or incorrect if the Fund knows that the account holder has a current telephone number in the U.S. Notwithstanding the foregoing, in the case of an account holder that is an entity, a Fund may rely upon a Form W-8 provided by the entity to establish its status as a foreign person if the Fund has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country.

3. U.S. Place of Birth--Accounts Opened on or after January 1, 2013. For accounts opened on or after January 1, 2013, a Fund has reason to know that a Form W-8 provided by an individual account holder is unreliable or incorrect if the Fund has, either on accompanying documentation or as part of its account information, a place of birth for the account holder in the U.S. A Fund may treat the individual account holder as a foreign person, notwithstanding the U.S. birth place, if the Fund has no knowledge that the individual has any other U.S. indicia (e.g., a U.S. address) and the Fund obtains a copy of the individual's Certificate of Loss of Nationality of the United States or Form I-407, Abandonment of Lawful Permanent Residence Status. A Fund may also treat the individual account holder as a foreign person, notwithstanding the U.S. birth place, if the Fund obtains a non-U.S. passport or other government-issued identification evidence of citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States or Form I-407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

4. U.S. Place of Birth--Accounts Opened Prior to January 1, 2013. For accounts opened prior to January 1, 2013, a Fund will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an account holder. However, if the Fund, on or after January 1, 2013, does review documentation that contains a U.S. birth place for an account holder that is treated as a foreign person, then the account will be considered to

⁷ The rules of paragraphs 2 through 5 of this Section do not apply to a Form W-8 provided to the Fund by a Participating FFI if the form contains an FFI-EIN for the FFI that the Fund verifies on the current published IRS FFI list.

have a experienced a change of circumstance as of the date that the Fund reviewed the documentation and the Fund will be considered to have reason to know that an account holder is a U.S. person.

5. Standing Instructions. A Fund has reason to know that a Form W-8 provided by an account holder is unreliable or incorrect if it is provided with respect to an Offshore Account and the account holder has standing instructions directing the Fund to pay amounts from its account to an address or an account maintained in the U.S. The Fund may rely upon the Form W-8 to establish the account holder's FATCA Status, however, if the account holder provides documentary evidence that supports its foreign status.

6. Information Conflicting with Account Holder's Claim of FATCA Status. A Form W-8 or written statement is unreliable or incorrect if there is information on the face of the documentation or in the Fund's account files that conflicts with the account holder's claim regarding its FATCA Status. However, a Fund may rely upon an account holder's claim regarding its FATCA Status if the Fund obtains both a Form W-8 (or written statement for a payment with respect to an Offshore Account) and documentary evidence that support the account holder's claim.

7. FFI-EIN. If an FFI is removed from the list of Participating FFIs published on the IRS database, a Fund is treated as knowing that such FFI is not a Participating FFI on the earlier of the date that the Fund discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's name was actually removed from the list.

Prior to January 1, 2016, a Fund that has received an account holder's claim of status as a participating FFI has reason to know that such account holder is not a Participating FFI even if the account holder's name and FFI-EIN appear on the most recent published IRS FFI list, if the current published IRS FFI list indicates that branches of the account holder located in the same country as the branch that submitted the Form W-8, are Limited Branches. Prior to January 1, 2016, a Fund will also have reason to know that the branch submitting the Form W-8 is a Limited Branch if the Form W-8 or other documentation for the branch contains an address in a country for which the FFI is shown, on the current IRS FFI list, to have Limited Branches. For purposes of FATCA withholding, a Fund is required to treat a Limited Branch as a Nonparticipating FFI.

H. Presumption Rules Where a Fund Cannot Reliably Associate an Account Holder With a Withholding Form and Documentary Evidence

1. Classification as an Individual or Entity. A Fund that cannot reliably associate an account holder with a valid Form W-9 or Form W-8 or that has received valid Documentary Evidence, but cannot determine an account holder's status as an individual or an entity from the Documentary Evidence, must presume that the account holder is an individual if the account holder appears to be an individual (e.g., based on the account holder's name). If the account holder does not appear to be an individual, then the account holder is presumed to be an entity.

2. U.S. or Foreign Status. An account holder that the Fund cannot reliably associate with a valid Form W-9 or Form W-8 or Documentary Evidence is presumed to be a U.S. person, except as otherwise provided below:⁸

(a) If the account holder is an entity, the account holder is presumed to be a foreign person if (i) the Fund has actual knowledge that the account holder's EIN begins with the two digits "98"; (ii) the Fund's communications with the account holder are mailed to an address in a foreign country; (iii) the Fund has a telephone number for the account holder outside of the U.S.; or (iv) the name of the account holder indicates that it is one of the entities listed on Exhibit A.

(b) The account holder is presumed to be a foreign person if the account holder is an entity that is: (i) an entity whose name contains an unambiguous expression of corporate status that is Incorporated, Inc., Corporation, Corp., P.C. (but not Company or Co.), or contains the term "insurance company", "indemnity company", "reinsurance company", or "assurance company"; (ii) a foreign government, a political subdivision of a foreign government, or a wholly-owned agency or instrumentality of either; (iii) an international organization or a wholly-owned agency or instrumentality thereof; (iv) a foreign central bank of issue; (v) a securities, commodities, or notional principal contracts dealer that is registered as such under the laws of the United States or a State or under the laws of a foreign country; (vi) a financial institution such as a bank, mutual savings bank, savings and loan institution, building and loan association, credit union, industrial loan association or bank, or other similar organization; (vii) a nominee or custodian; (viii) a broker; or (ix) a dealer in notional principal contracts.

3. FATCA Status for a Foreign Entity. If the account holder is a foreign entity and the Fund cannot reliably associate the account holder with a valid Form W-9 or Form W-8 or documentary evidence sufficient to determine the status of the entity for FATCA purposes (e.g., as a Participating FFI or Nonparticipating FFI), the Fund must presume that the account holder is a Nonparticipating FFI.

4. Intermediary Status. If the Fund cannot reliably associate the account holder with documentation to treat the account holder as an intermediary, the Fund must treat the account holder as an intermediary if the Fund has documentary evidence or other documentation that indicates, or the facts and circumstances (e.g., the name of the account holder, the presence of subaccount numbers) indicate that the account holder is a bank, broker, custodian, intermediary or other agent and the Fund has no knowledge that the account holder is acting for its own account. Any account holder that the Fund may treat as a foreign intermediary but that the Fund cannot reliably associate with valid documentation is presumed to be a Nonparticipating FFI. A person that the Fund may not reliably treat as a foreign intermediary under this paragraph is presumed to be other than an intermediary.

5. Joint Accounts. If an account is held jointly, the Fund cannot reliably associate the account with valid documentation from each account holder, and all of the holders

⁸ As a practical matter, the rules of this paragraph 2 generally will not cause a U.S. entity to be treated as a foreign entity because the Proposed Regulations would allow a Fund to rely upon a completed Form W-9 as evidence of an account holder's status as a U.S. person.

appear to be individuals, then the account is presumed to be held by an unidentified U.S. person. If any joint holder does not appear to be an individual, then the account is treated as held by a Nonparticipating FFI. However, if one of the joint holders provides a valid Form W-9, the account is treated as held by that holder.

If a payment is made outside of the United States with respect to an Offshore Account held jointly, the Fund cannot reliably associate the account with valid documentation from each account holder, and all of the holders appear to be individuals, and the Fund has no reason to know that any of the account holders is a U.S. person, the payment is presumed to be made to an unknown foreign individual. If the Fund has reason to know that any holder is a U.S. person, the payment is treated as made to an unidentified U.S. person.

6. Rebuttal of Presumption Rules. An account holder may rebut the Presumption Rules by providing reliable documentation to the Fund.

7. Actual Knowledge or Reason to Know. A Fund that knows or has reason to know that the status or characteristics of the account holder are other than what is presumed under the Presumption Rules may not rely on the Presumption Rules to avoid withholding or reporting with respect to such account holder.

I. Other Requirements

1. Change of Circumstances. For FATCA purposes, a person is considered to have a change in circumstances only if such change would affect the FATCA Status of the person. A change of circumstances includes any change that results in the addition of information relevant to a person's claim of foreign status (that is, U.S. indicia) or otherwise conflicts with such person's claim of FATCA Status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for this purpose only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the Fund, including information contained in a withholding statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

Documentation becomes invalid on the date that the Fund knows or has reason to know that circumstances affecting the correctness of the documentation have changed. However, a Fund may choose to treat a person as having the same FATCA Status that it had prior to the change in circumstances until the earlier of ninety (90) days from the date that the documentation became unreliable due to the change in circumstances or the date that new documentation is obtained.

2. Notification by IRS. A Fund that has received notification by the IRS that a claim of status as a U.S. person, a Participating FFI, or other entity entitled to a reduced rate of FATCA withholding, is incorrect is treated as knowing that such a claim is incorrect beginning on the date that is thirty (30) calendar days after the date the notice is received.

3. Electronic Transmission. A Fund may accept a Form W-9 or Form W-8 electronically, including by facsimile, if certain requirements are met. A Fund may also accept a copy of Documentary Evidence electronically, including by facsimile, if the Fund confirms that

the person furnishing the Documentary Evidence is the person named on the documentary evidence, the copy does not appear to have been altered from its original form, and the copy is a certified copy or notarized copy (that is, must either be certified to be a true copy of the original or must contain a notarized signed statement of the person furnishing the document that the copy is a true and accurate.

4. Record Retention. A Fund must retain either an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of record retention) of the documentation collected to determine the FATCA Status of its account holders. With respect to Pre-Existing Accounts, a Fund must retain the documentation collected for six (6) calendar years following the year in which the account identification procedures described above were performed. Upon the request of the IRS, a Fund may be required to extend this retention period.

5. Certification of Responsible Officer. In order for a Fund to meet its obligations with respect to identification procedures for Pre-Existing Accounts, a responsible officer of the Fund must certify to the IRS within one year of the effective date of its FFI Agreement that it has completed the enhanced review procedures of all High Value Accounts⁹ and to the best of such officer's knowledge after conducting a reasonable inquiry, the Fund did not have any formal or informal practices or procedures in place from August 6, 2011 through the date of such certification to assist account holders in the avoidance of FATCA. Additionally, a responsible officer of the Fund must certify to the IRS within two years of the effective date of its FFI Agreement that it has completed the account identification procedures and documentation requirements described above for all Pre-Existing Accounts or, if it has not obtained the required documentation with respect to an account, the Fund treats such account in accordance with the requirements of its FFI Agreement.

J. Certain Exceptions to FATCA

Certain limited categories of FFIs will be treated as Deemed-Compliant FFIs under the Proposed Regulations. A Deemed-Compliant FFI is not required to enter into an agreement with the IRS, but rather will automatically be deemed to have complied with the FATCA reporting obligations. A foreign private investment fund may, under certain limited circumstances, be treated as a Deemed-Compliant FFI. There are two categories of Deemed-Compliant FFIs that are relevant to private investment funds: Qualified Collective Investment Vehicles and Restricted Funds.

A "Qualified Collective Investment Vehicle" (a "QCIV") (i) must be an FFI solely because it is a Fund (i.e., it cannot be a bank or a broker), (ii) must be "regulated in its country of incorporation or organization as an investment fund," (iii) each holder of debt interests in excess of \$50,000 or of equity interests in the FFI and other holders of a financial account with the FFI must be (1) a U.S. person other than a Specified U.S. Person, (2) a Participating FFI, (3) another Deemed-Compliant FFI, or (4) an Exempt Beneficial Owner and (iv) if the Fund is part of an "expanded affiliated group," each other entity within the group must be either a Participating FFI or a Deemed-Compliant FFI.

⁹ See footnote 3 above.

A “Restricted Fund” (i) must be an FFI solely because it is a Fund (i.e., it cannot be a bank or a broker), (ii) must be “regulated in its country of incorporation or organization as an investment fund,” (iii) must have its interests distributed only by Participating FFIs, registered Deemed-Compliant FFIs, local banks, or “restricted distributors”¹⁰, (iv) must have distribution agreements that prohibit the sale of fund interests to U.S. persons, Nonparticipating FFIs and passive NFFEs with one or more substantial U.S. owners, (v) must have a statement in its prospectus and all marketing materials that the sale of interests in the fund to U.S. persons, Nonparticipating FFIs and passive NFFEs with one or more substantial U.S. owners is prohibited, (vi) must review its existing accounts to ensure that it does not have any accounts held by U.S. persons, non-participating FFIs or passive NFFEs, and (vii) either must not open any account for U.S. persons, non-participating FFIs or passive NFFEs or close any account held by such person within 90 days of learning that there is such an account.

The Proposed Regulations and the Preamble do not provide any guidance on when a Fund will be treated as “regulated in its country of incorporation or organization as an investment fund.” In our view, in the absence of additional guidance, the typical Cayman Islands private investment fund would not be “regulated” as an investment fund in the Cayman Islands. However, a UCITs fund or other EU-based investment fund may be treated as “regulated” as an investment fund in its country of incorporation for this purpose.¹¹

The usefulness of these exceptions is also limited because a Fund relying on them will still be required to conduct due diligence on each of its investors to ensure that its investors fit within one of the permitted ownership categories. Therefore, although neither a QCIV nor a Restricted Fund will have to enter into an agreement with the IRS to become a Participating FFI, they will still be required to follow compliance procedures that are similar to those imposed on a Participating FFI.

In order to qualify for the QCIV and Restricted Fund exceptions, an FFI must have its chief compliance officer certify to the IRS that it satisfies all of the requirements for being a QCIV or a Restricted Fund, obtain confirmation from the IRS of its status as a QCIV or Restricted Fund and receive an FFI-EIN, renew its certification every three years and notify the IRS if there is any change in circumstances which would make the FFI ineligible to be treated as a QCIV or Restricted Fund.

¹⁰ A “restricted distributor” is a distributor that has at least 30 unrelated customers for investment management services, has unrelated persons constituting at least half of its customers, is required under the laws of its country of incorporation to perform anti-money laundering compliance on its customers, operates and solicits customers only in its country of organization, has not more than \$175 million in total assets under management and no more than \$7 million of gross revenue and the distribution agreement with the FFI prohibits the distributor from distributing interests to specified U.S. persons, passive NFFEs or nonparticipating FFIs.

¹¹ Another exception applies to “owner-documented FFIs.” An “owner-documented FFI” is a Fund that effectively relies upon a withholding agent (which must be either a U.S. financial institution or a Participating FFI) to conduct FATCA diligence by providing the withholding agent with all of the information regarding its account holders. An owner-documented FFI is not permitted to issue debt which is a “financial account” in excess of \$50,000. Therefore, absent further guidance, it is unlikely that this provision will be available for most Funds. However, this exception may be useful for family offices or entities formed by family offices.

K. Intergovernmental Framework

On the same day that the Proposed Regulations were released, the Treasury Department and the governments of the United Kingdom, France, Germany, Italy and Spain announced that they would work towards an intergovernmental framework for FATCA implementation.

The intergovernmental approach would allow for automatic information exchange between the United States and participating countries with respect to foreign financial accounts held by U.S. persons in the participating country. Under this approach, an FFI organized in a participating country would provide information regarding U.S. accounts to its local tax authority which would then automatically share the information with the IRS. An FFI organized in a participating country would not have to enter into an FFI agreement with the IRS, would not be required to close accounts of recalcitrant account holders, would not be subject to withholding under FATCA and would not have to directly report any information to the IRS.

On July 26, 2012, the Treasury Department released a model intergovernmental agreement to serve as a basis for cooperation between the United States, the five countries mentioned above, and other participating governments. There are two versions of the model agreement, a reciprocal version and a non-reciprocal version. Under the reciprocal version, the United States would exchange information collected on accounts held by residents of participating countries in U.S. financial institutions.

At this point, the intergovernmental approach is still in its early stages. In order to implement this approach, the United States must enter into bilateral agreements with the participating countries. It is unclear whether the IRS would be willing to consider such an approach with the countries where offshore private investment funds are typically organized (e.g., the Cayman Islands).

We will continue to keep you informed of further developments under FATCA, including the issuance of the model FFI Agreement and the final regulations.

If you have any questions regarding this Memorandum, please contact Dan Murphy (212-574-1210), Ron Cima (212-574-1471), or Jim Cofer (212-574-1688).

Seward & Kissel LLP

To ensure compliance with Treasury regulations regarding practice before the Internal Revenue Service, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding penalties that may be imposed on the taxpayer under U.S. federal tax law, or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Appendix A

Key Definitions

The following is a summary of the key definitions used in this Memorandum:

“Deemed-Compliant FFI” means an FFI treated by the IRS as meeting the requirements of FATCA because (i) such FFI complies with prescribed IRS procedures and requirements (including procedures to ensure that the institution does not maintain U.S. accounts) or (ii) such FFI is a member of a class of institutions with respect to which the IRS has determined that entering into an FFI Agreement is not necessary to carry out the purposes of FATCA.

“Documentary Evidence” has the meaning ascribed to that term in Appendix C.

“Exempt Beneficial Owner” means a beneficial owner of a class identified by Congress or the IRS as posing a low risk of tax evasion, including foreign governments, international organizations, foreign central banks of issue, governments of U.S. possessions, and certain retirement funds.

“FATCA Status” means a person’s status as a U.S. person, a Specified U.S. person, a foreign individual, a Participating FFI, a Deemed-Compliant FFI, an Exempt Beneficial Owner, a Nonparticipating FFI, a territory financial institution, a QI branch of a U.S. financial institution, an excepted NFFE or a passive NFFE.

“FFI Agreement” has the meaning ascribed to that term in the Introduction.

“FFI-EIN” means an employer identification number (“EIN”) issued to a Participating FFI or Deemed-Compliant FFI.

“Limited Branch” is a branch of an FFI that under the laws of the jurisdiction that govern their accounts are prohibited either from reporting U.S. accounts to the IRS, withholding on payments to certain account holders, and/or taking specified actions (e.g., closing such accounts within a reasonable period of time) to avoid maintaining such accounts.

“NFFE” means a foreign entity that is not a financial institution.

“Nonparticipating FFI” means an FFI other than a Participating FFI, a Deemed-Compliant FFI, or an Exempt Beneficial Owner.

“Nonqualified Intermediary” (or “NQI”) means a foreign intermediary that is not a Qualified Intermediary.

“Nonwithholding Foreign Partnership” (or “NFP”) means a foreign partnership that is not a Foreign Withholding Partnership.

“Nonwithholding Foreign Trust” (or “NFT”) means a foreign trust that is a grantor trust or simple trust and is not a Foreign Withholding Trust.

“Offshore Account” means an individual account maintained and executed at an office or branch of the Fund outside of the United States.

“Participating FFI” means an FFI with respect to which an FFI Agreement is in full force and effect.

“Passthru Payment” means any withholdable payment or other payment to the extent attributable to a withholdable payment.

“Pre-Existing Account” means any account maintained by the Fund prior to the date that its FFI Agreement becomes effective.

“Presumption Rules” means the presumption rules set forth in Section H.

“Prima Facie FFI” means (i) an account holder with respect to which the Fund has available as part of its “electronically searchable information” a designation for the account holder as an intermediary, or (ii) an account maintained in the U.S., with respect to which the account holder is presumed to be, or documented as, a foreign entity and the Fund has recorded as part of its “electronically searchable information” a standardized industry code that indicates that the account holder is a financial institution.

“Qualified Collective Investment Vehicle” (or “QCIV”) has the meaning ascribed to that term in Section J.

“Qualified Intermediary” (or “QI”) means a foreign intermediary that has entered into a withholding agreement (other than an FFI Agreement) with the IRS.

“Reportable Account” has the meaning ascribed to that term in the Introduction.

“Restricted Fund” has the meaning ascribed to that term in Section J.

“Specified U.S. Person” means a U.S. person other than (i) a corporation the stock of which qualifies as “regularly traded”; (ii) an affiliate of a corporation described in clause (i); (iii) a tax-exempt organization or an IRA; (iv) the United States or a wholly owned agency or instrumentality thereof; (v) a State, the District of Columbia, a U.S. possession, a political subdivision of any of the foregoing, or a wholly owned agency or instrumentality of any of the foregoing; (vi) a bank; (vii) a REIT; (viii) a regulated investment company or an entity registered with the SEC under the Investment Company Act of 1940; (ix) a common trust fund; (x) a charitable remainder trust; (xi) a securities, commodities or derivatives dealer that is registered as such under federal or state law; and (xii) a broker.

“Waiver” means, in any case in which any foreign law would prevent the reporting of any information required by FATCA with respect to any U.S. account maintained by the Fund, a valid and effective waiver of such law from the account holder.

“Withholding Foreign Partnership” (or “WFP”) means a foreign partnership that has entered into a withholding agreement (other than an FFI Agreement) with the IRS.

“Withholding Foreign Trust” (or “WFT”) means a foreign trust that has entered into a withholding agreement (other than an FFI Agreement) with the IRS.

Appendix B

American Samoa, Corporation
Argentina, Sociedad Anonima
Australia, Public Limited Company
Austria, Aktiengesellschaft
Barbados, Limited Company
Belgium, Societe Anonyme
Belize, Public Limited Company
Bolivia, Sociedad Anonima
Brazil, Sociedade Anonima
Bulgaria, Aktsionerno Druzhestvo.
Canada, Corporation and Company (see note 1 below)
Chile, Sociedad Anonima
People's Republic of China, Gufen Youxian Gongsi
Republic of China (Taiwan), Ku-fen Yu-hsien Kung-szu
Colombia, Sociedad Anonima
Costa Rica, Sociedad Anonima
Cyprus, Public Limited Company (see note 5 below)
Czech Republic, Akciova Spolecnost
Denmark, Aktieselskab
Ecuador, Sociedad Anonima or Compania Anonima
Egypt, Sharikat Al-Mossahamah
El Salvador, Sociedad Anonima
Estonia, Aktsiaselts
European Economic Area/European Union, Societas Europaea
Finland, Julkinen Osakeyhtio/Publikt Aktiebolag
France, Societe Anonyme
Germany, Aktiengesellschaft
Greece, Anonymos Etairia
Guam, Corporation
Guatemala, Sociedad Anonima
Guyana, Public Limited Company
Honduras, Sociedad Anonima
Hong Kong, Public Limited Company (see note 5 below)
Hungary, Reszvenytarsasag
Iceland, Hlutfelag
India, Public Limited Company (see note 2 below)
Indonesia, Perseroan Terbuka
Ireland, Public Limited Company
Israel, Public Limited Company
Italy, Societa per Azioni
Jamaica, Public Limited Company (see note 5 below)
Japan, Kabushiki Kaisha
Kazakstan, Ashyk Aktsionerlik Kogham
Republic of Korea, Chusik Hoesa

Latvia, Akciju Sabiedriba
 Liberia, Corporation
 Liechtenstein, Aktiengesellschaft
 Lithuania, Akcine Bendroves
 Luxembourg, Societe Anonyme
 Malaysia, Berhad (see note 3 below)
 Malta, Public Limited Company
 Mexico, Sociedad Anonima (see note 4 below)
 Morocco, Societe Anonyme
 Netherlands, Naamloze Vennootschap
 New Zealand, Limited Company
 Nicaragua, Compania Anonima
 Nigeria, Public Limited Company
 Northern Mariana Islands, Corporation
 Norway, Allment Aksjeselskap
 Pakistan, Public Limited Company
 Panama, Sociedad Anonima
 Paraguay, Sociedad Anonima
 Peru, Sociedad Anonima
 Philippines, Stock Corporation
 Poland, Spolka Akcyjna
 Portugal, Sociedade Anonima
 Puerto Rico, Corporation
 Romania, Societate pe Actiuni
 Russia, Otkrytoye Aktsionernoy Obshchestvo
 Saudi Arabia, Sharikat Al-Mossahamah
 Singapore, Public Limited Company
 Slovak Republic, Akciova Spolocnost
 Slovenia, Delniska Druzba
 South Africa, Public Limited Company
 Spain, Sociedad Anonima
 Surinam, Naamloze Vennootschap
 Sweden, Publika Aktiebolag
 Switzerland, Aktiengesellschaft
 Thailand, Borisat Chamkad (Mahachon)
 Trinidad and Tobago, Limited Company
 Tunisia, Societe Anonyme
 Turkey, Anonim Sirket
 Ukraine, Aktsionerne Tovaristvo Vidkritogo Tipu
 United Kingdom, Public Limited Company
 United States Virgin Islands, Corporation
 Uruguay, Sociedad Anonima
 Venezuela, Sociedad Anonima or Compania Anonima

Country-Specific notes

- (1) Excluding a Nova Scotia Unlimited Liability Company (or any other company or corporation all of whose owners have unlimited liability pursuant to federal or provincial law).
- (2) Excluding a company deemed to be a public limited company solely by operation of Section 43A(1) (relating to corporate ownership of the company), section 43A(1A) (relating to annual average turnover), or section 43A(1B) (relating to ownership interests in other companies) of the Companies Act, 1956 (or any combination of these), provided that the organizational documents of such deemed public limited company continue to meet the requirements of section 3(1)(iii) of the Companies Act, 1956.
- (3) Excluding a Sendirian Berhad.
- (4) Including a Sociedad Anonima that chooses to apply the variable capital provision of Mexican corporate law (Sociedad Anonima de Capital Variable).
- (5) Including any Limited Company that is not defined as a private company under the corporate laws of this jurisdiction.

General Notes

- (6) In general, where the term Public Limited Company is not defined, that term shall include any Limited Company defined as a public company under the corporate laws of the relevant jurisdiction.
- (7) Any reference to a Limited Company includes, as the case may be, companies limited by shares and companies limited by guarantee.
- (8) Different linguistic renderings of the name of an entity listed above shall be disregarded. For example, an entity formed under the laws of Switzerland as a Societe Anonyme will be a corporation and treated in the same manner as an Aktiengesellschaft.

Appendix C

Documentary Evidence Procedures

A. Documentary Evidence.

In the case of an individual non-U.S. account holder, a Fund may rely on Documentary Evidence as to the account holder's non-U.S. status rather than obtaining a Form W-8 from the account holder.

“Documentary Evidence” means: (i) a certificate of residence issued by an appropriate tax official of the country in which the account holder claims to be a resident that indicates that the account holder has filed its most recent income tax return as a resident of that country; or (ii) any valid identification issued by an authorized governmental body that includes the individual's name and address and is typically used for identification purposes.

B. Requirements for Validity of Documentary Evidence

1. Validity Period. As a general rule, Documentary Evidence is valid until the earlier of the last day of the third calendar year following the year in which the Documentary Evidence is provided to the Fund or the day on which a change in circumstance occurs that makes the information on the Documentary Evidence incorrect. However, Documentary Evidence that contains an expiration date will be valid until the end of the expiration period, regardless of whether that expiration date occurs before or after the last day of the third calendar year following the year in which the Documentary Evidence is provided to the Fund. In addition, Documentary Evidence that is not generally renewed or amended, such as a certificate of incorporation, may be treated as valid indefinitely until a change in circumstance occurs that makes the information on the Documentary Evidence incorrect.

C. Circumstances Under Which a Fund Has Reason to Know That Documentary Evidence is Unreliable

1. General. A Fund can not treat Documentary Evidence provided by an account holder as valid if the Documentary Evidence does not reasonably establish the identity of the person presenting the Documentary Evidence. For example, Documentary Evidence is not valid if it is provided in person by an account holder that is a natural person and the photograph or signature on the Documentary Evidence, if any, does not match the appearance or signature of the person presenting the document. A Fund may not rely on Documentary Evidence to reduce the rate of withholding that would otherwise apply under the Presumption Rules if the Documentary Evidence contains information that is inconsistent with the account holder's claim as to its FATCA Status, the Fund has other account information that is inconsistent with the account holder's claim, or the Documentary Evidence lacks information necessary to establish the account holder's FATCA Status.

2. Establishment of Foreign Status. A Fund may not treat Documentary Evidence provided by an account holder as valid for purposes of establishing the account holder's foreign status if the only mailing address or residence address that is available to the Fund is an address at a financial institution (unless the financial institution is the account holder), an in-care-of address, or a P.O. box. In this case, the Fund must obtain additional documentation

that is sufficient to establish the account holder's status as a foreign person. Documentary Evidence is unreliable or incorrect to establish a account holder's status as a foreign person if the Fund has a current residence or mailing address (whether or not on the documentation) for the account holder in the United States, if the account holder notifies the Fund of a new address in the United States, or if the Fund has a current telephone number for the payee in the United States. A Fund may, however, rely on Documentary Evidence as establishing the account holder's foreign status under the following circumstances:

(a) A Fund may treat an account holder that is an individual as a foreign person even if it has a mailing address, residence address, or telephone number for the account holder in the United States if the Fund--

(i) has in its possession or obtains additional Documentary Evidence (that does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder's foreign status; or

(ii) has in its possession or obtains a valid Form W-8BEN that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or if a mailing address is inside the United States the direct account holder provides a reasonable explanation in writing supporting the account holder's claim of foreign status).

(b) A Fund may treat an account holder that is an entity as a foreign person even if it has a mailing address, residence address, or telephone number for the account holder in the United States if the Fund--

(i) has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(ii) obtains a valid Form W-8BEN that contains a permanent residence address outside the United States and a mailing address, if any, outside the United States.

3. U.S. Place of Birth--Accounts Opened on or after January 1, 2013. For accounts opened on or after January 1, 2013, a Fund has reason to know that Documentary Evidence provided by an individual account holder to demonstrate the individual's status as a foreign person is unreliable or incorrect if the documentation contains a U.S. birth place for the account holder or the Fund has, as part of its account information, a place of birth for the account holder in the United States. A Fund may treat the individual account holder as a foreign person, notwithstanding the U.S. birth place, if the Fund has no knowledge that the account holder has any other U.S. indicia described in this Appendix C and the Fund obtains a copy of the individual's Certificate of Loss of Nationality of the United States or Form I-407. A Fund may also treat the individual account holder as a foreign person, notwithstanding the U.S. birth place, if the Fund obtains a valid Form W-8BEN from the account holder that establishes the account holder's foreign status and either a copy of the individual's Certificate of Loss of Nationality of the United States or Form I-407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

4. U.S. Place of Birth--Accounts Opened Prior to January 1, 2013. For accounts opened prior to January 1, 2013, a Fund will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with an account holder. However, if the Fund, on or after January 1, 2013, does review documentation that contains a U.S. birth place for an account holder that is treated as a foreign person, then the account will be considered to have experienced a change of circumstance as of the date that the Fund reviewed the documentation and the Fund will be considered to have reason to know that the account holder is a U.S. person.

5. Standing Instructions. Documentary Evidence is unreliable or incorrect as an indication of an account holder's status as a foreign person if the account holder has standing instructions directing the Fund to pay amounts from its account to an address or an account maintained in the United States. The Fund may treat the direct account holder as a foreign person, however, if the account holder provides a valid Form W-8BEN and either Documentary Evidence that supports the account holder's claim of foreign status or a reasonable explanation in writing that supports its claim of foreign status.

6. Information Conflicting with Account Holder's Claim of FATCA Status. Documentary Evidence is unreliable or incorrect if there is information on the face of the documentation or in the Fund's account files that conflicts with the account holder's claim regarding its FATCA status. However, a Fund may rely upon an account holder's claim regarding its FATCA status if the Fund obtains both a Form W-8 (or written statement for a payment with respect to an Offshore Account) and Documentary Evidence that support the account holder's claim.