

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY CLEARSTREAM BANKING S.A.]

Stephen E. Shay  
Deputy Assistant Secretary for International Tax Affairs  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
U.S.A.

Steven A. Musher  
Internal Revenue Service  
Office of the Associate Chief Counsel (International)  
1111 Constitution Avenue, NW  
Washington, DC 20224  
U.S.A.

July 15, 2010

**RE: Comments on Foreign Account Tax Compliance Act Provisions**

Dear Sirs,

Clearstream Banking S.A. ("Clearstream") welcomes the opportunity to provide the U.S. Treasury and the Internal Revenue Service ("IRS") with preliminary comments on guidance projects and issues concerning the interpretation and the implementation of the Foreign Account Tax Compliant Act ("FATCA") provisions of the Hiring Incentives to Restore Employment ("HIRE") Act, enacted into law on March 18, 2010.

Clearstream is an International Central Securities Depository ("ICSD") based in Luxembourg, which provides a wide range of settlement, banking and custody services to over 2,500 financial institutions located worldwide. As part of its services, Clearstream provides its client base with direct and indirect access to 50 domestic securities markets, including the U.S., and is also one of the major primary places of issuance and settlement for international securities n1 used by both U.S. and non-U.S. issuers.

Considering its participation as sub-custodian in various local securities markets and its central market infrastructure role for international securities, Clearstream wishes to emphasize its main concerns and questions with regards to the enacted changes and would welcome the opportunity to enter into a close dialogue with both the U.S. Treasury and the IRS to provide information and support in the implementation of the new law.

Since several months, Clearstream has been working closely with many international trade associations such as the European Banking Federation ("EBF"), the Institute of International Bankers ("IIB") and the International Capital Markets Services Association ("ICMSA") to understand the implications of the enacted changes and to identify solutions for the industry to comply with the new requirements while minimizing associated costs and burdens. Our main observations and suggestions regarding the implementation of the new U.S. withholding tax system have been included in the joint IIB and EBF efforts and shared with your respective institutions as part of the continuous dialogue that has been established with these parties. Our intention is therefore not to duplicate these efforts, but rather to focus on a particular problematic that has not been covered yet in the aforementioned submissions.

Section 502 "Repeal of Certain Foreign Exceptions to Registered Bond Requirements" has for effect to repeal the Tax Equity and Fiscal Responsibility Act (TEFRA) rules for foreign-targeted bearer debt instruments issued by U.S. entities after March 18, 2012. We understand that the targeted U.S. issuers will therefore have to opt for the registered issuance format, unless they choose to issue their bearer bonds in a Dematerialized Book-Entry system n2 provided these holdings can not be exchanged into bearer bonds in 'definitive' form (unless the book-entry system goes out of business without a

successor). We note that the law text provides authority to the Secretary to specify other (presumably non-dematerialized) book-entry systems for a security to be treated as registered form.

The international securities market, also called Eurobonds market, which is serviced by Clearstream, has co-existed successfully since 50 years with the U.S. domestic markets for the benefits of issuers and investors across the world. It is characterized by a high level of flexibility in the product design and by the use of many issuance governing jurisdictions, and is almost exclusively made of global bearer bonds immobilized with Clearstream and Euroclear, acting as ICSDs.

Clearstream is also willing to assist the IRS and the U.S. Treasury to restrict the issuance of bearer bonds in 'definitive' form in the market. We would therefore welcome the opportunity to discuss with your respective institutions about the procedures to follow for Clearstream to be recognized as book-entry system should it wishes to do so and to clarify what would be the various implications.

Whilst Clearstream firmly supports the adaptations required at market infrastructure level to comply with the new FATCA provisions, it is also concerned about the possible negative consequences that the repeal of TEFRA rules may have on non-U.S. borrowers issuing immobilized bearer bonds through Clearstream. We understand from the FATCA text that non-U.S. issuers would, if they chose to continue issuing bearer bonds to non-U.S. persons under TEFRA rules, not be subject to a U.S. excise tax. We are however willing to clarify how the U.S. Treasury and the IRS would consider these bearer bonds should Clearstream be recognized as Dematerialized Book-Entry System.

To close on Section 502, we also note that the U.S. Treasury is authorized to extend the "portfolio interest exemption" to registered debt instruments where no IRS Form W-8BEN has been provided if it determines that such form is not required in order to carry out the purposes of this exemption. It is unclear to us whether such an exemption would apply to registered debt securities issued through and immobilized with Clearstream, acting as Dematerialized Book-Entry System. Again, we herewith seek clarifications from the IRS and the U.S. Treasury on the procedures to follow to obtain such an exemption.

Regarding the other sections of the Act, we note that Clearstream has been acting as Qualified Intermediary ("QI") for many years and has therefore contributed, like many other potential Foreign Financial Institutions ("FFI"), to the significant improvements noted in the tax collection and information provision process since the introduction of the QI regime. In order for the new regime to be as successful, it will have to ensure that benefits for the participants outweigh the costs and risks inherent to any future compliance mechanisms. We therefore advise the IRS and the U.S. Treasury to consider pragmatic solutions, such as the ones suggested by the EBF and the IIB in their joint submissions dated 23 April 2010 and 16 June 2010, when designing the implementation measures, in order to avoid possible negative consequences such as disinvestment in U.S. securities.

Since the implementation of FATCA will raise a series of challenges throughout the industry, we would very much appreciate to enter into a constructive dialogue with the IRS and the U.S. Treasury as to the best answers to bring to the above questions in order to ensure a smooth transition towards a new framework compliant with the new rules.

We look forward to working with you throughout the implementation of the FATCA provisions and remain at your disposal for a meeting or call to expand further on the above considerations.

Yours sincerely,

Arnaud Delestienne  
Executive Director  
Head of Network Management  
International Markets  
Clearstream Banking  
Luxembourg, Germany

Cc:

Manal Corwin, International Tax Counsel, U.S. Treasury  
Michael Danilack, Deputy Commissioner (Int'l) LMSB, IRS

**FOOTNOTES:**

n1

The total value of international securities primarily issued and deposited with Clearstream exceeded USD 12 trillions (equivalent) as at the end of December 2009.

n2

Reference is made to IRS Notice 2006/99