

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
DST SYSTEMS, INC. AND BOSTON FINANCIAL DATA SERVICES, INC.]

November 3, 2010

Internal Revenue Service
Attn: Office of Associate Chief Counsel (International)
CC:PA:LPD:PR (NOT-121556-10)
Room 5203
PO Box 7604, Ben Franklin Station,
Washington, DC 20044

Re: Comments regarding *IRS Notice 2010-60*

Ladies and Gentlemen:

DST Systems, Inc. n1 and Boston Financial Data Services, Inc. n2 are large service providers to domestic mutual fund companies. As such, we are vitally interested in issues related to the Foreign Account Tax Compliance Act (FATCA) provisions included in the Hiring Incentives to Restore Employment Act of 2010 (HIRE), enacted in March of this year.

The prompt September release by the Internal Revenue Service (“the Service”) of limited interim guidance in *Notice 2010-60* is a welcome first step toward implementation of the regulations. We appreciate the opportunity to comment on the regulations and supporting guidance.

As many commentators have observed, the imposition of new regimes of documentation, certification, withholding and information reporting for certain foreign investors poses daunting challenges for all the parties involved. To the extent the requirements for implementing the new rules are issued on a timely basis and take into account the practical difficulties involved, service providers for the mutual fund industry will be better able to design and administer adequate compliance programs.

We join with other financial services industry groups in requesting that Treasury and the Service consider offering transitional relief for the first year the new regulations will apply, and/or applying a phased approach to implementing the necessary supporting requirements.

Following please find several suggestions and requests for clarification:

1) **Identifying EIN.** Notice 2010-60 in Section B(1) states that the Service expects to issue participating Foreign Financial Institutions (FFIs) with employer identification numbers (FFI-EINs). We suggest the IRS consider taking an approach similar to that used for entities that are registered to act as Qualified Intermediaries for foreign investors. The Service

issues Qualified Intermediary employer identification numbers (QI-EINs) to these entities.

QI-EINs are in an easily recognizable standard numeric format, beginning with “98-” in the first 3 positions. Applying a similar unique format for FFIs that register with the Service would provide a readily identifiable data-point that would aid recordkeepers and agents in identifying these entities.

2) **FFI Certification forms.** The Notice further states that withholding agents will be able to rely on certifications from FFIs of their status as participating FFIs. If the IRS does not choose to maintain an online database of participating FFIs, we suggest the IRS develop a new form that confirms the status of the entity as a participating FFI. The entity could provide a copy of this form to the investment provider as certification of its having registered and disclosed required information to the IRS. We suggest that developing such a form be given sufficient priority so that it could be made available at least 15 months in advance of the effective date for FATCA regulations. This will allow time for the certification form to be included in lists of requirements that are sent to foreign entities in advance of the FATCA effective date.

3) **Information Reporting Forms.** To the extent the Service expects to change its tax forms to accommodate FATCA, releasing the drafts of these forms as early as possible would provide recordkeepers with necessary preparation time to reprogram the electronic platforms that capture and encode required data. An 18-month window of time (before the forms would be required for use) is the minimum period needed to accomplish major reprogramming and testing of electronic platforms and tax reporting modules. If, as usual, the Service could provide an early release of draft forms along with a comment period, the industry could both prepare for and respond to the changes.

(a) **W-8BEN.** Will the Form W-8BEN will be modified to support FATCA, or will new forms be added for this

purpose?

We agree with the suggestion that separate W-8 forms be developed, one for individuals and one for entities. Taking this approach would allow individual investors to use a shorter simpler form, while entities would use a more complicated form. The entity version of the form could include a new FATCA section that presumably will require foreign entities to indicate their status as an FFI, a NFFE, or as an entity that is exempted from FATCA under IRS rules.

Guidance for further classification into categories (participating FFI, deemed compliant FFI, non-participating FFI) is needed to allow service providers to clearly identify the status of an entity at the time an account is opened, or at the time the entity certifies or recertifies its status.

We suggest that the entity version of the form contain a field that allows foreign entities to indicate whether they have filed the required information on their investors with the Service, and if so, when this filing was completed. This would assist withholding agents in evaluating how to treat the investing entity: as compliant or non-compliant, participating or non-participating.

If entities will be required to recertify their status at least annually, then a new certification form supplementary to the Form W-8BEN may be required for this purpose.

(b) **1042 and 1042-S.** Will Forms 1042 and 1042-S also be changed to support FATCA?

Since penalty withholding will apply to all income, how will long-term capital gains, which to-date have not been subject to Non-Resident Alien (NRA) withholding, be reported on the tax form?

What new codes will be added to indicate a recipient is a participating FFI, deemed compliant FFI, or non-participating FFI, or an excepted NFFE or another type of NFFE?

4) **Withholding.** Additional guidance should address

the following questions:

(a) Is the general assumption correct that the FATCA tax withholding requirements take precedence over standard Sections 1441 and 1442 NRA tax withholding requirements? Must FATCA withholding, if applicable, be taken instead of standard NRA withholding for an entity?

(b) How is FATCA withholding, if taken, to be coded, deposited, and reported? We suggest that whatever approach is taken should be consistent. If reporting of FATCA withholding will remain on the 1042 and 1042-S forms, then the deposit of FATCA withholding should follow the existing NRA withholding regimen. If reporting of FATCA withholding will be on a new form, the deposit should be made into specific FATCA tax accounts at the IRS.

5) Carve-outs for small FFIs and foreign pension plans. We agree with the proposal to treat certain small FFIs (for purposes of applying chapter 4), as NFFEs, regardless of whether withholding agents currently determine the direct and indirect owners of such entities for purposes of complying with local law or regulatory obligations. This will allow for continued investments by small family trusts without creating undue burdens that lead to little or no additional value in terms of tax compliance. Similarly, we support granting the presumption of exempted status from FATCA requirements to foreign pension plans, since the likelihood of US taxpayers being participants in such plans is, we believe, quite small.

As previously stated, we appreciate the opportunity to comment on the interim guidance in *Notice 2010-60*. Thank you for considering our questions and considerations. Should the Service wish to discuss any of our suggestions in greater detail, we would be pleased to respond further.

Sincerely,

Jeff Cook
Director of Regulatory Compliance

DST Systems, Inc.

Sharon L. James
Division Vice President,
Legal and Compliance, and
General Counsel
Boston Financial Data Services,
Inc.

Kansas City, MO

FOOTNOTES:

n1

DST Systems, Inc. designs and maintains automated recordkeeping systems for the mutual fund industry and is the largest provider of third-party shareholder recordkeeping services in the United States today.

n2

Boston Financial, jointly owned by State Street Corporation and DST Systems, Inc., services over 135 institutional and retail-based clients representing the mutual fund, insurance, retirement provider, and banking industries.