

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
THE JAPANESE BANKERS ASSOCIATION]

November 1, 2010

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 2010-60* 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 fully understands the legislative intent of FATCA as part of the U.S. government’s efforts to reduce the tax gap. However, we would like to express our concerns and provide recommendations, on behalf of the Japanese banking industry, for purposes of effective implementation of FATCA because of excessive burden it may place on financial institutions and their customers worldwide, while we sincerely appreciate various specific items of guidance included in *Notice 2010-60*.

The JBA works on behalf of banks, 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 almost all banks conducting banking business in Japan are its members. The JBA also promotes compliance of the member banks, proper banking transactions, and advocates consumer protections.

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 Yen (approximately US\$ 282 billion) at the end of 2009. In addition, only 52,000 U.S. citizens stay in Japan and this represents only 0.04% of the approximately 127,510,000 population of Japan. It would, therefore, be extremely burdensome and costly for Japanese banks, especially banks that have only small number of or almost no specified U.S. Persons, to conduct due diligence as dictated by FATCA to identify speci-

fied U.S. persons (as defined by *section 1473(3)*) with respect to approximately 790 million bank accounts maintained by the banks in Japan.

While we greatly appreciate the fact that the U.S. Department of Treasury (the “Treasury”) and the Internal Revenue Service (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 foreign financial institutions in *Notice 2010-60*, 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.

**I. Application of *Section 1471(f)(4)* or *1471(b)(2)(B)*
to Japanese Financial Institutions based on the Japanese
Financial Systems and the Bank Accounts in Japan**

Notice 2010-60 requests comments providing specific suggestions for defining and identifying specific classes of foreign entities that should be deemed to meet the requirements of *section 1471(b)* pursuant to *section 1471(b)(2)* or identified as posing a low risk of tax evasion pursuant to *section 1471(f)*. Accordingly, we would like to explain the current status of the Japanese financial services industry in the following sections so that the IRS can consider the application of *section 1471(f)* or *1471(b)(2)* to the Japanese financial institutions.

- In Japan, financial institutions are generally specialized in a specified function, such as commercial banking, trust banking (fiduciary), securities brokerage, and asset management. There are legal restrictions on the scope of services provided by each category of financial institutions. Most members of the JBA are specializing in traditional commercial banking services, such as accepting deposit from individuals and businesses and making loans. Thus their involvement in distribution of investment products, if any, would be very limited relative to the overall volume of their banking business.
- Japanese financial institutions, including banks, are subject to anti-money-laundering (“AML”) measures, such as the “Act on the Prevention of Transfer of Criminal Proceeds” and the “Foreign Exchange and Foreign Trade Law,” and routinely perform stringent due diligence on the identification of their customers using documentary evidence prescribed by these laws. These institutions are also subject to examinations by regulatory agencies. Accordingly, it would be

difficult to use financial accounts maintained at Japanese financial institutions as a tool for tax evasion.

- Unlike the U.S. tax regime, under the Japanese tax law, interest income is taxed separately from other items of income and subject to 20% withholding tax (15% for national tax and 5% for local tax) in the case of Japanese residents as defined by the Japanese tax law n1 and 15% national withholding tax in the case of nonresidents under the law. n2 Owing to these rules, financial institutions are required to separately recognize nonresident account holders from resident account holders. Furthermore, in case of nonresidents, financial institutions are required to comply with documentation requirements for treaty applications. As a result of these requirements, strong know-your-customers culture is instilled in Japanese financial institutions as a whole, and we believe that very few foreign nationals, if any, would be inclined to open an account at Japanese financial institutions to evade tax.
- As of the end of 2009, only approximately 52,000 U.S. citizens stayed in Japan according to the records of the Immigration Bureau of Japan, and as described above, this represents only 0.04% of the approximately 127,510,000 population of Japan, and only approximately 2.4% of the total foreign nationals staying in Japan (approximately 2,190,000).

For these reasons, the JBA, as the representative body for the entire banking industry in Japan, believes that it is likely that very few specified U.S. persons attempt to evade U.S. tax through Japanese financial institutions; therefore, we request that the Treasury and the IRS exercise their regulatory authority under FATCA to identify Japanese financial institutions as posing a low risk of tax evasion pursuant to *section 1471(f)(4)*, or as a class of foreign entities that are deemed to meet the requirements of *section 1471(b)* pursuant to *section 1471(b)(2)(B)*.

II. Specific Requests to Reduce Excessive Burden of Japanese Financial Institutions upon the Implementation of FATCA

As explained above, it is the JBA's strong request that broader exemptions under *section 1471(f)(4)* or *1471(b)(2)(B)* be granted to Japanese financial institutions; however, we also request that the regula-

tions and other guidance be drafted in a manner that minimizes administrative burden of Japanese financial institutions even if they are not afforded the broader exemptions.

Japan has been an important partner of the United States from economic perspectives, and the Japanese banks as a whole have provided a significant source of funding for the U.S. economy as supported by the amount of their direct investment in U.S. financial assets. In the event that the implementation of FATCA is not practically feasible for the Japanese financial services industry, it would result in substantial confusion in the industry and could ultimately lead the Japanese financial institutions to withdraw their investment from U.S. financial assets. In order to avoid such negative consequences to the implementation of FATCA, we sincerely ask that the Treasury and the IRS consider the following requests.

1. Application of the Convention between the government of Japan and the government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

As a consequence of the longtime interdependent relationship as described above, the United States and Japan have developed modern and comprehensive income tax treaty in 2004. Article 26 of the 2004 treaty provides comprehensive exchange of the information between the two competent authorities, and the “Explanation of Proposed Income Tax Treaty between the United States and Japan” prepared by the Joint Committee on Taxation states that the powers of each country’s competent authority to obtain information include the ability to obtain information held by financial institutions. Accordingly, in light of these treaty provisions and the Japanese tax rules described above, we think that the information required under FATCA may be obtained by the IRS through the application of Article 26 of the treaty. We, therefore, request that the Treasury and the IRS consider treating financial institutions of the countries with comprehensive treaty provisions regarding the exchange of information differently from ones of other countries, when developing the regulations and future guidance.

2. Specific Detailed Requests

As we explained above, Japanese financial institutions are considered to pose a low risk of tax evasion by specified U.S. persons. As such, we request that the Treasury and the IRS develop the regulations and future guidance in a manner that minimizes the compliance burden of foreign financial institutions, even if Japanese financial institutions cannot be afforded the broader exemption. The following specific recommendations we outline below are consistent in principles with the comments previously submitted by the Institute of International Bankers (“IIB”) and the International Banking Federation (IBFed) in which the JBA also has membership.

We believe that the successful implementation of FATCA would be achieved if the vast majority of foreign financial institutions participate in the compliance framework outlined in FATCA, and we request that the Treasury and the IRS carefully develop the regulations and other guidance to ensure that excessive compliance burden is not placed on foreign financial institutions. While we welcome the specific guidance included in *Notice 2010-60*, we still do not think that the guidance would mi-

nimize potential compliance burden sufficiently to make it realistically workable for the vast majority of financial institutions around the world.

(1) Definition of Financial Accounts

In Japan, bank deposit accounts are the necessities of everyday life as saving has been traditionally considered a virtue, and it has contributed to the very high ownership of bank deposit accounts by virtually everyone, and it is not unusual even for students to own multiple bank accounts. As of March 31, 2010, there are approximately 790 million bank deposit accounts in Japan. Apparently it would take a tremendous amount of work to apply the procedures prescribed in *Notice 2010-60* to all of these accounts.

We believe that certain bank accounts that pose a low risk of tax evasion by specified U.S. persons should not be subject to the due diligence and reporting requirements of FATCA to minimize the compliance burden of the Japanese financial institutions. Specifically, we request that liquid deposit accounts (e.g., ordinary saving deposit accounts and checking accounts) and time deposit accounts (while we think it would still be appropriate to exclude all types of time deposit accounts from the definition of financial accounts subject to FATCA, the accounts with the terms of one year or less should be at least excluded in light of their “short-term” nature based on the congressional intent as described later.) be excluded from the definition of financial accounts under FATCA. Although liquid deposit accounts may be used to collect income subject to the procedures under FATCA, including U.S. source dividends and interest, U.S. withholding agents, such as U.S. custodians and Qualified Intermediaries (“QI”), are typically involved in the payment flow, and it would not be necessary to force the financial institutions that maintain the above-mentioned accounts to perform due diligence and reporting to identify potential U.S. tax evasion. Accordingly, we request that liquid deposit accounts and time deposit accounts be excluded from the definition of financial accounts except to the extent that the account is flagged for other purposes for having questionable account activities, etc. Furthermore, any accounts with no activities for a certain period of time (i.e., sleeping accounts) should also be excluded. We would like to emphasize that the Joint Committee technical explanation anticipates that the Treasury may determine that certain short-term obligations, or short-term deposits, pose a low risk of U.S. tax evasion and may be excluded, and our requests are consistent with this approach.

(2) De Minimis Exemption for U.S. Accounts

The JBA also requests that the \$ 50,000 threshold for exclusion from U.S. accounts with respect to deposit accounts held by individuals be reconsidered. In light of approximately 790 million deposit accounts faced by the Japanese financial institutions, we do not think that the \$ 50,000 threshold amount would sufficiently reduce the burden placed on them. We request that the Treasury and the IRS consider the maximum deposit insurance coverage (10 million yen or approximately US\$ 120,000 in case of Japan), the average deposit balance per household (during 2009 the average for households with two persons or more was 16,380,000 yen or approximately US\$ 200,000 in case of Japan), or deposit amounts maintained by typical households in various countries and adjust the de minimis exemption amount upward to more realistic level.

Notice 2010-60 provides that participating foreign financial institutions (“FFI”) may determine if a depository account meets the \$ 50,000 de minimis exemption by taking the average of the month-end balances or values during the preceding calendar year; however, we request that more streamlined method, such as using the year-end balance, be allowed to minimize the compliance burden of participating FFIs. In addition, any depository account that is not in existence as of the reporting date should be exempt although the value of such account exceeded \$ 50,000. Furthermore, while an FFI is permitted to elect not to apply the \$ 50,000 exemption, we request that an FFI may make the election by simply using the elected method as part of its identification procedures, rather than affirmatively making such an election, as the compliance burden of participating FFIs could unduly increase if the determination needs to be performed every year and a formal affirmative election is required.

The Treasury is afforded discretion to require the \$ 50,000 threshold to be measured on an expanded affiliate group basis, but we request that this discretion not be exercised since technical difficulties participating FFIs would face in making such measurement and imposing such additional burden on participating FFIs go against the underlying principles of *Notice 2010-60*. (See additional comments on “expanded affiliated group” in the *section (5)*.)

(3) Identification of U.S. Accounts

The JBA greatly appreciates the specific procedures to be applied by participating FFIs prescribed in *Notice 2010-60* in detail. We believe, however, that the administrative burden placed on participating FFIs would still remain substantial even with the help of guidance in *Notice 2010-60*, and we request that the Treasury and the IRS consider the following points.

1. Individual Accounts

The definition of specified U.S. persons is based on the definition of “U.S. persons” under the U.S. tax law, and encompasses legal resident aliens and foreign visitors who satisfy the substantial presence test (i.e., 183 days or more presence in the U.S.) as well as U.S. citizens. We think that it would not be feasible for FFIs to identify “specified U.S. persons” accurately and verify them on a regular basis and such an exercise would go well beyond the normal duties of FFIs. Accordingly we request that legal residency status (i.e., green card test) and the substantial presence test be excluded from the definition of specified U.S. persons, because only relevant authorities in the United States would ordinarily obtain the information sufficient to verify such status.

Notice 2010-60 uses the term “documentary evidence establishing U.S. or non-U.S. status” in Step 4 for preexisting individual accounts and Step 3 for new individual accounts, but we request that certification by the account holders be included in the definition of such term so that participating FFIs would not be required to verify the information provided by the account holders.

Furthermore, Step 4 for preexisting individual accounts and Step 5 for new individual accounts provide that participating FFIs request Form W-8BEN or Form W-9 from certain account holders. As it would not be realistic for FFIs to routinely use U.S. tax forms during the ordinary course of business

and could interfere with FFIs normal business activities, we request that FFIs be permitted to customize existing account opening documents for use with certain account holders flagged in these steps and add the specific items required on Forms W-8BEN and W-9 on those account opening documents.

In light of the inherent limitation of financial institutions' ability to obtain personal information from their customers and the exchange of information afforded by the U.S.-Japan income tax treaty, we request that the regulations and other guidance on FATCA be developed in a manner that minimizes the compliance burden placed on FFIs.

We would also like to call your attention to the fact that "Report by the Council on Customer Due Diligence Measures by Business Operators for Anti Money Laundering" published on July 20, 2010 concluded that "nationality is sensitive information and cannot be verified without obtaining one's passport or alien registration card, and thus it is not appropriate to require businesses to obtain as part of customer due diligence." In addition, because Japanese financial institutions have very few specified U.S. persons as their account holders, it would be particularly difficult to request the information on one's nationality to comply with foreign (i.e., the U.S.) law. We request that the Treasury and the IRS fully take into consideration specific situations faced by FFIs in various countries.

2. Entity Accounts

According to *Notice 2010-60*, participating FFIs are first required to verify whether the entity account holder is a U.S. entity, and then required to verify whether the entity is an FFI if it is not a U.S. entity. With respect to the entity account holder not classified as a U.S. entity or an FFI, *Notice 2010-60* introduced a new criterion under which participating FFIs are required to obtain the evidence that the entity account holder is engaged in an active trade or business and requested further comments about specifics of evidence used for the new criterion.

In addition to establishing that an entity is a U.S. entity or FFI, the JBA would like the Treasury and the IRS to consider permitting participating FFIs to treat entity accounts with sufficient evidence showing that they are publicly traded or members of an expanded affiliate group of publicly traded companies as other than U.S. accounts.

Furthermore, we request that the regulations clarify that entity accounts held by publicly traded or members of an expanded affiliate group of publicly traded companies (See additional comments on "expanded affiliated group" in the *section (5)*.) provided under *section 1472(c)(1)(A) & (B)* as exceptions to Non-financial Foreign Entities ("NFFE") within the meaning of *section 1472(d)* should be excluded from the definition of financial accounts, so long as participating FFIs can verify such status through the certification by the account holders or other appropriate methods. Because the excepted NFFEs are ultimately treated as accounts other than U.S. accounts in Step 4, it would help minimize the compliance burden of participating FFIs if these types of entity account holders can be excluded in the earlier steps.

In connection with the specific types of evidence to be used in Step 4 to establish whether an entity is engaged in an active trade or business, we believe that it would be most practical and feasible to apply the “active trade or business” criterion to the holders of the new accounts other than retail deposit accounts and time deposit accounts as we explained in *section 2(1)* above, and require that participating FFIs obtain certification regarding the “active trade or business” and the information on substantial U.S. owners from the account holders through new account opening documents or inquiries to the account holders.

We would also like to support the proposal that participating FFIs are not required to look through the information of ultimate beneficiaries in the event that account holders are other financial institutions, such as global custodians, QIs, and FFIs, which are holding financial assets on behalf of their customers, in light of the provisions of Section IV E of *Notice 2010-60* providing that it is preferable for reporting to be performed by the FFI that is in a direct payment relationship with the account holder.

3. Timing of Due Diligence Procedures

We believe that repeating customer due diligence on a regular basis would be a substantial burden for participating FFIs, and we therefore request that procedures for identifying U.S. accounts described in *Notice 2010-60* be generally only required upon opening of accounts.

(4) Annual Report

Notice 2010-60 requests comments on foreign exchange rates and the specific reporting procedures on gross receipts and gross withdrawals and payments. Given the volatile nature of foreign exchange rates, the JBA believes that it would be prudent not to require the use of U.S. dollars as reporting currency but to allow the use of currency regularly used by participating FFIs for local financial and tax reporting purposes, in order to achieve support from FFIs globally. With regard to the reporting of gross receipts and gross withdrawals and payments, participating FFIs should be permitted to report only the items reported to customers and local regulatory agencies in the ordinary course of business. Furthermore, the form of annual report should be sufficiently flexible and customizable for various languages and other requirements from country to country. Since the use of alphabetical letters may be difficult in the system with certain languages and the order of names and addresses may be different from language to language, the Treasury and the IRS should develop the system that flexibly permits the format of annual report that is reasonably administrable in all jurisdictions. FATCA still reserves the right of the Treasury to request and obtain additional information from an FFI pursuant to an FFI agreement, in the event that the information contained in the annual report is insufficient or otherwise additional information is needed.

Notice 2010-60 further provides that the Treasury and the IRS intend to require electronic filing of the annual report; however, we think that it would rather be appropriate to make the electronic filing optional considering the different security and data standards for various countries and the potential compliance burden associated with such requirement. Specifically, many Japanese financial institu-

tions maintain source documents in the form of paper records and would not be reasonably able to file annual report electronically.

Notice 2010-60 also requests comments concerning the election to use Form 1099 in lieu of the annual report. The JBA does not necessarily think that this election would have significant meanings to most FFIs that do not normally prepare Form 1099. Accordingly, when developing the regulations concerning the alternate use of Form 1099, we request that the Treasury and the IRS also consider streamlining the requirements on default annual report as we described above.

We would like to emphasize that reporting rules of Form 1099 are very detailed and complex, and the preparation of accurate Form 1099 requires a thorough knowledge and experience in U.S. tax law. In addition, the related forms and instructions are subject to revisions every year. As such, it would take tremendous amount of efforts and cost to fully understand the reporting requirements for Form 1099, to modify the existing system to conform to the Form 1099 requirements, and to keep up with fast-changing requirements and forms. Thus, the JBA requests that the Treasury and the IRS revisit the items to be reported as part of the annual report and reconsider the requirements for reporting of gross receipts and gross withdrawals and payments, and grant the exemption from cost basis reporting to those participating FFIs that elect to use Form 1099.

Because existing QIs are also required to comply with the provisions of FATCA, we also request that such QIs may elect to use the annual report in lieu of Form 1099 that is required as part of the QI agreement.

(5) Definition of “expanded affiliate group” as used in Due Diligence and Reporting Requirements

Under FATCA, due diligence and reporting requirements under an FFI agreement are generally imposed on an expanded affiliate group basis unless otherwise provided by the Treasury. As the requirement of group based due diligence and reporting would create substantial compliance burden in some cases, we request that participating FFIs be permitted to elect whether the requirements of an FFI agreement can be fulfilled on a stand-alone or group basis.

Furthermore, the attribution rules of indirect ownership under the U.S. tax law are not necessarily adopted in other jurisdictions; therefore, we request that the Treasury and the IRS develop the regulations to provide the definition of the expanded affiliate group that is more administrable, such as allowing participating FFI to select from (i) 50% or more directly owned subsidiaries or (ii) alternatively those subsidiaries consolidated for local financial reporting purposes.

We also request that the regulations include sufficient administrative relief for certain compliance hardship that may be experienced in member(s) of the expanded affiliate group as a result of differing standards and requirements in different local jurisdictions in which the member(s) are located. Such relief is particularly important for FFIs with global network of affiliates, and we further request that such instance should not be immediately construed as a violation of an FFI agreement.

(6) Withholdable Payments

The JBA requests that the definition of withholdable payments be limited in order to minimize the interference of FATCA with normal banking business. While we fully understand the goals of FATCA, we are concerned about the potential interference with international banking business and possible impact on the liquidity and health of the U.S. financial market, because of the overly broad definition of withholdable payments that encompass interbank transactions conducted in the ordinary course of banking business. Accordingly, we request that the regulations should make it clear that transactions exempt from withholding under the existing rules (e.g., payments under repurchase agreements, short-term interest, certain derivative payments, etc.) are excluded from withholdable payments, and specifically exclude interbank transactions entered into in the ordinary course of banking business (e.g., interbank lending, derivative transactions, deposits, etc.) from the definition. Furthermore, in light of the congressional intent of FATCA, payments received by FFIs with respect to their direct investment in U.S. financial assets on their own account should be excluded from the definition of withholdable payments.

(7) Passthru Payments

Notice 2010-60 requests comments as to methods that a participating FFI could use to determine whether a payment is “attributable to” a withholdable payment, including any associated information reporting that may be necessary, and which take into account the administrative burden imposed by any such approach. The definition of “passthru payments” includes any withholdable payment or other payment to the extent attributable to a withholdable payment. The JBA is concerned about the potential compliance issues arising from the definition, as it is not entirely clear whether the term “passthru payments” only includes the withholdable payments that has a clearly traceable link with the accountholder, or it could also include the withholdable payments that only has an indirect link with the account holders (e.g., whether interest income received by the account holder on deposit held at a Japanese financial institution (Japan source interest income) could be treated as passthru payments since the Japanese financial institution’s source of the interest payment may be funded by its investment in U.S. Treasury securities).

Our understanding is, however, that the drafters of FATCA only intended to encompass the involvement of a non-participating FFI between the account holder and a participating FFI, or payments to recalcitrant account holders, and did not intend to convert non-U.S. source payment into U.S. source payment. Accordingly, we request that the regulations and future guidance clarify the definition by stating that a clearly traceable link should exist between the withholdable payment and the account holder. Furthermore, any procedures related to “passthru payments” should be developed in a manner that minimizes the compliance burden of participating FFIs.

(8) FFI Agreement

The JBA requests that an FFI agreement be simpler and more user-friendly than QI agreements, which were fairly complicated and required thorough knowledge of related U.S. tax law. It is likely that many more financial institutions would enter into an FFI agreement than the QI agreement. In

particular, because of the structure of Japanese financial services industry as described above, there are many financial institutions that were not intermediaries and thus not required to become QIs. Thus it is very important for Japanese financial institutions to have user friendly and simple FFI agreement in order to fully participate in FATCA. In general, official forms that require full compliance on a global basis (e.g., immigration documents, customs declaration forms, etc.) are developed in such manners, we strongly request that an FFI agreement be developed as simple and user friendly as possible. Furthermore, whether the agreement should be entered into separately or on a group basis would depend on the situations of each FFI; therefore, we request that a participating FFI be permitted to elect freely whether to enter into an FFI agreement separately or on a group basis.

(9) Refund Procedures

The JBA urges the Treasury and the IRS to immediately develop and publish detailed refund procedures with respect to the tax withheld under FATCA. We believe that the priority for preparing guidance in this regard is particularly important and has a significant meaning for Japanese financial institutions because of their relatively higher direct investment in U.S. financial assets than the institutions in other countries. We specifically request that the specific procedures and time frame for claiming refunds be provided in a prompt manner. The conditions and procedures for claiming refunds should not be rigorous and complicated, and should be developed in a manner that minimizes the burden of investors, in light of avoiding significant confusion among Japanese financial institutions and preventing them from withdrawing their direct investment in U.S. financial assets. As a separate note, interest on overpayment under FATCA would be allowed if the refund is not issued within 180 days, despite the fact that interest would be allowed in 45 days with respect to most other refund cases. Because the interest is to be allowed in a manner that is significantly disadvantageous to the taxpayers under FATCA, we request that this provision be revisited and reconsidered so that interest on tax withheld under FATCA can be allowed after 45 days. Finally, we request that FATCA be not implemented until refund procedures are fully developed and become operational.

(10) External Verification Requirements

We anticipate that the scope of external verification required under FATCA may be very broad and far reaching, in light of the fact that due diligence under FATCA could involve the review of identifying information for all account holders. Such broadness of the verification requirements would still be the same in the case of certification by the management of participating FFIs. Accordingly, we request that the external verification procedures be developed in a manner that the compliance burden of participating FFIs do not exceed other examination and verification procedures to which they are already subject.

(11) Effective Date and Transition Rules

We presume that certain laws and rules may have to be amended in Japan in light of the far reaching impact of FATCA. To this end, the JBA is extremely concerned about the fact that proposed FATCA regulations have not yet been promulgated as of today, only approximately two years from the effective date. For example, *Notice 2010-60* provides the intention of the Treasury and the IRS in drafting

the withholding and the associated information reporting that may be necessary with respect to pass-thru payments, but it should be noted that significant time and efforts would be required to modify the systems and procedures to comply with the regulations once they have been published. Thus we request that sufficient time be allowed to fully comply with the regulations once they have been promulgated, and thus the effective date be reevaluated. Furthermore, legal and regulatory actions may have to be taken in order to fully incorporate the requirements of FATCA in day-to-day operations of participating FFIs, in such case participating FFIs would be required to close accounts. In light of these potential difficulties, we request that certain safe harbor and transition rules be provided for at least first two to three years after the effective date to prevent withholding tax is unduly imposed, even if the effective date itself could not be changed.

Conclusion

Lastly, the JBA reiterates in requesting that the regulations be developed in a manner that minimizes the compliance burden of financial institutions by taking into account the risk of U.S. tax evasion by their account holders. As stated before, Japan has been an important partner of the United States from economic perspectives, and the direct investment in U.S. financial assets by Japanese banks reached approximately 26 trillion Yen (approximately US\$ 282 billion) at the end of 2009. In order to maintain the significant source of capital into the U.S. financial market, to avoid substantial turbulence in the industry, and to prevent the Japanese financial institutions from withdrawing their investment from U.S. financial assets, we sincerely request that the Treasury and the IRS develop the regulations and future guidance in a pragmatic and fair manner.

We look forward to working with you throughout the implementation of the FATCA provisions. We would also be willing to work with you and to discuss any alternative solutions on this matter, should one be preferable to you. Should you have any questions or need any additional information, please feel free to contact us at shijyo_kokusai@zenginkyo.or.jp.

Very truly yours,

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FOOTNOTES:

n1

An individual who has a place of abode in Japan or has continuously lived in Japan for a period of one year or more, or an entity headquartered in Japan.

n2

Those taxpayers who are not treated as residents as defined in the footnote 1 are treated as nonresidents.