

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
PERSHING LLC]

May 16, 2011

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

Mr. John Sweeney
Senior Technical Reviewer
Office of Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Comments on Internal Revenue Service Notice 2011-34 regarding the Foreign Account Tax Compliance Act

Dear Mr. Sweeney,

Pershing LLC (“Pershing”) appreciates the opportunity to submit comments to the U.S. Treasury and the Internal Revenue Service with respect to forthcoming regulations regarding the implementation of the Foreign Account Tax Compliance Act (“FATCA”) ⁿ¹ the provisions of which were enacted under section 501 of the Hiring Incentives to Restore Employment Act of 2010. Pershing, a Delaware limited liability company and wholly-owned indirect subsidiary of The Bank of New York Mellon Corporation, a New York Corporation, is a U.S. registered securities broker-dealer and securities clearing organization taxable as a corporation for U.S. federal income tax purposes. Pershing is a leading global provider of financial business solutions to a broad representation of over 1,500 institutional and retail financial organizations and independent registered investment advisers who collectively service approximately five million active investors with assets of more than \$ 907.5 billion. ⁿ²

Located in many offices worldwide, Pershing and its affiliates are committed to delivering dependable operational support to financial brokers and intermediaries. Pershing is a member of every major U.S. securities exchange and its international affiliates are members of the Deutsche Borse, the Irish Stock Exchange and the London Stock Exchange. FATCA will have a significant impact on Pershing as it imposes obligations on both Pershing and almost all of its clients and customers.

Pershing, on behalf of itself and certain of its affiliates, ⁿ³ respectfully requests that forthcoming regulations with respect to the FATCA provide that securities clearing organizations, such as Pershing and its affiliates, be permitted to rely on certain certifications received from participating foreign financial institutions and U.S. financial institutions for purposes of compliance under FATCA. ⁿ⁴

This submission sets forth the basis under FATCA and applicable law for such request. This submission will also discuss how such guidance would be consistent with existing reliance rules under Chapter 3 of the Code with respect to withholding. n5

Pershing welcomes the opportunity to meet with you and your associates to discuss the guidance requested in this submission in greater depth, and the reasons we believe such guidance should be issued. We are available at your convenience.

Background

Description of Pershing's Business Operations

Pershing's U.S. Operations

Pershing's customers and clients are generally financial institutions subject to FATCA rather than the ultimate investors. Pershing and its affiliates provide clearing and execution services for introducing broker-dealers and other financial institutions (collectively, "Introducing Brokers") including record keeping and operational services such as settlement of securities transactions, maintaining custody of securities and customer account balances, and extending credit on margin accounts for introduced customers in connection with the services provided to the Introducing Broker. The Introducing Broker possesses the direct client relationship with the introduced customers; nearly all of Pershing's business relationships with the customers are through the Introducing Brokers. The relationship with the introduced customer is established and maintained by the Introducing Broker. Introduced customers normally contact their Introducing Brokers directly for all matters concerning their brokerage account. These clearing arrangements are very beneficial to small and medium sized Introducing Brokers by providing them with access to state-of-the-art technology, professional expertise and economy of scale.

The relationship between Pershing and an Introducing Broker is evidenced by a clearing agreement (a "Clearing Agreement"). Pershing's Clearing Agreements entered into in the United States are regulated by the Financial Industry Regulatory Authority ("FINRA") and must be submitted to and approved by FINRA prior to becoming effective. A Clearing Agreement identifies and allocates various responsibilities between Pershing and an Introducing Broker.

The majority of Pershing's Introducing Brokers are domestic entities that are regulated as broker-dealers by the U.S. Securities and Exchange Commission (the "SEC") and FINRA. However, Pershing also provides services to some non-U.S. Introducing Brokers that are not regulated by FINRA. All Introducing Brokers maintain a direct relationship with their customers and are responsible for opening new accounts, obtaining the necessary account documentation (such as a Form W-9 or appropriate Form W-8) and knowing the introduced customers' financial resources, investment objectives, and risk tolerance. Pursuant to the Clearing Agreement, Introducing Brokers serve as the agent of the introduced customer. Pershing relies on the Introducing Brokers' representations as to all information about the introduced customer.

Pershing is responsible for the receipt, delivery and custody of each introduced customer's funds and securities and credits such customer's account with interest, dividends, and gross sales proceeds from transactions it is directed to make by the customer's Introducing Broker. Pershing is responsible for following an Introducing Broker's instructions and will execute transactions and release or deposit money or securities to or for accounts only upon an Introducing Broker's instructions.

Pershing generally offers clearing services on a 'fully-disclosed' basis, meaning that an Introducing Broker contracts with Pershing to maintain or 'carry' the individual customer accounts in the introduced customer's name. With respect to fully-disclosed accounts, the Introducing Broker discloses the identity of each introduced customer to Pershing. Pershing also provides some services for a small number of omnibus accounts where information about the underlying customer is not disclosed to Pershing, as discussed below.

An Introducing Broker is responsible for obtaining an introduced customer's taxpayer information (such as their taxpayer identification number ("TIN") on a Form W-9 or appropriate Form W-8) pursuant to their Clearing Agreement with Pershing. n6 This agreement follows the rules of the SEC and FINRA which require that the Introducing Broker, as a regulated entity, obtain information regarding the tax status of its customer (e.g., the introduced customer's TIN) and to retain those records as part of its required business records. This responsibility is allocated to the Introducing Broker because it has a direct business relationship with the introduced customer. n7

When an Introducing Broker enters into a Clearing Agreement with Pershing, the Introducing Broker's existing customer accounts are transferred to Pershing in a "bulk transfer." Bulk transfers may also occur when an Introducing Broker is involved in a corporate merger or acquisition. A bulk transfer of accounts occurs by transferring account information (e.g., the introduced customer's name, address and TIN), securities and cash balances by way of magnetic computer tape or electronic transmission from the transferor to Pershing. In some cases, the transferor of the information may be another clearing broker or organization while in others it may be a self-clearing Introducing Broker that has decided to outsource clearing and related operations to Pershing. These bulk transfers are in substance the establishment of new accounts and, given that the source of the information is either the Introducing Broker or another clearing organization, reliance on the introduced customers' information provided is appropriate as well.

In addition to its "fully-disclosed" accounts described above, Pershing provides clearing and execution services with respect to "omnibus accounts" maintained by certain Introducing Brokers. Introduced customers investing in omnibus accounts are not transparent on Pershing's operating systems (not "fully-disclosed"); Pershing only knows account totals and account positions at the level of the Introducing Broker, and not at the level of the underlying investors in the omnibus account. Under the Clearing Agreement with respect to omnibus accounts, the Introducing Broker must certify to Pershing that it collects the introduced customer's taxpayer information and complies with all withholding and tax reporting requirements.

Pershing also provides prime brokerage services to some hedge funds, mutual funds and corporate pension plans in the United States and abroad, serving as a centralized securities clearing facility for the

funds and plans. Under prime brokerage relationships, the funds are also responsible for maintaining their customers' taxpayer information and complying with withholding and reporting requirements for payments made by the funds.

Additionally, Pershing conducts some U.S. operations through its affiliate, Pershing Advisors Solutions, LLC ("PAS"), a Delaware limited liability company, which is a U.S. registered securities broker-dealer regulated by FINRA. PAS is a leading provider of financial business solutions for independent fee-based SEC registered investment advisors ("RIAs"), family offices and dually registered advisors working in conjunction with many of Pershing's Introducing Brokers. Pursuant to a Clearing Agreement with Pershing, PAS operates as an Introducing Broker on behalf of over 300 RIA clients on a fully-disclosed basis and Pershing provides U.S. and foreign tax information reporting and withholding services for PAS. Pershing's and PAS's operations are largely integrated under common platforms, systems and procedures. Through PAS, Pershing also provides clearing and custodial services for a registered investment adviser affiliate, Lockwood Advisors, Inc. a Delaware corporation, which provides services to Pershing's Introducing Brokers and PAS' investment adviser customers.

Pershing's Foreign Operations

Pershing currently conducts its foreign operations through its affiliate, Pershing Limited ("PL"), a UK limited company regulated by the UK Financial Services Authority (the "FSA"). PL, in turn, conducts business operations through Pershing Securities Limited ("PSL"), a UK limited company regulated by the FSA, and Pershing Securities International Limited ("PerSIL"), an Irish limited company regulated by the Financial Regulator. Pershing also plans to expand its foreign operations through (i) Pershing Securities Canada Limited ("PSCL"), a Canadian limited company that was recently approved by the Investment Regulatory Organization of Canada and has not begun operations, and (ii) the formation of Pershing Channel Islands Limited ("PCI"), a Jersey limited company regulated by the Jersey Financial Services Commission. PSL and PerSIL are qualified intermediaries and, as controlled foreign corporations defined in *Section 957(a)* ("CFCs") of Pershing, PL, PSL and PerSIL are treated as U.S. payors for U.S. federal income tax purposes. ⁸ It is intended that PSCL and PCI will also become qualified intermediaries and will be treated as U.S. payors for U.S. federal income tax purposes as CFCs.

PL and PSL conduct operations jointly within the UK as securities clearing brokers and, while there are slight differences, generally operate in the same manner as Pershing's U.S. operations. PL and PSL employ three primary business models: Model A, Model B, and Global Clear.

Under Model A, PL and PSL maintain settlement and clearing accounts in the name of Introducing Brokers on Pershing's operating systems. The Introducing Broker executes all trades and uses Pershing's services and operating systems to maintain books and records for their introduced customers. The Introducing Broker is responsible for collecting all taxpayer information with respect to such introduced customers, and while Pershing's systems may be used to generate reports, including reports with respect to taxes, for such customers, the Introducing Broker maintains all information reporting and withholding responsibilities. Model A is currently used for a small number of introduced customers.

Model B is substantially similar to Pershing's fully-disclosed account model in the U.S. and is used for most customer accounts. Under Model B, the Introducing Broker is responsible for maintaining taxpayer information and documentation for introduced customers (including information with respect to beneficial owners of entities) which it provides to PL and PSL, and PL and PSL are responsible for fulfilling applicable withholding and reporting requirements. By contrast, under Global Clear, which is similar to Pershing's omnibus account model, PL and PSL do not receive information on the introduced customers, and the Introducing Broker is required to certify that it maintains taxpayer information and documentation and complies with applicable withholding and reporting obligations.

Under both the Model A and Model B account models, the Introducing Broker must provide the name, address and residency information with respect to the introduced customer for accounts maintained with PL or PSL, at their request, and both PL and PSL conduct regular samplings of such records to ensure compliance by the Introducing Broker. With respect to all three business models ~ Model A, Model B and Global Clear ~ the Introducing Brokers must also comply with applicable "Know Your Client" regulations ("KYC"). In this regard, PL and PSL rely on the information obtained by the Introducing Broker, but have the right to inspect the Introducing Broker's records and conduct routine inspections of such materials.

PerSIL operates in Ireland using business models that are substantially the same as those employed by PL and PSL in the UK.

Through PSL, Pershing also maintains foreign investment adviser driven accounts similar to the services PAS provides to RIAs in the United States. These accounts are maintained on a fully disclosed basis and all agreements between PSL and investment advisors require that no accounts will be maintained for U.S. beneficial owners. The investment advisors are responsible for complying with KYC obligations with respect to such accounts and for obtaining necessary taxpayer information and documentation. However, PSL is responsible for complying with withholding and reporting obligations with respect to such accounts.

It is intended that when PSCL begins operations, it will employ business models substantially similar to those employed by Pershing, and will likely offer clearing services for both fully-disclosed and omnibus accounts. It is not expected for PSCL to offer services for introduced customer accounts with a U.S. beneficial owner.

It is intended that when PCI begins operations, it will employ a business model analogous to Model B, only maintaining accounts on a fully-disclosed basis. PCI will likely rely on its Introducing Brokers to comply with KYC obligations for introduced customers and for obtaining necessary taxpayer information and documentation. PCI also intends that it will not provide services for introduced customer accounts with a U.S. beneficial owner and its forms for establishing introduced customer accounts will require disclosure of the ultimate beneficial owners to ensure that it would not maintain U.S. accounts, defined below. PCI will be responsible for complying with withholding and reporting obligations with respect to introduced customers.

Analysis

On behalf of itself and its affiliates, Pershing respectfully requests that forthcoming guidance to be issued with respect to FATCA provide that Pershing and its U.S. affiliates be permitted to rely on the identification, documentation and related procedures conducted by Introducing Brokers with respect to introduced customers for purposes of compliance under FATCA for both fully-disclosed and omnibus accounts, provided that the Introducing Brokers are either participating foreign financial institutions, defined below, or U.S. financial institutions (“USFIs”).ⁿ⁹ Additionally, Pershing requests that similar relief be extended to Pershing’s foreign affiliates, for all their account types and relationships, to the extent that they become participating foreign financial institutions themselves. While this submission specifically addresses the circumstances of Pershing and its affiliates, Pershing believes that any guidance provided as described herein would be generally applicable to securities clearing organizations that currently rely on certifications from brokers for purposes of withholding under Section 1.1441-1(e)(4)(ix)(C).

FATCA generally requires foreign financial institutions (“FFIs”) to comply with specific withholding, documentation and reporting requirements with respect to accounts they maintain in which U.S. persons hold beneficial interests (“U.S. accounts”) or be subject to a 30 percent withholding tax on “withholdable payments” made to such FFIs or their affiliates. Additionally, FATCA requires USFIs to identify payees that may be subject to the requirements of FATCA for purposes of withholding on withholdable payments. In this regard, FATCA obligates both FFIs that enter into an agreement with the IRS to comply with the requirements of FATCA to avoid withholding (“participating foreign financial institutions” or “PFFIs”) and USFIs to distinguish between numerous categories of payees and account holders.ⁿ¹⁰

Specifically, in order to avoid FATCA withholding, *Notice 2010-60* and *Notice 2011-34* obligate a PFFI to examine customer account information it has available to identify U.S. accounts and whether an account belongs to an FFI that may be subject to FATCA withholding. After initially identifying such accounts, a PFFI must obtain documentation confirming the characterization of the account for these purposes. With respect to accounts a PFFI identifies as reportable U.S. accounts, the PFFI must report to the IRS (a) the name, address and TIN of the account holder (or substantial U.S. owner of a U.S.-owned foreign entity), (b) the account number, (c) the account balance or value, and (d) the gross receipts and withdrawals from the account. USFIs must follow similar procedures to those required of PFFIs in order to identify accounts held by FFIs that may be subject to FATCA withholding.ⁿ¹¹

Due to the fact that introduced customer accounts maintained by Pershing for Introducing Brokers appear on Pershing’s books and records and Pershing is responsible for collecting and dispersing monies with respect to the introduced customer accounts, Pershing will be in a position where it will be obligated to comply with the obligations imposed on USFIs under FATCA with respect to such introduced customer accounts. As Pershing does not possess a direct relationship with the introduced customer, it will not be in a position to obtain the necessary information and documentation from such customer to fulfill its obligations, but rather will have to rely on the Introducing Brokers with which it is doing business. Consistent with policies outlined under *Notice 2010-60*, *Notice 2011-34* and other long standing guidance issued by the IRS, the obligation to obtain information and documentation with respect to beneficial account holders should lie with the entity with the most direct and immediate

relationship to the account holder, provided such entity is either regulated by the IRS or a U.S. person. Accordingly, Pershing believes that it is appropriate to issue guidance providing that clearing organizations, such as Pershing and its affiliates, should be permitted to rely on certification from PFFIs and USFIs that they have obtained and reported information classifying introduced customers for FATCA purposes on the basis that such organizations have a more direct relationship with the introduced customers.

Section 1.1441-1(e)(4)(ix)(C) currently allows a withholding agent to rely on the certification of a U.S. broker that the broker holds a valid beneficial owner withholding certificate, and *Private Letter Ruling 200107027* (November 20, 1999) currently allows a U.S. securities clearing broker-dealer to rely on a beneficial owner withholding certificate maintained by a FINRA-registered introducing securities broker with respect to both new account business and bulk transfers of accounts, without the need for any further action or inquiry. These rules are relied on by a wide variety of withholding agents particularly securities clearing organizations, including Pershing and its affiliates. The underlying policy of these rules is that the best opportunity to obtain accurate information lies with the person who has the closest relationship with the introduced customer, in this case the Introducing Brokers. As the basis for the rules set forth under Section 1.1441-1(e)(4)(ix)(C) and *Private Letter Ruling 200107027* is identical to that presented with respect to FATCA in the present context, Pershing requests that reliance procedures similar to those currently available for nonresident alien withholding purposes be made available with respect to FATCA compliance for all types of introduced customer accounts. Such relief should allow Pershing to rely on certifications by its Introducing Brokers for purposes of FATCA that they have obtained and reported the information required with respect to introduced customers, provided that the certification relied upon by Pershing was obtained from either a USFI or a PFFI, which are themselves required to comply with FATCA. n12 Under such procedures, Pershing, as a USFI, should be permitted to rely on documentation maintained and reported by another USFI or PFFI, for all types of customer accounts introduced by such a USFI or PFFI to Pershing's platform (regardless of whether they are fully disclosed accounts or omnibus accounts and whether introduced as a new account or in a bulk transfer of account information) and for all FATCA identification, information reporting, and withholding purposes. Furthermore, Pershing's ability to rely on such information should not require any further action or inquiry by Pershing with respect to customer accounts maintained for the introducing USFI or PFFI.

Allowing Pershing to rely on information obtained by a USFI or PFFI Introducing Broker would be consistent with the approach adopted in *Notice 2010-60* for chains of accounts maintained through PFFIs. *Notice 2010-60* indicates that where an account is maintained through a chain of PFFIs, only the PFFI that has the most direct and immediate relationship with the beneficial owner of the account should be required to perform FATCA information reporting. Such an approach acknowledges that PFFIs should be able to rely on the compliance of other entities that share overlapping obligations under FATCA where the other entity has a more direct relationship with the beneficial owner of an account. Extending such an approach to the identification of U.S. accounts and FFIs, and the obtaining of confirmatory documentation, would be appropriate because it acknowledges that where entities have overlapping obligations under FATCA, only the entity with the greatest and best access to the information and documentation should be required to fulfill the obligations with respect to such accounts. n13

In the present case, the Introducing Brokers are the entities with the direct relationship with the introduced customers and Pershing's only relationship to such introduced customer is through their agent, the Introducing Broker. The Introducing Brokers are in a superior position to identify customer accounts as U.S. accounts or accounts maintained by other FFIs and to obtain any documentation needed from the introduced customer. Where such information is already being obtained for purposes of FATCA, which would be required where the Introducing Broker is a USFI or PFFI, it is appropriate to allow a securities clearing broker, such as Pershing and its affiliates, to rely on such information, and the securities clearing broker should not be obligated to duplicate the efforts of the Introducing Broker to obtain information with respect to the introduced customer. In many cases the securities clearing broker will not have the capability or capacity to collect the information themselves, and it would place an excessive burden for them to build such systems and procedures solely for FATCA purposes. Additionally, where the ultimate beneficial owner of an introduced customer account is removed from Pershing through a chain of financial institutions, Pershing and its affiliates should be permitted to rely on information received from each entity within the chain, to the extent the information is provided either by a PFFI or a USFI. This would be in accordance with the guidance provided in *Notice 2010-60* with respect to chains of PFFIs, allowing reliance on the FATCA reporting conducted by the PFFI with the most direct relationship to the beneficial owner of an account.

Moreover, existing reliance rules are intended to prevent unnecessary duplicative efforts in obtaining information and documentation from introduced customers. An introduced customer establishes a relationship with an Introducing Broker who then introduces the customer's account to clearing brokers, often utilizing more than one clearing broker with respect to an introduced customer's accounts. Without permitting clearing brokers to rely on information provided by Introducing Brokers, the introduced customer would have to provide the same documentation each time a new clearing broker was utilized for one of their accounts maintained by the Introducing Broker. Accordingly, not only would Pershing's efforts be duplicative of a PFFI or USFI Introducing Broker's efforts in obtaining information and documentation from an introduced customer for FATCA purposes, each time an introduced customer's account is introduced to a new clearing broker, such customer would be obligated to provide redundant information and documentation reporting.

Further support for such an approach can be seen by the approach the Financial Crimes Enforcement Network ("FinCEN") has taken with respect to KYC compliance. Under guidance issued by FinCEN, U.S. Introducing Brokers are responsible for conducting KYC, suitability and customer identification for introduced customers and tax documentation review and validation. In FinCEN Guidance (FIN-2008-G002) n14, FinCEN concluded that it would be appropriate to require only the Introducing Broker to comply with the requirements of the Customer Identification Programs rule with respect to customers introduced to a clearing firm pursuant to a clearing agreement where opening and approving customer accounts and directly receiving and accepting orders from the introduced customer are allocated exclusively to the Introducing Broker. This guidance reflects that U.S. Introducing Brokers have the primary relationship with the introduced customer and are in the best position to know their customer, including their investment objectives and general suitability requirements.

In coordination with the relief requested above, Pershing requests that where Pershing is providing services for RIAs through PAS, and PAS is functioning as an Introducing Broker, PAS should be entitled to rely on information received from RIAs to the extent such RIAs are PFFIs or USFIs. Under these arrangements, the RIAs maintain the direct relationship with the introduced customers in the same manner as an Introducing Broker and would similarly have the greatest and best access to the customers to obtain, and ensure the accuracy of, information about the underlying customer. This reliance would not detract from, but rather would be consistent with, the KYC and other diligence undertaken by PAS currently.

As mentioned above, Pershing would welcome the opportunity to discuss the guidance requested in this submission and looks forward to participating in the development of further guidance under FACTA. Pershing believes that utilizing a reliance approach as set forth in this submission would provide sound tax administration, ensuring that the IRS receives the information required under FATCA. At the same time, this approach would establish a system that imposes the least compliance burden on affected institutions by placing responsibility for compliance with those best able to comply. Please do not hesitate to contact us should you have any comments or questions regarding this submission.

Respectfully submitted,

Herbert Green
Director
Tax Management Group
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Jersey City, NJ

cc:

Mr. Michael Danilack
Mr. Itai Grinberg
Mr. Jesse Eggert
Mr. Steven A. Musher
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Mr. Manal Corwin

FOOTNOTES:

n1

Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (the “Code”). All Section references are to the Code or the Treasury Regulations promulgated thereunder except where otherwise noted.

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The number of Pershing's customers and the amount of assets invested are as of December 31, 2010.

n3

Pershing's affiliates accompanying in the request are all one hundred percent owned direct and indirect subsidiaries of The Bank of New York Mellon Corporation and include: Pershing Advisor Solutions LLC, a Delaware limited liability company; Pershing Limited, a UK limited company; Pershing Securities Limited, a UK limited company; and Pershing Securities International Limited, an Irish limited company.

n4

In the alternative, Pershing would be willing to submit a request for a private letter ruling seeking such a determination.

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Such guidance would also be consistent with *Private Letter Ruling 200107027* (November 20, 1999) (allowing U.S. securities clearing broker-dealers to rely on beneficial owner withholding certificates maintained by FINRA-registered introducing securities brokers).

n6

It is expected that Pershing and its affiliates will require more detailed information from Introducing Brokers with respect to U.S. accounts, defined below, for purposes of FATCA compliance.

n7

To ensure compliance with Pershing's withholding obligations under Chapter 3, U.S. Introducing Brokers must obtain all physical Form W-9s and Form W-8s and the Introducing Brokers input the relevant data from the documents into Pershing's systems, enabling Pershing to perform tax reporting and withholding functions. Non-U.S. Introducing Brokers would also obtain the physical Form W-9s and Form W-8s. However, in the case of non-U.S. Introducing Brokers all of these tax documents are submitted to Pershing for review and validation and Pershing inputs the relevant data into its systems.

n8

See, Section 1.6049-5(c)(5)(i)(C).

n9

The relief requested specifically with respect to PAS, which does not conduct clearing activities, is discussed below.

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See IRS Notice 2010-60, 2010-37 I.R.B. (Aug. 27, 2010) (“*Notice 2010-60*”); also see IRS Notice 2011-34, 2011-19 (Apr. 8, 2011)(supplementing and partially superseding *Notice 2010-60*) (“*Notice 2011-34*”). For purposes of this memorandum, references to PFFIs also include “deemed-compliant FFIs,” as described in *Notice 2010-60* and *Notice 2011-34*.

n11

Pershing will, of course, use all information received from PFFIs and USFIs in complying with its own reporting and withholding obligations, as appropriate.

n12

Such an approach was proposed by the Securities Industry and Financial Markets Association (“SIFMA”) in its October 29, 2010 comment letter on *Notice 2010-60*, which expressed the view that such reliance “relief” should be extended from the withholding context to FATCA compliance. See SIFMA Comments on *Notice 2010-60* (October 29, 2010) at pg. 10-11.

n13

In allowing PFFIs to rely on the passthru payment percentage published by other PFFIs, *Notice 2011-34* also supports the argument that it is appropriate to permit reliance on the FATCA compliance obligations of other entities where the other entity has the greatest and best access to information.

n14

Customer Identification Program Rule (“CIP”) No-Action Position Respecting Broker-Dealers Operating Under Fully Disclosed Clearing Agreements According to Certain Functional Allocations (March 4, 2008).