

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
ROYAL BANK OF CANADA]

June 7, 2011

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

RE: *Notice 2011-34* Supplemental Notice to *Notice 2010-60* Regarding the Foreign Account Tax Compliance Act (“FATCA”)

Dear Sirs;

Royal Bank of Canada and its subsidiaries (“RBC”) are pleased to have the opportunity to provide comments regarding the second round of FATCA guidance contained in *Notice 2011-34* (the “Notice”).

We continue to recognize the significant challenges faced by Treasury and the Internal Revenue Service (“IRS”) to develop detailed regulations and other guidance within a very short time period in order to enable foreign financial institutions (“FFIs”) to enter into FFI Agreements (i.e., become Participating FFIs or “PFFIs”) and make the necessary changes to implement the requirements of FATCA by January 1, 2013.

As a global financial group with operations in over 50 countries and offering a range of financial services including but not limited to retail banking, trust services, asset management, brokerage, custody and insurance, RBC has worked closely with various industry associations that are submitting comments related to the contents of the Notice and generally support the content of these submissions. Therefore, in this letter we have sought to avoid repeating comments put forward in other parties’ submissions and have instead focused on providing additional practical information and recommendations that may not otherwise be addressed.

As we continue to interpret and assess the information that is available to date, and consider what steps would be required to implement the necessary changes, we may submit additional comments or request further clarification at a later date.

SUMMARY OF KEY CONCERNS AND RECOMMENDATIONS

The following provides a summary of the main concerns and recommendations regarding the contents of the Notice and discussed in more detail below.

- The need for additional details and clarity regarding the identification requirements for preexisting (and new) accounts for individuals.
- Elimination of Step 3 (review of private banking accounts) with respect to preexisting individual accounts, and amendment of Step 5 (review of preexisting accounts with a value or balance of \$ 500,000 or more) to incorporate elements of Step 3.
- Narrowing the scope of the definition of “passthru payments”, consideration of alternatives to reduce the cost and complexity of calculating and withholding on passthru payments, and implementation of a phased-in approach to withholding on passthru payments (other than withholdable amounts).
- Consideration of comments contained in previous RBC submissions regarding additional types of arrangements that pose a low risk of tax evasion for purposes of *Section 1471(f)*.
- Additional flexibility with respect to annual reporting, including the option for a PFFI to elect to have its withholding agent report U.S. accounts to the IRS.
- Confirmation regarding the complete exemption from basis reporting for QIs that are non-U.S. payors, retroactive to January 1, 2011.
- Extension of the centralized compliance option proposed in the Notice for certain collective investment entities to other types of arrangements, such as personal trusts associated with a common trustee.
- Additional guidance as to when a PFFI would be required to have capabilities in place to ~
 - Execute FFI Agreements.
 - Apply withholding on withholdable payments, and passthru payments other than withholdable payments.

- Initial deadline for reporting U.S. accounts to the IRS.

NOTICE SECTION I ~ Pre-existing Individual Accounts

It is clear that Treasury and the IRS have given careful consideration to the comments submitted in response to the procedures set out in *Notice 2010-60* with respect to the identification of U.S. accounts within a PFFI's population of preexisting individual accounts. Subject to certain exceptions discussed below, we recognize that the revised requirements set out in the Notice apply a more targeted and practical approach.

We also appreciate that the definition of "documentary evidence" set out in the Notice largely permits many FFIs to rely on the types of documentation that are already being used to identify individual account holders for other purposes. The ability to leverage existing procedures provides significant savings to PFFI's, and we believe that this approach will result in fewer recalcitrant account holders.

1. General Comments

Accounts for individuals represent the majority of accounts at RBC. As we continue to make efforts to identify the changes required to implement FATCA (to the extent possible, based on the available information), we appreciate that the Notice provides some additional detail and clarity. However, there are still a number of issues related to accounts for individuals for which we request that future guidance provide further clarity or alternatives, including the following ~

- Measurement of Account Value or Balance ~
 - a. Clarify whether an FFI is required to treat all accounts maintained by the FFI or its affiliates as a single account if the FFI's systems only permit the accounts with common ownership to be identified, but do not provide the ability to determine the aggregate value of those accounts.
 - b. An FFI should not be required to aggregate account balances or values where the only basis by which the accounts can be associated is by reference to a data element for which there is a legal restriction prohibiting its use. For example, a Canadian-resident individual's Social Insurance Number ("SIN") is used as their taxpayer identification number. Although it might be operationally feasible for the FFI to identify accounts with common ownership by searching for those with a common SIN, Canadian laws limit the use of SIN. Our initial review suggests that using SIN for purposes of identifying

accounts with common ownership would not be regarded as an appropriate use under Canadian law.

- New Accounts for Individuals ~

- a. Confirm that the definitions of “documentation”, “documentary evidence” and “documentary evidence establishing non-U.S. status” set out in the Notice also apply to new accounts opened for individuals after the effective date of the FFI Agreement.

- b. Clarify if the treatment of accounts with a preceding year-end balance of less than \$ 50,000 as non-U.S. accounts under Step 2 of Notice Section I.A.2 also applies to new accounts opened after 2012.

- c. Confirm that U.S. indicia identified in Section I.A.2 Step 4(A), and the applicable steps to be followed where U.S. indicia is found, apply equally to new accounts,

- Accounts with U.S. indicia

- a. A PFFI should not be required to request that the account holder provide documentation to establish U.S. or non-U.S. status if the PFFI already has the required documentation in its files.

- b. Where a Form W-8BEN is obtained for purposes of establishing non-U.S. status for an account with U.S. indicia, there should be no requirement to renew the W-8BEN upon expiry.

- c. In the case of a private banking account, clarify what additional documentation is required for the account holder if the only U.S. indicia found are in respect to an associated family member.

- d. Clarify in what circumstances, if any, a PFFI will no longer be able to rely on documentary evidence previously obtained to treat an account as non-U.S. In particular, if an account subsequently acquires any of the U.S. indicia identified in Step 4(A) for the first time, is the PFFI expected to follow the steps set out in Step 4(B) to determine whether the status of the account

has changed? If so, the PFFI should be given sufficient time to take the necessary steps before having to treat the account as being recalcitrant.

- Diligent File Reviews ~

- a. The “diligent file reviews” required under current Steps 3 and 5 should be limited to current files and not require that older files that have been placed in storage be retrieved and subject to review,

- b. A PFFI should not be required to perform a “diligent file review” under Steps 3 or 5 if the FFI chooses to request that the account holder provide either a W-9 if a U.S. person, or a W-8BEN and a non-U.S. passport or other government-issued evidence of citizenship in a country other than the U.S., or if the FFI already has such documentation on file.

2. Private Banking Accounts

We understand Treasury and the IRS’ objectives with respect to the procedures related to the review of “private banking accounts”, including the types of accounts and relationships that are being targeted under this procedure. However, we submit that the definition of “private banking account” provided in the Notice is overly broad and draws in accounts that should not appropriately be subject to the enhanced due diligence procedures.

The current definition places too much emphasis on the department and the employee that maintains and services the account, rather than focusing on the types of services provided to the actual accounts themselves. Not all accounts serviced by a particular relationship manager or department are necessarily receiving the same types of services. The mere fact that an account is serviced by a department or relationship manager that maintains and services some accounts appropriately defined as “private banking accounts” does not necessarily mean that all the accounts maintained and serviced by such departments/employees should be treated as private banking accounts as contemplated in the Notice. For example, many FFIs include their discount brokerage services within their Wealth Management business platform. These accounts generally receive minimum levels of personalized service and are often low in value. Such accounts should not be regarded as private banking accounts as there is no relationship manager assigned to the account. In addition, many FFIs only retain information related to such accounts on their electronic systems and do not retain any additional information in non-electronic files.

Even if the definition of “private banking account” is appropriately amended, we do not believe that a separate diligent review of such accounts would identify a material number of potential U.S. accounts that wouldn’t otherwise be identified during the review of accounts having a balance or value of \$

500,000 or more at the preceding year-end. If the FFI has private banking accounts with a balance or value of less than \$ 500,000, that same client will likely have an account with an FFI affiliate that does have a value or balance of \$ 500,000 or more. Many large groups of affiliated FFIs that provide a wide range of financial services to clients (such as RBC) provide some form of private banking services to clients through their retail banking business. Often the products and services offered through these businesses may not adequately meet the needs of a high net worth client. In these situations, the client may transfer the larger portion of their investible assets to an FFI affiliate (e.g., broker/dealer), in which case the account will be identified for review by the FFI affiliate if it meets the criteria in Step 5.

We recommend that Step 3 be eliminated and that Step 5 be amended to incorporate elements of Step 3. Accordingly, once the account is selected for review under Step 5 by virtue of the account balance or value, the account coding can be reviewed to determine if the account has a relationship manager that may have additional knowledge about the account holder and whether there are any associated family members or other entities linked to the account. We believe that FFIs can implement this approach more effectively and that the objective of identifying potential U.S. accounts will not be compromised.

NOTICE SECTION II ~ Passthru Payments

Consistent with comments provided by other FFIs and industry associations to Treasury and the IRS in previous submissions, RBC has recommended that Treasury and the IRS take a practical approach regarding the definition of passthru payments to avoid implementing withholding requirements that are disproportionately expensive and administratively burdensome relative to any benefits derived by the IRS from an information reporting perspective.

We appreciate that Treasury and the IRS have considered the submissions made by various stakeholders, and determined that some of the proposed approaches would not be consistent with the purposes underlying the passthru payment concept, which include ~

1. To avoid PFFIs being used as “blockers” through which non-PFFIs might benefit from indirect investment in U.S. assets without being subject to withholding or entering into an FFI Agreement, and
2. To provide FFIs with a tool that can be used to incent account holders to provide the information required by the FFI to identify U.S. accounts or to report information to the IRS.

With regard to the second objective, while we appreciate the effort to assist FFIs with their account identification efforts, a requirement to modify additional systems in order to apply withholding on non-U.S. source payments is not generally the preferred approach.

We appreciate the concerns raised by the first objective but are of the view that it is not necessary or appropriate for the passthru payment net to be cast so broadly in order to meet this objective.

The passthru payment rules contained in the Notice create an inequity between PFFIs and USFIs with regard to the scope of the FATCA provisions. USFIs are clearly required only to withhold on “withholdable payments”, while under the provisions of the Notice, PFFIs would be required to withhold on payments that are, in some instances, only very remotely attributable to withholdable payments. It is our view that Congress could not have intended to create this inequity. Accordingly, we suggest that in order to realign the responsibilities of foreign and US FIs, the passthru payment provisions should be crafted much more narrowly.

In the case of entities that are predominantly engaged in investing or trading in securities, commodities, partnership interests or derivatives thereof (“Investing PFFIs”), the passthru payment percentage (“PPP”) concept would result in comparable U.S. and foreign investment entities being treated similarly, except for the definition of “U.S. assets” to be applied for purposes of calculating an Investing PFFI’s PPP, which includes a proportionate share of investments in other PFFIs and deemed compliant FFIs (“DCFFIs”). In the case of other classes of FIs, a significant discrepancy also exists. We recommend that the passthru payment rules not apply to non-U.S. source income paid by non-Investment PFFIs to account holders.

We would suggest that the approach set out in the Notice with regard to the calculation of the amount of a passthru payment that is subject to tax is unnecessarily complex and costly, and that Treasury and the IRS should give further consideration to other alternatives that would still achieve the desired outcomes. To illustrate the complexity, we have summarized some of the issues associated with (i) the calculation of an FFI’s PPP and (ii) withholding on passthru payments made to custody accounts.

i. Calculation of FFI’s PPP

The requirements related to the calculation of the PPP by an FFI present a number of challenges and concerns, including the following ~

- The broad definition of “U.S. assets” to be used for purposes of calculating the PPP includes not only investments that could generate withholdable payments, but also a proportion of the value of an FFI’s investment in other PFFIs and DCFFIs. Most large FFIs hold investments in other large FFIs, making the determination of any particular FFI’s PPP an unworkable circular calculation. Since it would be impossible to calculate an initial PPP that can be published, most FFIs will be required to use the default of 100%, resulting in an overstatement of the PPPs and U.S. assets that will be subject

to withholding. Future calculations based on these amounts will also not accurately reflect the underlying U.S. assets.

- Many FFI entities within an expanded affiliated group may not currently produce quarterly financial statements on an entity basis since quarterly financial statements are generally only required on a consolidated basis for regulatory purposes.
- The requirement to calculate PPPs on a quarterly basis using a four-quarter rolling average calculation attempts to achieve a level of precision that is significantly diminished as a result of the imprecise initial calculation of “U.S. assets”. It is unclear that the effort and cost involved in performing the required calculations on such a frequent basis will, in fact, contribute to achieving the purposes underlying the passthru payment concept as indicated above.
- FFIs will need to make significant changes to be able to identify investments in PFFIs and DCFFIs and, in particular, to gather and store the PPPs of the issuers. Many FFIs will only be able to perform such calculations efficiently if the additional data can be obtained through electronic data feeds (see further discussion below regarding custody accounts).
- The PPPs of many FFIs will never be required to be used by other FFIs (e.g., a PFFI that is a personal trust). Such entities should not be required to publish a quarterly PPP in order to avoid using a 100% default value (e.g., where passthru payments are being made directly to the PFFI’s recalcitrant or non-PFFI account holders),

ii. Custody Accounts

In the case of custody accounts, because of the large volumes of securities and accounts for which custodians process transactions, any withholding on passthru payments must be automated, with very little (if any) need for manual processing. In that connection, to implement the requirements set out in the Notice, significant process and systems changes will be required, including the following ~

- Additional fields must be added to the Security (or

Property) Masters that are maintained by custodians (or their service providers) to store all the critical information related to each different security that the custodian holds and for which the custodian receives payments for processing. As a minimum, new fields would be required to store the following details applicable to the issuer of the security ~

- Status of the issuer as a PFFI or DCFFI (and possibly the FFI-EIN of the issuer for matching purposes); and
- PPP if the issuer is a PFFI or DCFFI.
- Changes to existing, or the creation of new, electronic data feeds that provide the custodian with the information necessary to populate the additional fields on the Security Master, mentioned above, are required. Currently, custodians receive information related to securities and securities-related transactions through such third-party data providers as Reuters, Telekurs, Bloomberg and others. Many custodians use multiple suppliers. To comply with the procedures set out in the Notice with respect to withholding on passthru payments (other than withholdable payments), one option would be for these existing data providers to expand their service offerings to provide the additional information. These data providers will, in turn, need to have sources from which to obtain the additional information related to PFFIs and DCFFIs. A more efficient option might be for PFFIs and DCFFIs to provide the required information to the IRS, who could then make the information available electronically to other PFFIs and DCFFIs.
- Changes are required to existing payment processing systems to take into account the status of an account to which a payment is being made or credited, the status of the issuer of a security in respect of which a payment is made, and the PPP, if applicable.
- It is likely that most (if not all) FFIs will need to make amendments to various client agreements to permit withholding on passthru payments. Such amendments

may not be possible in certain situations (e.g., when the PFFI has a contractual obligation to pay a fixed amount, or the PFFI is a trust governed by the terms of a trust agreement).

- In the case of FFIs that elect to be withheld upon and hold securities in omnibus or pooled accounts at their paying agents, new withholding rate pools may need to be established to allow their paying agents to withhold on the portion of payments allocable to recalcitrant and non-PFFI account holders.

Given the stated objectives of the passthru payment concept, and if the final requirements are operating effectively once implemented, the withholding on passthru payments should only be required on an exception basis. Accordingly, regardless of the scope of the final passthru payment provisions, we recommend that Treasury and the IRS give further consideration to alternatives that would reduce the burden on PFFIs.

At this time, it is difficult to anticipate the extent to which the situations for which that the passthru payment concept is intended will exist, and how strong of an incentive will be required to increase compliance with the FATCA regime. We recommend that Treasury and the IRS consider less onerous options initially and allow FATCA to be implemented and become fully operational within the global financial community before considering whether in fact more onerous requirements are needed to increase compliance, and if so, whether they need to be applied generally or whether they can be targeted to specific situations that are of particular concern. If PFFIs are required to report aggregate information about recalcitrant account holders on an annual basis (as Treasury and the IRS indicated they were considering in *Notice 2010-60*), the IRS will be in a much better position to assess the need for more stringent requirements after accumulating a few years of reporting data.

We believe that taking a phased-in approach would provide a number of benefits, including, but not limited, to the following ~

- PFFIs could implement changes to begin withholding on a limited basis sooner than they could if required to implement on the basis set out in the Notice.
- Treasury and the IRS would be in a position to focus their attention on defining the balance of the FATCA detailed requirements and drafting FFI Agreements and other compliance-related forms and procedures.
- FFIs would be in a position to focus on implementing other FATCA-related requirements to allow for the identification and reporting of U.S. accounts to

the IRS. Given the number of parties that need to participate in the development of procedures to implement withholding on passthru payments as set out in the Notice, it is unlikely that these changes could be implemented by January 1, 2013 without sacrificing other changes required to achieve FATCA compliance.

- A targeted approach could be implemented based on actual results, rather than anticipated non-compliance, allowing the objectives to be satisfied without imposing disproportionate burdens upon FFIs.

We submit that there are a number of ways in which the passthru payment concept can be implemented in a phased-in manner which could be modified if it is later determined that stronger or more targeted compliance incentives are necessary. We would be pleased to discuss such options in greater detail with Treasury and the IRS.

NOTICE SECTION III ~ Deemed-Compliant Status For Certain FFIs

D. Other Categories of Deemed-Compliant FFIs

The Notice indicates that Treasury and the IRS are still considering comments received regarding the types of foreign retirement plans that should be treated as posing a low risk of tax evasion under *section 1471(f)*.

As Treasury and the IRS consider such plans, we request that comments included in our letters of June 30, September 3 and November 3, 2010 regarding the following arrangements be considered for purposes of defining beneficial owners that pose a low risk of tax evasion ~

- Plans established under the provisions of the tax laws in a foreign jurisdiction, designed to encourage investment or saving for specific circumstances (e.g., education, disability, retirement) by providing tax advantages. Such plans are generally subject to restrictions that limit the amount of tax-advantaged savings and are monitored by local tax authorities. In Canada, these types of plans would include such arrangements as registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs), registered education savings plans (RESPs), registered disability savings plans (RDSPs) and tax-free savings accounts (TFSA).
- Foreign employee benefit or deferred compensation plans which are typically employer-sponsored and

designed not only to compensate employees, but also to satisfy other objectives such as the following

~

- Recruit, motivate and retain employees.
- Align employees' interests with those of shareholders.
- Comply with local regulations and market compensation practices.

NOTICE SECTION IV ~ Reporting on U.S. Accounts

- **Account Balance or Value/Gross Receipts and Withdrawals**

We were pleased to see that the Notice modified the reporting requirements for U.S. accounts that were contained in *Notice 2010-60*. We appreciate that the revised requirements are significantly simplified and generally permit FFIs to leverage their existing reporting capabilities. Although we continue to assess the requirements against our current capabilities, we anticipate that most RBC FFIs will be able satisfy these requirements without having to make significant and costly systems changes.

There are, however, certain specific areas to be addressed in future guidance for which the requirements in the current Notice may not be wholly appropriate, and we trust that Treasury and the IRS will consider allowing some flexibility in these situations. For example, if a personal trust is to be treated as an FFI, we suggest that reporting for U.S. persons be based on distributions made to the beneficiary. For most trusts, there is no amount with respect to the beneficiary's interest that would equate to account balance or value, and similarly no annual reporting of interest, dividends, other income distributions and gross proceeds from the sale or redemption of property. Similarly, insurance companies should be permitted to report alternative amounts as are applicable to their products.

- **Option to Elect to have Withholding Agent Report on U.S. Accounts**

Section 1471(b)(3) permits a PFFI to elect to have its withholding agent withhold on passthru payments allocable to the PFFI's recalcitrant accounts or accounts for non-PFFIs. We suggest that Treasury and the IRS also provide FFIs the option to elect to have their withholding agent (or other FFI as appropriate) report on U.S. accounts. This would be similar to the flexibility provided under the QI regime which permits a QI to assume (or not assume) backup withholding and Form 1099 reporting responsibilities.

We believe that there may be situations where the PFFI that has the closest relationship with the account holder (in terms of being able to determine the status of the account as U.S. or non-U.S.) may not currently be the FFI in the chain that has the recordkeeping systems that produce annual reporting to tax authorities or reporting to account holders.

For example, as we indicated in our letter dated June 30, 2010, many trust companies do not have robust electronic recordkeeping systems, especially with respect to the recording and reporting of transactional data, as they have not had the need for such systems in order to fulfill their fiduciary responsibilities. Instead, they may rely on the recordkeeping and reporting services provided by the financial institutions where they maintain financial accounts. In such situations, the trust company would greatly benefit from the option of electing to have the upstream financial institution record the account as a U.S. account and provide the required annual reporting to the IRS. This election would be dependent upon the upstream financial institution agreeing to assume such reporting responsibility and the trust company providing the information necessary for them to report (including name, address and TIN of each U.S. owner).

- **Basis Reporting**

The Notice indicates that Treasury and the IRS intend to issue guidance providing that FFIs that are not U.S. payors (as defined in *Regulation 1.6049-5(c)(5)*) and that report the information required under *section 1471(c)(1)(D)* with respect to U.S. accounts will not be required to report tax basis information required under *section 6045(g)* with respect to the account.

The application of the basis reporting rules to Qualified Intermediaries (QIs) has been subject to considerable discussion with Treasury and the IRS. The summary comments that were released with the final basis reporting regulations indicated that “a qualified intermediary that is not a U.S. payor or U.S. middleman as described in *Regulation 1.6049-5(c)(5)* will not be treated as a broker with respect to sales effected at an office outside the United States”. However, on further analysis, it was determined that QIs were not granted any effective relief, and many QIs are now looking to address how to satisfy the requirements which are already effective for certain securities purchased on or after January 1, 2011.

The suggestion that QIs reporting information under Chapter 4 will not be required to maintain and report cost basis information would provide welcome relief from an onerous burden for the sake of a small number of U.S. account holders, especially given all of the information that will be reported on these accounts under FATCA. However, given that the basis reporting regulations are now in effect, QIs are concerned that the final FATCA regulations may not provide full exemption (including retroactively) and therefore continue to devote resources to implementing basis reporting changes.

We are aware of the letter dated May 4, 2011 regarding this issue that was sent to Treasury and the IRS by the Investment Industry Association of Canada (“IIAC”). We would like to again stress the urgency of this issue and request that Treasury and the IRS act quickly to provide a clear statement to QIs confirming that the final regulations will provide a complete exemption from basis reporting for QIs that are non-U.S. payors, and that the exemption will apply retroactively to January 1, 2011.

NOTICE SECTION VI ~ Expanded Affiliated Groups ~ Centralized Compliance Option

The Notice indicates that Treasury and the IRS are considering whether a centralized compliance option should be provided for certain collective investment entities that are associated with a common asset manager or other agent. Under this option, the common asset manager or other agent would execute a single FFI Agreement on behalf of each member of the group of funds that participates.

We believe that providing such an option would be beneficial and we recommend that if personal trusts are ultimately required to be treated as FFIs rather than NFFEs, a similar option should be provided for trusts associated with a common trustee or agent. There may also be other types of FFIs for which such an option would be well suited.

NOTICE SECTION VII ~ Effective Date and Timing Concerns

As Treasury and the IRS are aware, FFIs will not be able to implement many of the changes required to comply with FFI agreements until final detailed requirements have been released. In the meantime, many FFIs are taking reasonable steps on the basis of available information regarding the final requirements to assess the impact of FATCA on their existing policies, procedures and systems.

The magnitude of the task facing Treasury, the IRS and the financial community to implement FATCA within a very short time period has been an issue that has been raised consistently since the beginning. With the effective date for section 501 of the HIRE Act not much more than 18 months away and uncertainty as to the timing of the release of the final detailed requirements, considerable anxiety continues to build within the global financial community.

We would submit that all changes required to fully implement FATCA, as we currently understand it, are unlikely to be in place on January 1, 2013. We appreciate the fact that *Notices 2010-60 and 2011-34* provide a phase-in period during which FFIs can review their preexisting accounts. However, in order to allow FFIs to plan resources and prioritize activities, we recommend that Treasury and the IRS provide further guidance related to the timing of other requirements, including the following ~

- **Time to identify new accounts for individuals and entities**

Notice 2010-60 indicated that future guidance would prescribe the period during which the steps for new accounts for individuals must be performed and the default treatment of account holders during that period. Similar requirements for new entity accounts were also left undefined.

With respect to preexisting accounts, depending on the type of account, an FFI has a minimum of one year to review accounts, and request and receive additional documentation before an account will be required to be treated as recalcitrant. We recommend that Treasury and the IRS consider defining

the final requirements in such a way that no accounts will be defined to be recalcitrant or non-PFFIs subject to withholding on passthru payments until January 1, 2014 at the earliest.

- **Initial Reporting Deadline**

In our letter dated June 30, 2010, we recommended that the deadline for annual reporting of U.S. accounts should be no earlier than June 30th following the reporting year-end. This would provide significant relief to FFIs that are busy during the first several months of the calendar year satisfying other filing requirements, including tax reporting to local tax authorities, and in the case of QIs, to the IRS. Given the nature of the information being reported and the manner in which it will be used by the IRS, we would submit that little would be gained by requiring PFFIs to file sooner. We recommend that future guidance address the deadline for reporting and provide a date that is no earlier than 6 months after year-end. This will provide relief to many FFIs that are currently concerned that they may need to have reporting capabilities in place within the first few months of 2014.

- **Execution of FFI Agreements and Effective Date**

The Notice indicates that FFI Agreements will become effective on the later of the date they are executed and the effective date of section 501 of the HIRE Act (i.e., January 1, 2013). This has created some uncertainty. We understand that many FFIs have been assuming that FFI Agreements will generally be effective January 1, 2013. Numerous requirements set out in *Notices 2010-60 and 2011-34* are defined by reference to the effective date of the FFI Agreement. If FFI Agreements for all FFIs are not executed prior to 2013, and if some FFIs have an effective date other than January 2013, there will likely be a certain amount of confusion created within the financial community.

When the Qualified Intermediary regime took effect on January 1, 2001, many QIs did not have executed agreements in place on that date. *Notice 2001-4* was subsequently released to provide the following transitional relief -

Provided that it submits its application before July 1, 2001, a potential QI may apply all of the provisions of the QI agreement beginning January 1, 2001. An applicant that submits its application after June 30, 2001, may represent to a withholding agent that it is a QI effective on the date it submits a complete application.

If the IRS intends to have most FFI Agreements executed prior to January 1, 2013, the potential confusion related to varied effective dates become less of an issue. However, if this is in fact the IRS' intention, FFIs will need to start planning resources and scheduling activities in order to complete the application process

on a timely basis, particularly in light of the requirements set out in the Notice with respect to the centralized coordination of the application process for an affiliated group and the amount of information that must be provided with the application. It would be helpful if future guidance could provide further commentary regarding the application process and, in particular, with regards to timing ~ when the IRS anticipates it will begin accepting applications, how long it expects it will take for agreements to be executed, whether transitional relief will be provided to protect FFIs that are making all reasonable efforts to execute agreements from exposure to Chapter 4 withholding, etc.

We appreciate your consideration of our comments and trust that you will find them helpful as you continue to develop the detailed FATCA requirements. If you have any questions regarding our written comments or would like further details, please do not hesitate to contact the undersigned by phone at (416) 955-3845 or by email at ann.noges@rbc.com.

Yours truly,

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