[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
THE HARTFORD FINANCIAL SERVICES GROUP, INC.]

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Re: Follow up to August 3, 2011 Meeting with The Hartford Financial Services Group, Inc. to discuss the Foreign Account Tax Compliance Act and Notice 2011-34 -- Supplemental notice to *Notice 2010-60* Under Chapter 4 of Subtitle A of the IRC

Dear Mmes. Corwin and Firehock, and Messrs. Musher, Plowgian, Sweeney, Eggert and Caballero:

On behalf of The Hartford Financial Services Group, Inc. ("The Hartford") I would like to thank you for the opportunity we had to meet with Jesse Eggert on August 3, 2011, regarding the Foreign Account Tax Compliance Act ("FATCA"): (1) its impact on certain of our foreign businesses; and (2) the timing of account due diligence applicable to U.S. life and annuity insurance companies. At the close of our meeting, we were asked to provide a written submission that outlines the particular issues and problems discussed and possible solutions that would address these concerns.

This memorandum will: (1) provide a background summary of our non-U.S. insurance businesses which were closed to new sales prior to the introduction and enactment of FATCA; (2) discuss Treasury's regulatory authority to address concerns of companies whose foreign insurance business is closed and pose virtually no risk of U.S. tax evasion; (3) provide suggested draft regulatory language covering several options that would address these concerns in a manner that is consistent with the statute and the legislative history; and (4) request clarification in future guidance that the due diligence obligations of life and annuity insurance companies classified as U.S. financial institutions ("USFIs") are required at the time of payment.

SUMMARY OF NON-U.S. INSURANCE BUSINESSES CLOSED TO NEW SALES PRIOR TO INTRODUCTION AND ENACTMENT OF FATCA

The Hartford has made a significant commitment to understanding the impact and potential changes that FATCA would have on our businesses and has assigned dedicated resources to review and ultimately, comply with the new statutory requirements. In the process of our analysis, we determined our non-U.S. insurance business is limited and poses virtually no risk of permitting U.S. persons to avoid their U.S. tax obligations. These businesses: (a) have been closed to new sales since 2009; (b) are controlled foreign corporations within the meaning of *IRC section 957(a)* ("CFCs") n1 and therefore comply with U.S. reporting and withholding rules relating to payments to U.S. persons; (c) while active, had policies and procedures in place prohibiting the sale of their annuity contracts to U.S. persons; and (d) only sold annuity contracts with very limited fund investment options.

Background

The Hartford established its business in Japan ("HLIKK") in 2000 and its business in the United Kingdom ("HLL") in 2005. Each is organized as a CFC and is a U.S. payor as defined by *Treas. Reg. section 1.6049-5(c)(5)*. Under FATCA, each would be classified as a foreign financial institution ("FFI") as defined in *IRC section 1471(d)*. Prior to ceasing sales to new policyholders, these businesses sold standard variable annuity type contracts that were neither individually negotiated with nor tailored to specific policyholders. These annuity contracts were filed with local regulators, provided limited investment options, restricted access to liquidity, and provided principal guarantees and insurance type death benefits. Moreover, each business was operated exclusively in jurisdictions that have income tax rates comparable to those in the United States, and those jurisdictions have robust tax treaties and information sharing agreements with the IRS.

In June of 2009, as a result of the financial crisis of 2008, sales to new policyholders were prohibited and there have been no (HLL) or limited (HLIKK) collection of additional premiums on in-force contracts. Additionally, the workforces for both businesses have been drastically cut, with only enough staff remaining to fulfill contractual obligations to existing policyholders. Similarly, the relationships with third-party distributors have been significantly reduced to a level commensurate with the servicing of the policyholders.

While the businesses were active, sales to U.S. persons were prohibited. In fact, both businesses required potential policyholders and their third-party distributors to attest to the fact that the potential policyholder was neither a U.S. citizen nor a U.S. green card holder. Distributors were required to obtain government issued identification (e.g., a passport) from each potential policyholder. If U.S. citizenship were discovered, neither business was permitted to sell an annuity contract to that policyholder. It bears noting that the attestation regarding U.S. citizenship was required at both the initial point of sale and at the time of a distribution. If, at the time of distribution, a payee (usually a beneficiary) were discovered to be a U.S. person, the businesses follow the rules that apply to CFCs as U.S. payors and file and furnish the appropriate Forms 1099 reporting the payments.

DISCUSSION OF TREASURY'S AUTHORITY TO ADDRESS CLOSED INSURANCE BUSINESSES

Chapter 4 of the IRC was enacted to combat tax evasion that may occur when U.S. taxpayers hold assets offshore. FATCA is designed to provide the IRS with third-party information reporting from FFIs that have U.S. persons as account holders, thus making evasion of U.S. taxes less likely. If an FFI chooses not to perform the requested information reporting related to its U.S. account holders, then certain U.S. source payments made to the FFI are subjected to 30 percent withholding.

The statute permits Treasury to exempt payments made to certain beneficial owners from the reporting and withholding obligations imposed by *IRC sections 1471* and 1472, if it were determined that the persons pose a low risk of tax evasion. n2 Additionally, Treasury is permitted to deem certain FFIs as meeting the FATCA requirements, if the FFI is a member of a class of institutions with respect to which it has been determined that the application of FATCA is not necessary to carry out the

purposes of the legislation. n3 Finally, the legislative history accompanying FATCA provides the Secretary with the authority to: "provide special rules addressing the circumstances in which certain categories of companies, such as certain insurance companies, are financial institutions, or the circumstances in which certain contracts or policies, for example annuity contracts or cash value life insurance contracts, are financial accounts or United States accounts for these purposes." n4

When viewed in their totality, businesses such as HLIKK and HLL pose virtually no risk of tax evasion and should be exempt from all FATCA requirements. Prior to ceasing sales, our annuity contracts and sales practices were not attractive to individuals seeking to evade U.S. taxes: they were standard annuity contracts with limited underlying investment options, the terms of which restricted liquidity, and proof of non-U.S. citizenship was required at point of sale. On a going forward basis, as FATCA implementation is phased in and as foreign bank accounts become less attractive for U.S. tax avoidance, life and annuity insurance contracts that are overly investment oriented (e.g., individually negotiated insurance contracts) could become a "fallback investment" for Americans seeking to evade U.S. taxation. However, this simply cannot happen with businesses closed to new sales. Life and annuity insurance contracts similarly situated to ours pose virtually no risk of tax evasion and, therefore, should be exempt from all FATCA requirements.

It is clear that both the FATCA statute and legislative history provide Treasury with ample authority to fine tune the regulatory implementation of FATCA to maximize Congress's legislative intent of preventing Americans from evading U.S. taxes while designing a fair and efficient regulatory burden for U.S. and foreign financial institutions. Treasury and the IRS have demonstrated an appreciation for this important balance, as evidenced by the regulatory guidance issued thus far, meetings with stakeholders, and public statements. This balance would not be achieved by imposing all the FATCA requirements on insurance businesses closed to new sales. The value, if any, of the information that the IRS would potentially gather here would be far outweighed by the burden placed on insurance companies. As outlined in several options provided below, we urge Treasury to exercise its regulatory authority to exempt these businesses from all FATCA requirements.

RECOMMENDATIONS FOR PROPOSED REGULATORY GUIDANCE

Option 1: Exempt Pre-Existing Accounts and Closed Businesses

As an initial matter, and as we discussed in our meeting, our concerns and the concerns of the life insurance industry in general regarding the scope of FATCA and its potential application to pre-existing accounts would be addressed, if life and annuity insurance contracts established prior to the enactment of FATCA were exempted from all FATCA requirements. For a variety of reasons that have been well established in a number of prior industry comment letters, we believe imposing FATCA due diligence and other requirements on existing life and annuity insurance accounts would create an extremely onerous and expensive compliance burden on the industry that would be disproportionate to any benefit that would accrue to the U.S. government. As a result, we support exempting from FATCA both (a) life and annuity insurance accounts established prior to the enactment of FATCA, and (b) insurance company entities that were closed to new sales prior to the enactment of

FATCA and whose business consists solely of such exempted life and/or annuity insurance accounts established prior to FATCA's enactment.

Option 2: Exempt Certain Insurance Accounts and Closed Businesses

If such a general rule for exempting life and annuity insurance accounts and insurance companies closed to new sales were determined to be beyond the scope of the regulatory authority provided by Congress, we offer several additional options for your consideration. Treasury and the IRS could take the following approach, which also focuses on the status and characteristics of specific accounts:

a. A foreign insurance company that is otherwise classified as an FFI is nonetheless exempt from IRC *sections 1471(a)* and 1472(a), if such insurance company solely issued life and/or annuity insurance contracts exempt under clause b. below.

b. A life or annuity insurance account is exempt from *IRC sections 1471(a)* and 1472(a) if:

i. The insurance company ceased selling such contract prior to the enactment of Chapter 4;

ii. The seller of such contract is a foreign insurance company that is classified as a U.S. payor under Treas. *Reg. section 1.6049-5(c)(5)* and complies with all of the reporting requirements under chapter 61; and

iii. The seller of such contract has notified the local regulatory authority of its closed status.

Option 3: Treat Certain FFIs as NFFEs

Alternatively, another option would be to treat certain FFIs as non-financial foreign entities ("NFFEs") and thus exempt from the requirements of *IRC section 1471*. The Hartford offers the following language as a possible means to achieve this treatment:

As permitted by *IRC section 1471(f)(4)*, the following FFIs are exempt from the requirements of *IRC section 1471(a)*:

a. A foreign insurance company that is a controlled foreign corporation (as defined by *IRC section 957(a)*) whose sole business was closed to new sales prior to the enactment of Chapter 4 and remains closed

is exempt from FATCA and is classified as a non-financial foreign entity.

b. In order to qualify as a closed business, that company must:

i. Have ceased sales of life and annuity insurance contracts, prior to enactment of Chapter 4;

ii. Have had policies and procedures in place prohibiting the sale of such contracts to U.S. persons; and

iii. Have policies and procedures in effect to fulfill its information reporting obligations as a U.S. payor (as defined in *Treas. Reg. section 1.6049-5(c)(5)*).

Option 4: Treat Certain FFIs as Deemed-Compliant

We also discussed creating an additional category of “Deemed Compliance” as an alternative for relieving the administrative burden imposed by implementing and maintaining strict adherence to Chapter 4 by insurance companies that were closed to new sales prior to the enactment of FATCA. In Notice 2011-34 Section III, Treasury indicated that all deemed-compliant FFIs will be required to: (1) apply for deemed-compliant status; (2) obtain an FFI identification number; and (3) certify every three years that it meets the requirements for such treatment. In addition, *Notice 2011-34*, Section III, further describes that (a) certain local banks, (b) local FFI members of certain participating FFI groups, and (c) certain investment vehicles would be deemed-compliant if each of these entities follows an additional set of prescribed requirements. The suggestion to create an additional category of deemed-compliant FFI for insurance companies closed to new sales prior to enactment of FATCA may appear to provide the relief we anticipated. Based on *Notice 2011-34*, however, such a solution would still impose significant ongoing requirements on the company, including performing due diligence on pre-existing accounts and calculating and publishing a passthru payment percentage which, for all the reasons and safeguards discussed above, would yield no real value to the government.

Treasury is permitted under *IRC section 1471(b)(2)* to classify certain FFIs as deemed-compliant with the requirements under *IRC section 1471*. If Treasury determines under *IRC section 1471(b)(2)* that a deemed-compliant category were appropriate for the type of closed insurance business described in this submission, we suggest a new category of deemed-compliant FFIs be created that would entail fewer but still adequate safeguards. The additional category of deemed-compliant FFI would be described as follows:

An entity that was closed to the sale of life and annuity insurance contracts prior to the enactment of FATCA is deemed-compliant if the entity:

i. had policies and procedures in place prohibiting the sale of its life and annuity insurance contracts to U.S. persons prior to its closure;

ii. sold only standard, life and annuity insurance contracts offered to the public the terms of which were not individually negotiated;

iii. ceased selling such contracts prior to the date of enactment of FATCA;

iv. maintains policies and procedures to fulfill its information reporting obligations as a U.S. payor (as defined in *Treas. Reg. section 1.6049-5(c)(5)*); and

v. notified the local regulatory authority of its closed status.

Entities that meet requirements (i) through (v) are also exempt from calculating and withholding on passthru payments, and need only (1) apply for deemed-compliant status; (2) obtain an FFI identification number; and (3) certify every three years that they meet the requirements for such treatment.

DOMESTIC USFI INSURANCE COMPANIES

Summary of U.S. Insurance Companies with Cash Value Contracts

The Hartford's U.S. operations include U.S. life insurance companies that issue, among other products, cash value life and annuity insurance contracts. Under Notice 2010-60, The Hartford's U.S. life insurance companies will be treated as USFIs.

Analysis of U.S. Life Insurance Company Businesses

As noted above, Chapter 4 was enacted to combat tax evasion that may occur when U.S. taxpayers hold assets offshore. The primary role of USFIs and other U.S. withholding agents under FATCA is to withhold 30 percent on withholdable payments made to foreign entities that are not FATCA compliant or otherwise exempt from Chapter 4. USFIs must also perform certain due diligence as set forth in *Notice 2010-60*. Section III.C. of *Notice 2010-60* indicates Treasury's desire to have USFIs follow similar account due diligence procedures as required of FFIs in an effort to have the FFI and USFI determination standards be parallel for purposes of account holder identification.

While we recognize Treasury's desire to keep these procedures similar, the fundamental differences between FFIs and USFIs in the case of insurance companies justify varying the timing of the due diligence procedures for FFIs and USFIs that are insurance companies. Specifically, insurance companies

that are USFIs should not have to follow the timeline imposed on FFIs for account due diligence and we request that future guidance clarify that USFI due diligence be required only at the time of payment. n5

Clarification of Timing of USFI Insurance Company
Entity Account Due Diligence

We interpret Section III.C of *Notice 2010-60* to require USFIs to perform due diligence at the time a withholdable payment is made to an entity that is classified as an FFI or NFFE. Unfortunately, there is some ambiguity around this provision. The procedures outlined by Section III.C. provide specific dates by which certain due diligence activities must be accomplished, and these procedures could be interpreted as contradicting the conclusion that the due diligence must be performed at the time a withholdable payment is made to an FFI or NFFE. For the reasons set out below, we request that you clarify in future guidance that any USFI due diligence must be performed at the time of payment.

FFIs have an annual reporting obligation to the IRS under *IRC section 1471(c)* while USFIs have a reporting obligation to the IRS when payment is made. Because USFIs are obligated to report withholdable payments only after payment occurs and not annually as is the case for FFIs, USFIs should not be required to perform due diligence until a payment is made.

Moreover, existing U.S. requirements under Chapters 3, 24 and 61 require USFis to properly document and identify payees at the time of payment. Failure to properly identify or document a payee under Chapter 3 or Chapter 24 requires USFIs (and other withholding agents) to impose withholding. Since USFIs and other withholding agents already require documentation at time of payment, including a FATCA review and due diligence requirement would lend itself to administrative consistency. Chapter 4 due diligence should be consistent with the timing of existing information reporting and withholding obligations.

USFI insurance company "accounts" are different from banking and similar accounts because the payee is frequently someone other than the owner of the contract (e.g., a beneficiary). Unlike banking and similar accounts, information acquired at insurance "account" opening is frequently stale by the date of payment because payments often occur years after a contract is purchased. In addition, requiring a USFI to conduct a due diligence review on the owner of an insurance contract at the time of purchase, and then conduct another due diligence review at the time a distribution is made, would be duplicative and result in the collection of useless information. As a result, a due diligence requirement at the time a payment is made would provide the IRS with the most accurate payee information. Clarifying that USFI due diligence steps are required at the time of payment will ensure that the IRS receives appropriate payee information when a payment is made.

On behalf of the Hartford, I thank you again for the time you provided us to discuss the application of FATCA to our businesses and for the consideration that you have and will be giving to our recommendations. We fully understand the challenges that both the government and financial institutions face in implementing FATCA. We believe the proposals that we have described in this submission will further the goal of implementing FATCA in a reasonable and proportionate manner. If you

require additional information or have questions relating to this submission please feel free to contact me directly at 860-547-6410.

Very Truly Yours,

Michael Chesman
Senior Vice President
The Hartford
Hartford, CT

FOOTNOTES:

n1

All references herein to "IRC" are to the Internal Revenue Code of 1986, as amended.

n2

IRC sections 1471(f)(4) and 1472(c)(2).

n3

IRC section 1471(b)(2)(B).

n4

111th Congress -- General Explanation of Tax Legislation Enacted, March 2011, JCS-2-11 at page 213.

n5

In light of the phased implementation timeline set out in *Notice 2011-53*, we also request that any such obligation to perform due diligence at the time of payment begin no earlier than December 31, 2014.