

Japan Securities Dealers Association

Tokyo Shoken Kaikan Bldg.
1-5-8, Kayaba-cho, Nihonbashi, Chuo-ku
TOKYO 103-0025, JAPAN
Phone: (813) 3667-8451 Fax: (813) 3666-8009

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 (Reporting on Certain Foreign Accounts)

Dear Sir/Madam:

The Japan Securities Dealers Association ("JSDA") appreciates the opportunity to provide 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 of 2010 (Pub. L. 111-147).

The JSDA comprises more than 500 members consisting of securities firms and other financial institutions operating securities businesses in Japan. The JSDA is functioning as a self-regulatory organization as well as a trade association in the Japanese securities market.

In the past, Japanese securities firms and financial institutions have fully cooperated with the enforcement of the U.S. tax law through active participations in the Qualified Intermediary ("QI") regime. While we understand the purpose and the background of FATCA, we are concerned about the potential administrative and compliance burden on the Japanese securities firms and financial institutions due to the practical issues that may arise during the implementation of FATCA. While we welcome the specific guidance included in Notice 2010-60 (the "Notice") that was designed to reduce the burden placed on foreign financial institutions ("FFI"), we are still concerned about the potentially excessive compliance burden that our members are expected to face. Therefore, we would appreciate your understanding in the issues described below to ensure that the regulations and future guidance are developed in a manner that minimizes the administrative burden placed on the securities firms and financial institutions in Japan.

Especially, it should be noted that Japanese securities companies and financial

institutions are in compliance with "Act on Prevention of Transfer of Criminal Proceeds," which was enacted to prevent money laundering by such measure as the due diligence requirements for the customers of business operations. We would also like to note that no significant tax evasion case by a U.S. person has been reported in Japan after the implementation of QI regime on January 1, 2001. In light of these circumstances, we would greatly appreciate if the U.S. Department of Treasury (the "Treasury") and the Internal Revenue Service (the "IRS") duly consider the following recommendations.

1. Application of Section 1471(f)(4) or 1471(b)(2)(B) to Japanese Financial Institutions

As previously noted, it is our understanding that no significant tax evasion case by a U.S. person was reported in Japan after the QI regime was implemented on January 1, 2001. By way of background, in general, Japanese securities firms are very reluctant to open an account for a customer who does not reside in Japan, because Japanese securities firms are most likely not permitted to solicit business with nonresident customers without first obtaining securities brokerage license in the customers' home jurisdictions. In addition, less than 0.01 % of the accounts maintained through Japanese securities firms (type-1 financial instrument business operators under the Financial Instruments and Exchange Act) are owned by U.S. persons (based on the receipt of Form W-9 under the existing QI regime). It should also be noted that most of the Forms W-9 were submitted by Japanese nationals who temporarily reside in the U.S. for business and became U.S. residents under U.S. tax laws. In this regard, it is highly unlikely for a U.S. person to avoid taxes through securities firms in Japan. Accordingly, we would like to request that type-1 financial instrument business operators be listed as a class of exempt institutions under Sec. 1471(b)(2)(B).

2. Verification and Information Reporting Requirements of U.S. Accounts under the Agreement between a Foreign Financial Institution and the IRS

It is our understanding that FATCA would revise the existing QI agreement and impose additional requirements on existing QIs such as annual information reporting requirement of the specified U.S. person, including name or corporate name, address, U.S. taxpayer identification number ("TIN"), account number, account balance, and annual gross receipts and withdrawal amount. However, since the existing customer management system at Japanese securities companies does not maintain all of the above information, the additional requirements would place considerable compliance burden, including administrative burden and significant mailing cost, in meeting such additional requirements, especially the requirements to report the account balance and the annual receipts and withdrawal. Accordingly, we request that the definition of specified U.S. persons subject to the reporting requirement be modified to include only the U.S. person defined under U.S. tax laws and regulations (i.e. a U.S. citizen, green card holder, U.S. resident, U.S. corporation, etc.) who has established a new account after the effective

date of FATCA, as well as the existing customers who were identified as U.S. person through the ordinary course of business.

In addition, we request that securities firms and financial institutions not be required to confirm the identification of each customer, and required to inquiry about the U.S. status only if the customer information obtained during the ordinary course of business implies the customer's U.S. status through language, telephone number, or electronic mail address, etc. Furthermore, the accounts established solely for the purpose of stock options and treasury shares as well as the accounts established for employee stock ownership plans or corporate employee stock ownership plans pose very low risk of U.S. tax evasion and we believe that they should also be exempt under Sec. 1471(b)(2)(B).

3. U.S. Owned Foreign Entities

Currently, Japanese securities firms confirm the identity of entity clients but do not maintain their shareholders information. The due diligence requirement of a U.S. owned foreign entity essentially means the verification of all shareholders or owners of entity clients, which is expected to be very burdensome and costly. Accordingly, we would like to request the following:

- (1) To require the determination as to U.S. status of entity clients only upon establishment of the account, after FATCA has become effective.
- (2) To allow participating FFIs to rely on third party data sources when following the steps described in the Notice to verify whether the entity clients are engaged in active trade or business. The JSDA welcomes the approaches introduced in the Notice that are designed to limit the verification requirements to the entities with no active trade or business, and would like to request that the Treasury and the IRS include the use of third party data sources in the regulations.
- (3) To limit the scope of due diligence requirement to the direct shareholders or owners of entity clients. Although the Sec. 1473 of FATCA defines the substantial U.S. owner as a specified U.S. person who directly or indirectly holds 10 percent or more of the entities, it would be practically impossible to verify the existence of indirect shareholders that are specified U.S. persons.
- (4) To verify the identification of substantial U.S. owners of the entity clients only at the time of the establishment of new account through a written certification as to existence and identity of the substantial U.S. owners from the entity clients. Since customers are not required to investigate the substantial U.S. owners under the current Japanese law, repeating the verification requirements would be unduly burdensome and costly in light of possible administrative work, additional customer correspondences, and system enhancements required to comply with such requirements.
- (5) To treat the accounts utilized merely for the following purposes, which poses the low risk of U.S. tax evasion, as exempt under Sec. 1471(b)(2)(B).
 - Buyback of treasury shares

- Employee stock ownership plans
- Corporate employee stock ownership plans, etc.

4. Expanded Affiliate Group

Under FATCA, due diligence and certain other requirements under an FFI agreement are generally imposed on an expanded affiliate group basis unless otherwise provided by the Treasury (e.g., the determination of the \$50,000 threshold with respect to individual accounts). As Japanese securities firms do not maintain pertinent records on the group basis and the requirement of group based due diligence and record maintenance would create substantial compliance burden, we request that participating FFIs be permitted to perform due diligence and maintain the required records on a stand-alone basis. We also request that annual reporting and external audit be permitted to be made on a stand-alone basis.

5. Other Requirements

(1) Annual Report

We request that participating FFIs be permitted to elect to use Form 1099 in lieu of the annual report at discretion of each participating FFI, in order to minimize the administrative burden placed on FFIs. Furthermore, even if Form 1099 is not elected, we request that the requirement to report the account balance, the amount of gross receipts and withdrawal be eliminated because Japanese securities firms do not maintain such records and would be unduly burdensome and costly to report such information.

(2) Report on Recalcitrant Account Holders

According to the Notice, the Treasury and the IRS appear to intend to require the reporting of recalcitrant account holders with certain indicia of U.S. status. We request that the scope of such reporting be limited only to the extent of the information available to the participating FFIs during their ordinary course of business.

(3) External Verification

We request that the external verification requirements be developed so that existing QIs would not face excessive cost and compliance burden, as they have already been required to comply with the external verification requirement.

Conclusion

As we discussed, FATCA would place considerable burden on the administrative matters of Japanese securities firms and financial institutions. Although all the above

issues are critical, we would like to ask for an extra attention to our request number 1, Application of Section 1471(f)(4) or 1471(b)(2)(B) to Japanese Financial Institutions. In the event that it is not feasible, then we request that the above request 2 ~ 5 be considered as an alternative. We would appreciate your kind consideration for Japanese securities firms and financial institutions in order to prevent possible negative consequences on the behaviors of Japanese investors who are investing in U.S. securities.

We look forward to working with you throughout the implementation of the FATCA provisions and remain at your disposal for a meeting or call to expand further on the above considerations.

Yours sincerely,
Japan Securities Dealers Association

伊地知 日出海

CC:

Mr. Steven A. Musher
Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Mr. Carl Cooper
Senior Counsel, Office of the Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Mr. John Sweeney
Attorney, Office of the Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224