



Invested in America

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RE: SIFMA Comments on Announcement 2012-42

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association (“SIFMA”)¹
welcomes the opportunity to submit these further comments regarding the regulations
that are being developed to implement the provisions of the Foreign Account Tax

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

Compliance Act (“FATCA”) that were included in section 501 of the Hiring Incentives to Restore Employment Act (the “HIRE Act”). The comments are made in response to Announcement 2012-42 (the “Announcement”).

First, SIFMA greatly appreciates the extensions of deadlines and clarifications contained in the Announcement. SIFMA in particular believes that the relaxed timelines set forth in the Announcement for withholding agents and FFIs to complete due diligence and other FATCA requirements will help the financial community to implement FATCA in an orderly manner.

Nonetheless, SIFMA believes that it is critical that the extensions of FATCA deadlines contained in the Announcement be supplemented, by extending the grandfathered obligation definition to cover obligations entered into prior to January 1, 2014 or outstanding on that date. In addition, we believe that it is absolutely critical for the term “grandfathered obligation” to include any obligation to make a payment with respect to, or to repay, collateral posted to secure any transaction entered into before January 1, 2014. The absence of final FATCA regulations and signed intergovernmental agreements (“IGAs”) has left many market participants unsure of their exact FATCA responsibilities. As a consequence, the financial markets remain in a state of flux regarding FATCA gross-ups and related matters, and SIFMA believes that subjecting obligations issued in 2013 to potential FATCA withholding risk may result in substantial market disruption.

At a minimum, SIFMA would strongly suggest that the grandfathered obligation definition be expanded to include a transaction (and any associated collateral) entered into before January 1, 2014 under an ISDA Master Agreement, a Global Master

Repurchase Agreement (“GMRA”), a Global Master Securities Lending Agreement (“GMSLA”), or any similar master agreement. Finally, SIFMA would suggest that the Announcement be clarified in the following technical respects:

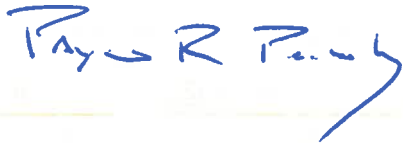
- For purposes of documenting accounts, it should be made clear that both USFIs and PFFIs may rely on an accountholder’s self-certification that it is a PFFI to cover periods when such status may not have been updated in the government’s electronic database (e.g., for PFFIs that sign FFI agreements after January 1, 2014).
- The exemption from withholding for gross proceeds realized before January 1, 2017 should be clarified to apply regardless of whether the disposed property could produce U.S. source income.
- Until such time as the rules respecting withholding on gross proceeds are finalized, including the determination of who is the payee in a receive versus purchase (“RVP”) or delivery versus purchase (“DVP”) transaction, neither USFIs nor PFFIs should be required to solicit new or additional documentation to determine the FATCA status of any potential payee of gross proceeds, except to the extent that such a payee also receives U.S. source FDAP income in addition to such gross proceeds.
- In connection with the expansion of the grandfathered obligation definition to include collateral posted to secure a notional principal contract that is a grandfathered obligation, it should be clarified that independently grandfathered collateral (e.g., collateral consisting of Treasury securities issued before January 1, 2013,

under the current grandfather rule) will not lose its grandfathered status merely because it is posted to secure a notional principal contract that is *not* a grandfathered obligation.

* * *

SIFMA appreciates your consideration of its collective views and concerns on the regulations that are being developed to implement the provisions of FATCA. Please do not hesitate to contact me at (202) 962-7300 or ppeabody@sifma.org if you have any questions or if we can be of further assistance.

Sincerely,



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Cc:

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