FATCA
Briefing on proposed regulations

Singapore, February 2012

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- These slides are illustrative only and should not be treated as a comprehensive or exact interpretation of the proposed FATCA regulations dated 8th February 2012, especially as clarification is still required from the IRS over the interpretation of some wording
- The views expressed by the presenters are not necessarily those of Ernst & Young LLP

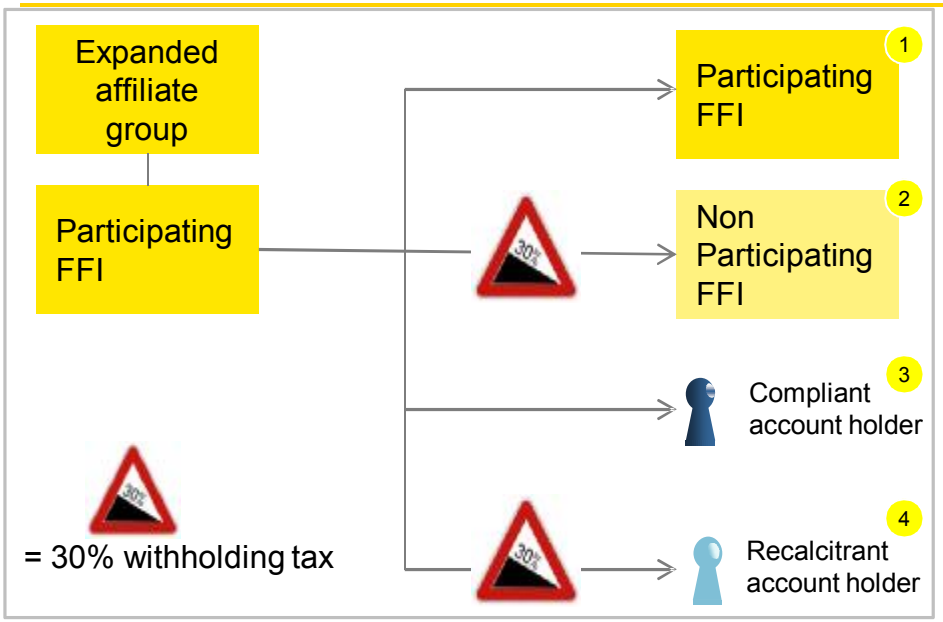
Agenda

1. Introductions
2. Overview of FATCA
3. Key changes
4. More details
5. Next steps

Introduction

- On 8th February 2012, Treasury and the IRS issued the proposed regulations under FATCA, 388 pages
- The proposed regulations address many of the major items requiring further clarification from the three prior notices
- The proposed regulations reflect significant modification and elaboration in the key areas of FATCA
- Treasury also released a joint statement together with five EU nations announcing a framework for reporting and sharing of information
- Feedback needs to be provided by 30th April
- Final regulations are still expected in “summer” 2012

Overview of FATCA
The principles remain the same



Foreign financial institution (FFI)

- An FFI is any foreign entity that:
  - accepts deposits in the ordinary course of a banking or similar business (e.g. bank);
  - as a substantial portion of its business, holds financial assets for the account of others (e.g. custodian)
  - is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading securities, partnership interests, commodities or any interest (including a future or forward contract or option) in such securities, partnership interests or commodities (e.g. broker).

1. Participating FFI (PFFI)

- An FFI that has entered into an agreement with the IRS. No witholding is required.

2. Non Participating FFI (NPFFI)

- An FFI that has not entered into an agreement with the IRS.
- An FFI must retain 30% of each "withholdable payment" made to a NPFFI.
- Withholdable payment is US sourced income such as dividends, interest, rents and royalties and the gross sale proceeds on the sale of assets producing US source dividends and interest.

3. Compliant account holder

- An account holder of a PFFI who agrees to the PFFI reporting on their investment income to the IRS.

4. Recalcitrant account holder

- A recalcitrant account holder is either someone who fails to provide information regarding their US tax status or refuses to all a PFFI to report their investment income to the IRS.
- All PFFIs must retain 30% of each withholdable payment attributable to a recalcitrant account holder.

Note:

If a participating FFI fails to withhold tax, the FFI remains responsible for its payment. Details of the payment process to the IRS are still to be defined by the IRS.

Key Changes

Timeline – No significant changes except for foreign passthrough payments

New account opening processes – Reliance on an FFI's existing client on-boarding processes

Entity accounts – A new US$250,000 de minimis applies for all entity accounts (US$50,000 de minimis for individual accounts remains)

Insurance contracts – A US$250,000 de minimis now in place for pre-existing accounts. Pure protection products out-of-scope

Enhanced reviews – Required for individual accounts with balances greater than US$1m. Private banking rules removed

Deemed compliance rules – Expansion of the deemed compliance rules. Usefulness of those rules needs to be evaluated as a number of restrictions remain

Withholding – Withholding on foreign passthru payments will not come into force until 2017 at the earliest

On boarding

Prior Notices

- KYC and client on-boarding processes should be enhanced to enable the identification of US or non-US status.

Proposed Regulations

- An FFI can rely on existing customer on-boarding processes
- FFI's are generally no longer required to make significant modifications to the information collection process
- However, requirement to obtain government issued identification remains
- Requirement to review all information collected to determine if an account holder has US Indicia remains…

New and Pre-Existing Accounts
US Indicia

- The requirement to review customer data for indicia of US status remains, with one additional criteria:

1. Identification of the account holder as a US citizen or US resident
2. US place of birth for the account holder
3. US address (including a US P.O. Box address)
4. Standing instructions to transfer funds to a US account
5. Hold mail or c/o address as the sole address (**pre-existing only US address, new accounts remains global addresses**)
6. Power of attorney or signatory authority granted to someone with a US address
7. **A US telephone number (new)**

If US indicia are found, then additional documentation will be required

Pre-Existing Account
De minimis limits

Prior Notices

Individual & Entity Accounts

- **Exempted**

  balance < $50K

- **Electronic search**

  between $50K to $500K

- **Electronic + due diligent review**

  > $500K

Proposed Regulations

Individual Accounts

- **Exempted**

  balance < $50K ($250K for insurance contracts)

- **Electronic search**

  between $50K to $1M

  ($250K to $1M for insurance contracts)

- **Electronic + due diligent review**

  > $1M

Entity Accounts

- **Exempted***

  balance < $250,000 (1 July 2013)

- **Electronic search**

  between $250K to $1M (1 July 2013)

- **Due diligent review**

  > $1M

Reporting

Prior Notices

Phased reporting for PFFI, the following information is required to be reported to the IRS,

- Name, address, TIN, account number of account holder and account balance as at calendar year end (2014)
- Aggregate number and value of accounts held by recalcitrant account holders (2014)
- Dividends, interest and other income paid to the account (2015)

Proposed Regulations

- Phased in timelines for reporting
- Election to report on a non-consolidated basis
- 2014: Name, address, TIN, account number of account holder and account balance as at calendar year end
- 2015: Above requirements plus income associated with US accounts
- 2016: Full reporting
- Reporting can be in the currency of the account or USD
- A PFFI may elect to perform 1099 reporting similar to US institutions.

Withholding – US FDAP and gross proceeds

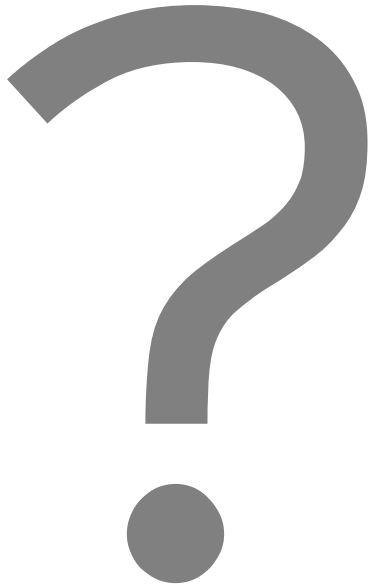
Prior Notices

- Participating FFIs were required to withhold on US source FDAP payments made to non participating FFIs beginning on 1 January 2014
- Withholding on gross proceeds beginning on 1 January 2015

Proposed Regulations

- Withholding on US sourced Fixed, Determinable, Annual, Periodic (FDAP) income and on gross proceeds begins 1 January 2015
- Exceptions
  - payments to prima facie FFIs (1 January 2014)
  - US FDAP paid by USFIs (1January 2014)
- No withholding for exempt payees and grandfathered obligations

Passthru payments



Deemed Compliance

Prior Notices

- Certain categories of FFIs will be deemed to be compliant
  - Certain local banks
  - Local FFI members of participating FFI groups
  - Certain investment vehicles
  - Other categories

- Deemed compliant FFIs will be required to certify to the IRS every three years that it meets the requirements for deemed compliant FFI status

Proposed Regulations

- For FFIs that are at low US tax evasion risk, they may be "deemed" to meeting the FATCA reporting requirement
- Two new sub categories of deemed compliant was introduced as well as a refinement of those introduced under Notice 2011-34
  1) Registered Deemed Compliant
  2) Certified Deemed Compliant
- Registered Deemed Compliant FFIs will be required to certify and register with the IRS
- Certified Deemed Compliant FFIs only required to certify and provide withholding documentation to withholding agents
- Insurance companies not mentioned
- Pensions and tax exempt orgs included
- 98% of accounts – local
- EU countries can be cross border

Expanded Affiliated Group

Prior Notices

- Each “FFI affiliate” in an “FFI Group” must be a participating FFI or deemed-compliant FFI
- Each FFI affiliate must execute their own FFI Agreement under coordinated procedures that will apply to all its worldwide branches and offices

Proposed Regulations

- Each member of an EAG must obtain the status of either a participating FFI or a registered deemed compliant FFI. There are exceptions to this general rule for limited branches, limited FFI affiliates and QIs.
  - Exception allowed for FFIs that cannot comply with FFI agreement due to local law restrictions, but only up to 31st December 2015
  - Must still undertake identification and due diligence required as if they were participating
  - Not allowed to open new U.S. accounts or accounts for non-participating FFIs

Chief Compliance Officer

Prior Notices

- The Chief Compliance Officer ("CCO") or another equivalent-level officer (responsible officer) of an FFI will be required to certify to the IRS to:
  - the timely completion of various steps in the account identification procedure as prescribed in Notice 2011-34,
  - the absence of any activity or policy in place between the publication date of Notice 2011-34 and the effective date of the FFI Agreement assisting or encouraging circumvention of US account identification procedures and
  - the existence of written policies and procedures in place as of the effective date of the FFI Agreement prohibiting employees from advising US account holders on how to avoid having their US accounts identified.

Proposed Regulations

- As before, plus
  - Annual sign off by the CCO
  - Annual internal review of FATCA compliance
  - External review if any evidence of systemic failure

Private banking

Prior Notices

For private banking accounts defined as any service using the words ‘private banking’, ‘wealth management’ and/or a ‘relationship manager, then

- Perform a diligent review of all manual records
- Question the relationship manager to ascertain if they had any reason to believe the client was a US person
- Maintain all correspondence for 10 years

Proposed Regulations

- Private banking requirements removed and replaced by a de minimis of $1m.
- However, all accounts over $1m need a diligent review of:
  - current customer files and certain other documents, and
  - is required only to the extent that the electronically searchable files do not contain sufficient information about the account holder
  - If a relationship manager exists, then they still need to be questionned
  - Maintain documentation for 6 years (general requirement)

Asset/ Fund Management

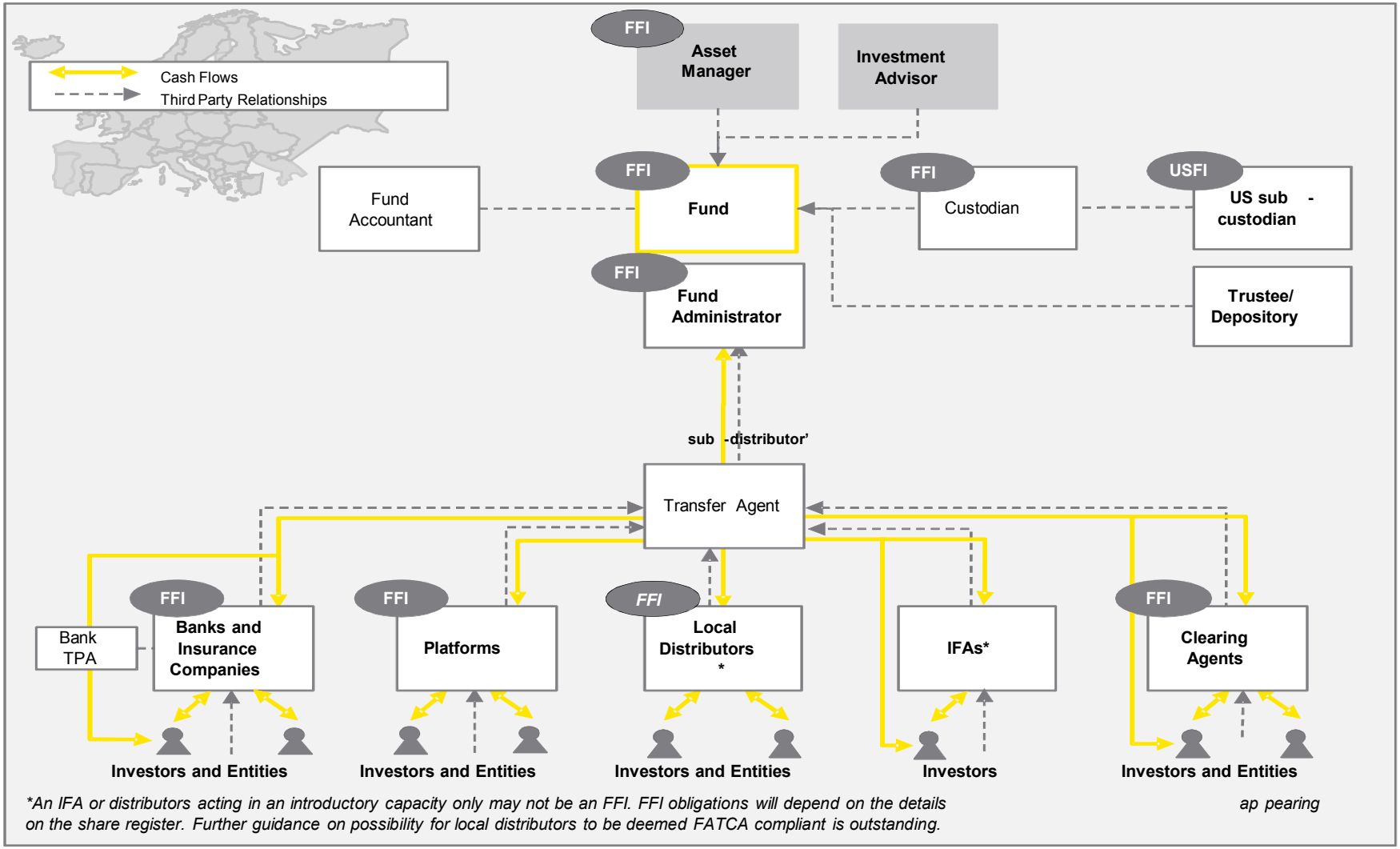
Prior Notices

Prior notices provided little if any specific guidance for Asset/ Fund Management.

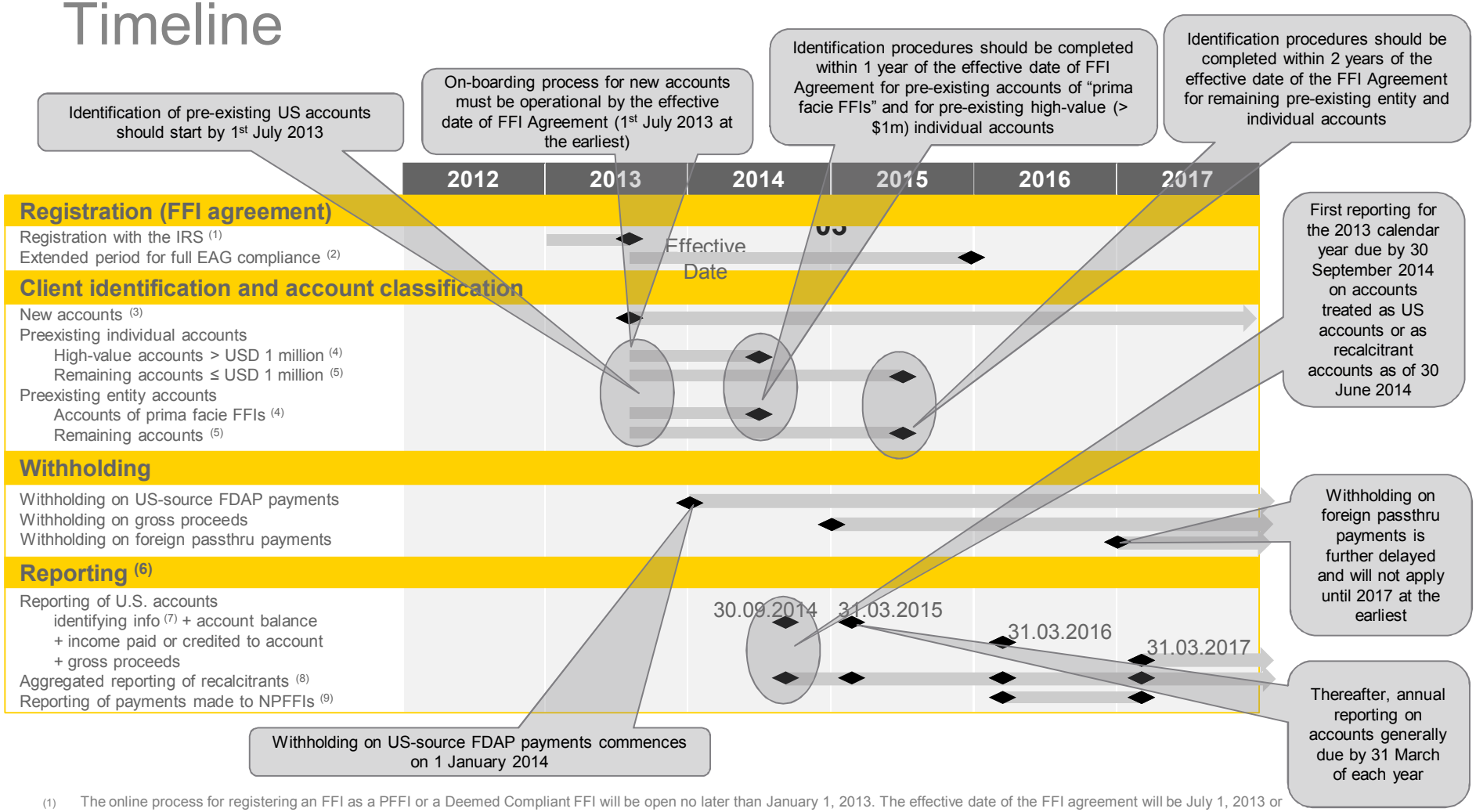
Proposed Regulations

- There remains very little that is specific to AM/FM organisations, particularly in the use of 3rd parties, and further guidance is expected
- Deemed compliance may bring some relief from FATCA, but not entirely. A deemed-compliant fund will still have to perform due diligence on direct investors and change how they do business with their distributors before registering with the IRS. If the distributor's status were to change, the fund will need to take remedial actions
- Responsible officer at each asset manager will be ultimately responsible for FATCA compliance, even if a third-party service provider performs all of the necessary due diligence, withholding and reporting functions

Asset/ Fund Management
Understanding the ecosystem – illustrative only



Timeline



(1) The online process for registering an FFI as a PFFI or a Deemed Compliant FFI will be open no later than January 1, 2013. The effective date of the FFI agreement will be July 1, 2013 or later.

(2) Certain "limited branches" and "limited FFIs" that are unable to be fully compliant as a result of local law restrictions may remain nonparticipating until December 31, 2015 without tainting the other members of the EAG group, although they may be subject to withholding.

(3) Accounts opened on or after the effective date of the FFI agreement.

(4) Within one year of the effective date of the FFI agreement—earliest effective date is July 1, 2013.

(5) Within two years of the effective date of the FFI agreement—earliest effective date is July 1, 2013.

(6) This slide does not address reporting requirements of withholding agents that are not FFIs.

(7) Name, address, TIN and account number either (i) of the account holder that is a specified U.S. person or (ii) of the U.S. owned foreign entity (TIN if available) and of each substantial U.S. owner of such entity.

(8) Separate reporting of recalcitrants with U.S. indicia and of dormant accounts (each on an aggregated basis) required.

(9) Payments of "foreign reportable amounts" (including non-U.S. source FDAP payments) to NPFFIs made in 2015 and 2016 required to be reported.

Next Steps

- It is now time for all financial institutions to reassess the precise implications of the proposed regulations on their customers, products, processes and systems, with a mandate of achieving cost-effective compliance. Only then will financial institutions be able to assess whether they benefit from the changes in the proposed regulations.

- The first effective date for FFIs is only 16 months away, so plans need to be engaged as soon as possible.

- Comments on the proposed regulations are required by 30th April 2012, which is a very short window in which to assess the impact of the proposed regulations and to prepare comments to the IRS should financial institutions wish to do so. Industry Associations will be key to success.

- A reminder – this is only a overview and a first interpretation of the proposed regulations. As more guidance and clarity is provided by the IRS and US Treasury some of these interpretations may change. In addition, these are not the final regulations.

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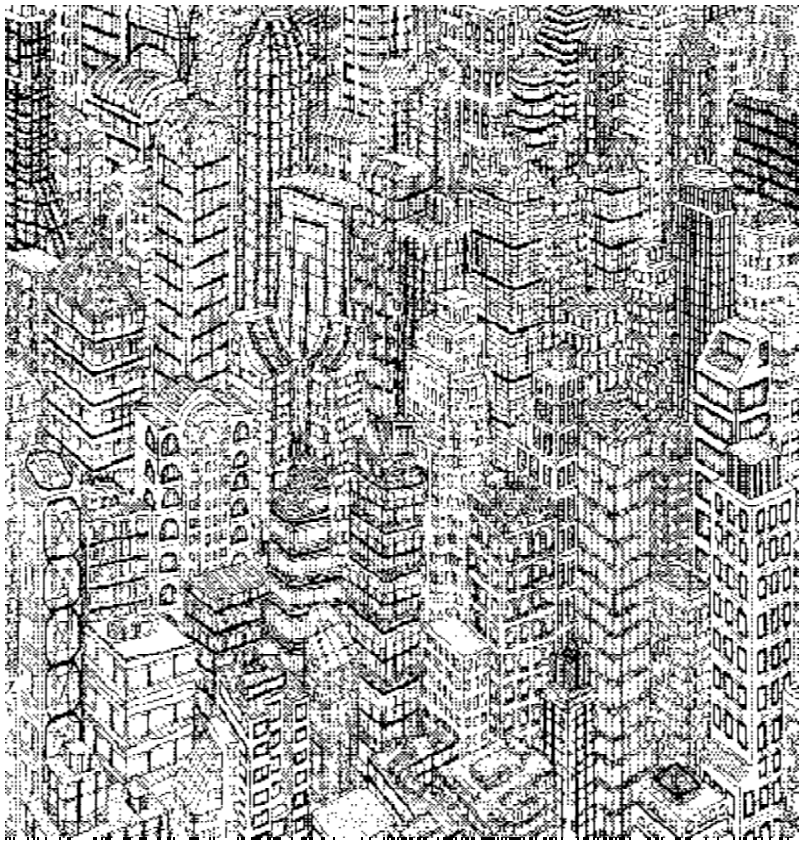

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