

July 13, 2013

**MEMORANDUM TO OUR INVESTMENT MANAGEMENT CLIENTS AND FRIENDS**

**FATCA UPDATE: IRS DELAYS FATCA IMPLEMENTATION FOR SIX MONTHS**

On July 12, the Internal Revenue Service (the “IRS”) issued Notice 2013-43 which will delay the implementation of the Foreign Account Tax Compliance Act (“FATCA”) by six months.

FATCA requires “foreign financial institutions” (“FFIs”), including non-U.S. private investment funds, to enter into an agreement with the IRS to (1) conduct due diligence regarding their investors to determine whether or not they have certain types of direct or indirect U.S. investors, (2) report certain information about certain of their direct and indirect U.S. investors, and (3) withhold amounts payable to investors who refuse to provide information to the fund (“recalcitrant accountholders”) and other FFIs which do not comply with their obligations under FATCA (“non-compliant FFIs”). If a non-U.S. private investment fund does not enter into an agreement with the IRS (or qualify for the benefits of an Intergovernmental Agreement (an “IGA”), as discussed below), it will be subject to a 30% withholding tax on its U.S. source interest and dividends and gross proceeds from the disposition of property which gives rise to U.S. source interest and dividends. In January, the IRS issued final Treasury Regulations implementing FATCA.

In Notice 2013-43, the IRS announced:

- (1) The online FATCA registration portal will open on August 19, 2013 rather than July 15, 2013;
- (2) FFIs must register with the IRS by April 25, 2014 rather than October 25, 2013 in order to avoid the imposition of withholding taxes when FATCA becomes effective on July 1, 2014;
- (3) Withholding on interest and dividends from U.S. securities will begin on July 1, 2014 rather than January 1, 2014; and
- (4) For purposes of FATCA, the due diligence rules applicable to new investors will be effective for those persons investing on or after July 1, 2014 rather than January 1, 2014.

A complete list of revised FATCA effective dates is attached as Exhibit A.

In addition, the IRS addressed certain technical issues in Notice 2013-43. The IRS will not finalize FATCA registrations or issue Global Intermediary Identification Numbers (“GIINs”), which serve as evidence of registration under FATCA, in 2013. Rather, an FFI will be able to input information in the FATCA portal in 2013 but will be required to finalize such information in 2014, at which time the IRS will issue a GIIN to the FFI.

A FFI resident in a jurisdiction that is treated as having an IGA in effect will be permitted to register on the portal as a registered deemed-compliant FFI. For purposes of such registration, the IRS announced that it will treat a jurisdiction which has signed an IGA as having brought into force such agreement. A list of such jurisdictions will be provided on the IRS website. It is noted that the Cayman Islands has announced that it intends to enter into an IGA with the United States but such agreement has not yet been signed. Therefore, the FATCA registration process for a Cayman Islands entity remains uncertain at this time.

Additional information regarding the application of FATCA to private investment funds can be found on our website. In particular, our webinar on this topic can be viewed at <http://38.88.62.101/fatca/index.html>.

We will continue to keep you updated of any new developments regarding FATCA. If you have any questions regarding the application of FATCA to your organization, please contact Jim Cofer (212/574-1688, [cofer@sewkis.com](mailto:cofer@sewkis.com)), Ron Cima (212/574-1471, [cima@sewkis.com](mailto:cima@sewkis.com)) or Dan Murphy (212/574-1210, [murphyd@sewkis.com](mailto:murphyd@sewkis.com)).

Seward & Kissel LLP

## Exhibit A

### Important Dates for FATCA

	<b>FATCA REGULATIONS</b>	<b>MODEL 1 IGA</b>
<b>Entering into FFI Agreement/Registration with IRS</b>	April 25, 2014 for effectiveness as of July 1, 2014	April 25, 2014 for effectiveness as of July 1, 2014
<b>Identification and Documentation Procedures for Entity Accounts</b>	<p><b>New Accounts</b><sup>1</sup>—Within 90 days of opening account (or when a withholdable payment is made with respect to the account, if earlier)</p> <p><b>Prima Facie FFIs</b><sup>2</sup>—Within six months of the effective date of the FFI Agreement (i.e., December 31, 2014)</p> <p><b>Pre-Existing Accounts</b><sup>3</sup>—Within two years of the effective date of the FFI Agreement (subject to an exception for accounts with a value of less than \$250,000<sup>4</sup>) (i.e., June 30, 2016)</p>	<p><b>New Accounts</b><sup>5</sup>—Upon opening account</p> <p><b>Pre-Existing Accounts</b><sup>6</sup>—June 30, 2016 (subject to an exception for accounts with a value of less than \$250,000<sup>7</sup>)</p>

<sup>1</sup> Accounts opened on or after the effective date of the FFI agreement (which will generally be July 1, 2014).

<sup>2</sup> A “Prima Facie FFI” is an entity which either (i) is designated as a qualified intermediary or non-qualified intermediary in the FFI’s electronically searchable records or (ii) is presumed or documented to be a foreign entity and has certain NAICS or SIC codes associated with its account in the FFI’s electronically searchable information.

<sup>3</sup> A “Pre-Existing Account” is an account that is outstanding on the effective date of the FFI agreement (which will generally be July 1, 2014).

<sup>4</sup> Under this exception, an FFI is not required to perform identification and documentation procedures with respect to a pre-existing entity account the aggregate balance or value of which is \$250,000 or less (determined as of the effective date of the FFI agreement) if no holder of such account that has been previously documented by the FFI as a U.S. person for purposes of the other U.S. withholding tax provisions is a “specified U.S. person”. This exception shall cease to apply if the account has a balance or value in excess of \$1,000,000 at the end of any subsequent calendar year.

<sup>5</sup> Accounts opened on or after July 1, 2014.

<sup>6</sup> A “Pre-Existing Account” is an account that is outstanding on July 1, 2014.

<sup>7</sup> Under this exception, an FFI is not required to perform identification and documentation procedures with respect to a pre-existing entity account the aggregate balance or value of which is \$250,000 or less (determined as of July 1, 2014) if no holder of such account that has been previously documented by the FFI as a U.S. person for purposes of the other U.S. withholding tax provisions is a “specified U.S. person”. This exception shall cease to apply if the account has a balance or value in excess of \$1,000,000 at the end of any subsequent calendar year in which case the FFI has six months after the end of such calendar year to document the account under regular procedures.

<p><b>Identification and Documentation Procedures for Individual Accounts</b></p>	<p><b>New Accounts</b>—Within 90 days of opening account (or when a withholdable payment is made with respect to the account, if earlier)</p> <p><b>Pre-Existing High-Value Accounts</b><sup>8</sup>—Within one year of the effective date of the FFI Agreement</p> <p><b>Other Pre-Existing Accounts</b>—Within two years of the effective date of the FFI Agreement (subject to an exception for accounts with a value of less than \$50,000<sup>9</sup>)</p>	<p><b>New Accounts</b>—Upon opening account</p> <p><b>Pre-Existing High-Value Accounts</b><sup>10</sup>—June 30, 2015</p> <p><b>Other Pre-Existing Accounts</b>—June 30, 2016 (subject to an exception for accounts with a value of less than \$50,000<sup>11</sup>)</p>
<p><b>Reporting Information About U.S. Accounts to IRS or FATCA Partner Jurisdiction</b></p>	<p>March 31, 2015 (with a 90-day extension) for 2014 calendar year<sup>12</sup></p>	<p>FATCA Partner jurisdiction provides information for 2014 to IRS by September 30, 2015<sup>13</sup></p>
<p><b>Making Responsible Officer Certifications to the IRS</b></p>	<p>February 29, 2016—initial certification regarding pre-existing accounts and practices and procedures</p> <p>June 30, 2017 and every three years thereafter—regular certification regarding compliance procedures</p>	<p>N/A</p>

<sup>8</sup> A “High-Value Account” is an account that has a balance of more than \$1,000,000 on the effective date of the FFI Agreement.

<sup>9</sup> Under this exception, an FFI is not required to perform identification and documentation procedures with respect to a pre-existing individual account the aggregate balance or value of which is \$50,000 or less (determined as of the effective date of the FFI agreement). This exception shall cease to apply if the account has a balance or value in excess of \$1,000,000 at the end of any subsequent calendar year.

<sup>10</sup> A “High-Value Account” is an account that has a balance of more than \$1,000,000 on July 1, 2014.

<sup>11</sup> Under this exception, an FFI is not required to perform identification and documentation procedures with respect to a pre-existing individual account the aggregate balance or value of which is \$50,000 or less (determined as of the effective date of the FFI agreement). This exception shall cease to apply if the account has a balance or value in excess of \$1,000,000 at the end of any subsequent calendar year in which case the FFI has six months after the end of such calendar year to document the account under regular procedures.

<sup>12</sup> Special limited reporting rules apply for 2014 and 2015 calendar years.

<sup>13</sup> This is the deadline for the partner jurisdiction to report to the IRS, but the date for reporting by an FFI in an IGA jurisdiction to its local taxing authority will be set by local legislation and could vary from country to country.

<b>Withholding on Interest and Dividends (paid to non-compliant FFIs)</b>	July 1, 2014	July 1, 2014
<b>Withholding on Gross Proceeds (paid to non-compliant FFIs)</b>	January 1, 2017	January 1, 2017
<b>Withholding on Recalcitrant Account Holders from Offshore Funds (Foreign Pass-Thru Payments)</b>	January 1, 2017	No withholding as long as information is reported to partner jurisdiction