

THE ASSOCIATION OF GLOBAL CUSTODIANS

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July 30, 2004

Robert H. Green
Director, International (SE:LM:IN)
Internal Revenue Service
1111 Constitution Avenue, NW, MA-3-322D
Washington, DC 20224

Re: U.S. Residency Certification -- Forms 6166 and 8802

Dear Mr. Green:

On behalf of the Association of Global Custodians ("Association"), thank you and your colleagues at the Internal Revenue Service ("IRS") for meeting with us on May 13, 2004¹ to discuss the Association's concerns on the Form 8802 process. The Association is very interested in pursuing our mutual aim to provide U.S. residents the most effective and accurate method for securing treaty benefits to which they are entitled.

At the May 13 meeting we outlined a number of concerns with the Form 8802 process and how the process has a negative impact on U.S. residents in their quest to receive treaty benefits, on custodians endeavoring to meet the needs of clients, and on the IRS, as well.

¹ **Present for Association:** Pat Costello (Mellon Financial); Tom Andrew (Brown Brothers Harriman); Stéphanie Atkinson (Brown Brothers Harriman); Larry Manning (JPMorgan Chase Bank); Justin O'Brien (The Bank of New York); Mary Bennett (Baker & McKenzie).

Present for IRS: Bob Green (Director, International); Aziz Benbrahim (Tax Treaty Manager, Group 1); Patti Valancius (Competent Authority Analyst, Tax Treaty Division); Felecia Davenport (Program Analyst, Philadelphia Service Center); Ron Rivelli (Section Chief, Philadelphia Service Center); Detta Kissel (Deputy Associate Chief Counsel – Intl.); Elizabeth Karzon (Branch Chief, Office of Associate Chief Counsel – Intl.); John Manton (Manager, Office of Foreign Payments).

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We are writing to follow up on these concerns and on the specific suggestions we recommend for improving the process.

The meeting began with an overview of the Association's interest in the processing of the Form 6166 applications given that Association members hold over \$40 trillion in securities. The Association also commented on the mutual interest we have with the IRS in improving the Form 6166 application process and our desire to air our concerns constructively with a view to securing benefits for our clients, as well as Association members and the IRS.

Attachment A to this letter is a copy of the talking points prepared for the May 13, 2004 meeting, annotated with information discussed during the meeting as well as additional details on the items of concern. The talking points are referenced in the discussion below.

I. Form 8802 Signature Requirement (See III.B. of talking points)

The Association outlined for the IRS participants that the instructions for the Form 8802 specify who may sign the Form. For example, a corporation's Form 8802 may be signed either by "an officer with legal authority to bind the corporation" or the corporation's authorized representative. In practice the IRS's Philadelphia Service Center ("PSC") has been rejecting numerous Forms 8802 signed by corporate officers that meet this requirement. From the perspective of our clients, binding signature authority is frequently held by officers other than those on a predetermined list such as president or CEO. To address the IRS's disclosure concerns, the Association suggests that the individual officer signing the Form 8802 certify under penalties of perjury (e.g., in Box 11 or by adding appropriate language to the Form) that he or she is an officer who has authority to legally bind the taxpayer entity. The officer will continue to include his or her title in the box labeled "Capacity in which acting" (e.g., "vice president" or "assistant treasurer"). By following this procedure, the individual officer should be deemed to have met the burden of proof, and clients will be able to process the forms in a timely manner without the need to adhere to inappropriate "title" requirements.

II. Form 8802 Annual Requirement Issues (See III.E. of talking points)

The Association noted the burden on its members and their clients to meet the annual renewal requirement for Form 8802, as well as the annual penalty of perjury statements. The completion of Form 8802 and the annual statement that the taxpayer is a U.S. resident and will file a U.S. tax return is an immense administrative undertaking for the custodian as well as its clients. The Association's clients include pension plans, VEBAs,

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the mutual fund industry, charities, educational foundations, insurance companies and corporations. These entities rarely cease to be U.S. residents. From our conversation with the IRS, it is the Association's understanding that the annual statements are for the almost exclusive purpose of weeding out those individuals that cease to be U.S. residents. As this is not the case with institutional clients (which hold the substantial majority of non-U.S. assets), we believe that the following two accommodations should be made for the custodial community:

- The Form 8802 should be valid for up to three years (e.g., current year, plus two additional years) if a taxpayer uses a custodian as an appointee and if the taxpayer includes in a penalties of perjury statement that it is a U.S. resident for the current year and plans to remain a U.S. resident through the end of the second succeeding taxable year and will notify the custodian if during that time period, it ceases to be a U.S. resident. This could be accomplished by using Box 11.
- The Form 8802 should allow for certification requests for up to three years. Accordingly, a Form 8802 could be signed in 2004 to cover requests for certificates for years 2004, 2005, and 2006 and would allow a third-party processor (e.g., custodian) to submit the original Form 8802 in 2004 for purposes of obtaining a residency certificate for 2004, and to submit copies of such previously executed Form 8802 in 2005 and 2006 for purposes of obtaining new certificates of residency for each of those years.

These two accommodations would be made available to the following entity types that are processed through a custodian:

- Complex Trust
- Revenue Ruling 81-100 Trust
- Estate
- Corporation
- Employee Benefit plan/trust
- An exempt organization under 501(c)(3)
- Governmental organization

Please note, many of the entity types listed above do not pay taxes to the U.S. government and therefore would not benefit by relinquishing their U.S. residency. The Association believes that the above proposal would enable the current burdensome requirements on the custodian and investor client to be substantially reduced and the functioning of the Form 8802 process to be greatly improved.

III. Partnership/Trust Issues

Form 8821 Annual Requirements: (See III.C. of talking points)

We would like to clarify with the IRS that it is not necessary to obtain annual Forms 8821 from all partners of partnerships and beneficiaries of trusts. Form 8821 is the authorization provided by a partner or beneficiary to allow the IRS to effectively disclose to the partnership or trust and any other designated persons that the partner or beneficiary files tax returns as a U.S. resident. This effectively gives the IRS the authority to issue the residency certification to and/or discuss the residency certification with the designated persons. The instructions to Form 8821 allow the requester to authorize tax information disclosure for future tax periods that end no later than three years after the date the tax information authorization is received by the IRS. We would like to request clarification from the IRS that one Form 8821 must be provided to the IRS per partner or beneficiary during the three year validity rule and that the new Form 8802 application should reference that Forms 8821 are on file with the IRS.

The Association would also suggest to the IRS that a Form 8821 prepared by a partner or beneficiary for the exclusive purpose of allowing a partnership, trust, or custodian to submit a Form 8802 remain valid with the IRS for an indefinite period. The Association believes that an indefinite validity is consistent with the applicable statute and regulations.

1. Section 6103(c) authorizes the IRS to disclose returns or return information in two circumstances: (a) to any person the taxpayer designates in a request for or consent to such disclosure, or (b) to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person.
2. Treas. Reg. § 301.6103(c)-1(b) sets forth standards for written requests for disclosure of return information to a designee of the taxpayer in the first situation – it requires that the request indicate “the taxable year or years covered by the return or return information”.
3. Treas. Reg. § 301.6103(c)-1(c) sets forth standards for written requests for disclosure of return information to a designee of the taxpayer in the second situation – it does *not* require the taxpayer to specify the taxable year or years covered by the return information – instead, it asks for sufficient facts to enable the IRS to determine the nature and extent of the information or assistance requested and the return information to be disclosed in order to comply with the taxpayer's request.

4. The Internal Revenue Manual (IRM 3.38.128.5) specifies that a Form 8821 submitted by a taxpayer to authorize confirmation that the taxpayer has filed a U.S. resident income tax return for purposes of preparing a Form 6166 U.S. residency certification is a disclosure request that falls into the second category mentioned above (i.e., a request that a third party provide assistance to the taxpayer in meeting the requirements to take advantage of the benefits available under a treaty).
5. In other words, such a request does not need to specify particular years in order to comply with the regulations.

We therefore recommend changes to Form 8821 and its instructions to provide that a Form 8821 which is submitted exclusively for purposes of facilitating requests for Form 6166 residency certificates should be valid indefinitely (i.e., until revoked or superseded).

Penalty of Perjury Statements for Partners or Beneficiaries (See III.C.2 of talking points)

The Association believes that obtaining annual statements under penalties of perjury from each individual partner or beneficiary stating that the partner or beneficiary is a U.S. resident and "will continue to be throughout the current tax year" is administratively burdensome for partnerships or trusts with large numbers of partners or beneficiaries. This has resulted in partnerships and trusts frequently not obtaining treaty benefits under current U.S. treaty arrangements.

We suggest that individual partners or beneficiaries provide a penalty of perjury statement that they are U.S. residents, that they intend to remain U.S. residents throughout the current taxable year and for the two following years, and that they will notify the partnership/trust if they abandon their U.S. residence before the end of that time period. By adopting this approach, the IRS could substantially reduce paperwork and associated administrative costs with minimal sacrifice of accuracy of determinations of continued residency status.

There are a number of factors that the IRS should take into account when addressing this issue. The IRS has the ability to verify interim filing of resident returns by each partner and beneficiary, thereby minimizing the risk of inaccurate determinations based on reliance on a longer term statement. Moreover, the Tax Treaty Division is under no express pressure from treaty partners to obtain specific forms of proof of continued residency status from U.S. taxpayers before issuing certificates of residency.

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IV. Country-Specific Certifications (See III.D. of talking points)

The Association feels that it is in all parties' best interests for the IRS to discontinue providing country-specific certifications except for those instances when they are clearly needed. The need to obtain country-specific Forms 6166 necessitates anticipating the countries in which potential investments may be made and forces the taxpayer to request multiple certificates. As noted in IRS News Release IR-2004-78, it is not a surprise that the IRS expects to double (to three million) the number of certifications issued in 2004 as compared to 2003. Based on our discussion, we understand that the IRS intends to discontinue issuing country-specific Forms 6166 except in unusual circumstances. Although this seems to be a system problem, the Association would like to reiterate the need to have this fixed before the year 2005 processing is upon us in less than six months.

For any other concerns or information that the IRS needs to document, the Association offers to compile and provide background information from its members. We understand information may be needed on issues that include: (i) non-treaty-related uses for the Form 6166 certifications, including identifying non-treaty country related requests in order to identify non-treaty-related purposes for which certifications are being requested; (ii) identification of treaty partners for which non-treaty-related requests are being made in order to determine whether some other procedure might be agreed upon with that treaty partner; and (iii) the need to respond to internal IRS requests for information on the countries for which certifications are being requested.

The Association has secured details on current non-treaty related uses of the Form 6166. Please see Attachment B to this letter for a table on treaty and non-treaty uses for Form 6166 certifications. Please note that the only non-treaty related use which affects the Association members in practice is the requirement imposed by various countries to produce a certificate of residence for underlying custodial customers whenever an Association member opens an investment account on behalf of its custodial customers in that country.

V. Transitional Relief (See III.F. & G. of talking points)

The Association would like to make note of the timing and lack of transitional period that coincided with the IRS's issuance of the new procedures and the consequences of that decision. Our clients have been unreasonably burdened with excessive tax liability due to the hurdles in obtaining a Form 6166 in a timely manner. The time period between announcement of the new procedures and implementation was much too short to allow institutions to alter their procedures and obtain updated information from their customers in

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order to be able to obtain Forms 6166 needed to facilitate tax relief. This inability to obtain Forms 6166 has in certain cases effectively led to permanent loss of treaty relief from foreign governments, thereby causing significant expense to both taxpayers and to the IRS itself.

The Association would like to work with the IRS on the refinement of the process going forward. As we are now into July we would like to pursue changes that will be implemented in the 2005 Form 8802 process and if possible, provide transitional relief in 2005. Guidance will need to be provided as soon as possible so that custodians have the time needed to update procedures and inform their clients as to their responsibilities. We also would like to see a training period instituted for the Philadelphia certification unit in order to bring the employees up to speed. As noted, the changes were not only a burden for us but to the Philadelphia office and the lack of adequate time to properly train the certification unit has adversely impacted the whole process. For example:

1. Turn around time for processing applications does not meet the 30-day target time.
2. Applications being processed by multiple personnel at PSC has led to contradictory information to applicants.
3. Typographical errors on certificates have led to rejection by withholding agents or tax authorities in treaty countries and the need for re-certification.
4. Processing mistakes have occurred, such as certificates for non-U.K. use being bundled with certificates for U.K. use and sent directly to U.K. tax authorities and certificates not being sent to designated person named on Form 8802.
5. Overall customer service issues have arisen due to the doubling of work.

ANNOTATED¹
TALKING POINTS FOR
ASSOCIATION OF GLOBAL CUSTODIANS MEETING AT IRS
REGARDING FORM 8802
May 13, 2004

I. Introductions

Present for Association: Pat Costello (Mellon); Tom Andrew (BBH); Stephanie Atkinson (BBH); Larry Manning (JPMorgan); Justin O'Brien (BONY); Mary Bennett (B&M)

Present for IRS: Bob Green (Director, International); Aziz Benbrahim (Tax Treaty Manager, Group 1); Patti Valancius (Competent Authority Analyst, Tax Treaty Division); Felecia Davenport (Program Analyst, Philadelphia Service Center); Ron Rivelli (Section Chief, Philadelphia Service Center); Detta Kissel (Deputy Associate Chief Counsel – Intl.); Elizabeth Karzon (Branch Chief, Office of Associate Chief Counsel – Intl.); John Manton (Manager, Office of Foreign Payments)

II. Overview of Association interest in process of obtaining Form 6166 residency certificates

- A. Custodians for over \$40 trillion in securities
- B. Nature of involvement in application process and maintenance of Form 6166

III. Comments with respect to new process

A. Overview

- 1. Some very helpful improvements in new process
 - a) Introduction of an official application form (Form 8802) is a welcome development
 - b) IRS willingness to accept applications by fax is also very helpful
- 2. Some concerns, however, about certain aspects of the process on which we have suggestions intended to be constructive

B. Form 8802 signature requirement

- 1. Instructions say corporation's Form 8802 may be signed either by "an officer with legal authority to bind the corporation" or the corporation's authorized representative, but in practice PSC has been rejecting some Forms 8802 signed by corporate officers
- 2. IRS website guidance says form may be signed by "any corporate officer, i.e. president, vice-president, treasurer, chief accounting officer, etc. duly authorized by the corporation to bind the corporation in accordance with applicable state law"
- 3. Binding signature authority is frequently held by numerous officers other than the president or CEO
- 4. **Suggestion:** let the individual signing Form 8802 certify under penalties of perjury (e.g., in Box 11 or by adding appropriate language to the Form) that he or she is an officer who has authority to legally bind the taxpayer entity

¹ To reflect the results of the discussions at that meeting.

- a) Allowing this would seem consistent with IRM 11.3.2.4.3(1)(b), which allows the IRS to disclose tax return information to an officer who provides a written statement on corporate letterhead to the effect that he or she has authority to legally bind the corporation.
- b) Would seem consistent with state law doctrine of apparent authority

Note: We have noted that the IRS wants the individual who signs the form to include his or her title in box labeled "Capacity in which acting" (e.g., "vice president" or "assistant treasurer").

C. Additional requirements for partnerships and common trusts

- 1. Primary problem relates to whether it is necessary to obtain *annual* Forms 8821 from all partners of partnerships and beneficiaries of trusts.

- a) Form 8821 is the authorization provided by a partner or beneficiary to allow the IRS to effectively disclose to the partnership or trust and any other designated persons that the partner or beneficiary files tax returns as a U.S. resident – this effectively gives the IRS the authority to issue the residency certification to and/or discuss the residency certification with the designated persons
- b) Instructions to Form 8821 allow requester to authorize tax information disclosure for future tax periods that end no later than 3 years after the date the tax information authorization is received by the IRS.
- c) **Requested clarification:** Can you please confirm our understanding that a Form 8802 submitted on behalf of a partnership or trust can attach copies of Forms 8821 previously provided by partners or beneficiaries and previously submitted to the IRS if those previously provided authorizations are still valid under the 3-year rule in the Form 8821 instructions?

- (1) Assuming you agree with our understanding, we request the IRS's public confirmation of this.

Note: The IRS is in apparent agreement with this understanding indicating that it would not be necessary to attach copies of previously filed, still valid Forms 8821 if the application simply made reference to them. The IRS took a note of our request for public confirmation of their agreement with this understanding.

- d) **Additional suggestion:** Taxpayer partners or beneficiaries should be able to execute Forms 8821 authorizing disclosure to the partnership or trust and to designated custodians exclusively for purposes of the latter's submission of Forms 8802 for an *indefinite* period in the future – we believe this suggestion would be fully consistent with the applicable regulations.

- (1) Section 6103(c) authorizes the IRS to disclose returns or return information in two circumstances: (a) to any person the taxpayer designates in a request for or consent to such disclosure, or (b) to any other person at the taxpayer's

request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person.

- (2) Treas. Reg. § 301.6103(c)-1(b) sets forth standards for written requests for disclosure of return information to a designee of the taxpayer in the first situation – it requires that the request indicate “the taxable year or years covered by the return or return information”
- (3) Treas. Reg. § 301.6103(c)-1(c) sets forth standards for written requests for disclosure of return information to a designee of the taxpayer in the second situation – it does *not* require the taxpayer to specify the taxable year or years covered by the return information – instead, it asks for sufficient facts to enable the IRS to determine the nature and extent of the information or assistance requested and the return information to be disclosed in order to comply with the taxpayer’s request.
- (4) The Internal Revenue Manual (IRM 3.38.128.5) specifies that a Form 8821 submitted by a taxpayer to authorize confirmation that the taxpayer has filed a U.S. resident income tax return for purposes of preparing a Form 6166 U.S. residency certification is a disclosure request that falls into the second category mentioned above (i.e., a request that a third party provide assistance to the taxpayer in meeting the requirements to take advantage of the benefits available under a treaty).
- (5) In other words, such a request does not need to specify particular years in order to comply with the regulations.
- (6) We therefore recommend changes to Form 8821 and its instructions to provide that a Form 8821 which is submitted exclusively for purposes of facilitating requests for Form 6166 residency certificates should be valid indefinitely (i.e., until revoked or superseded).

Note: *The IRS representatives invited a detailed proposal from the Association, and indicated that it would be considered.*

2. Additional issue relates to the need to get annual statements under penalties of perjury from each individual partner stating that the partner is a U.S. resident and “will continue to be throughout the current tax year.”
 - a) Obtaining annual statements of residence is administratively very burdensome for partnerships or trusts with large numbers of partners or beneficiaries
 - b) Risk of abandonment of U.S. residence within period of, say, 3 years is extremely low for vast majority of individuals (particularly those willing to state under penalties of perjury they intend to maintain U.S. residence for a specified multi-year period) and virtually non-existent for non-individual partners or beneficiaries.

- c) **Suggestions:**
- (1) Allow individual partners or beneficiaries to provide a penalties of perjury statement that they are U.S. residents and intend to remain U.S. residents throughout the current taxable year and for the 2 following years, and that they will notify the partnership/trust if they abandon their U.S. residence before the end of that time period – do away with need for annual refreshing of that statement thereafter; and
 - (2) Allow non-individual partners or beneficiaries to provide a penalties of perjury statement that they are U.S. residents and intend to remain U.S. residents indefinitely, and that they will notify the partnership/trust if they abandon their U.S. residence at any point in the future.
- d) Adopting this approach would vastly reduce paperwork and expense of annual contacts with each partner or beneficiary, with minimal sacrifice of accuracy of determinations of continued residency status.
- e) IRS has ability to verify interim filing of resident returns by each partner and beneficiary, further reducing risk of inaccurate determinations based on reliance on statement.

Note: *The representatives from the Tax Treaty Division confirmed that they were under no particular pressure from treaty partners to obtain specific forms of proof of continued residency status from U.S. taxpayers before issuing certificates of residency. The IRS representatives invited a detailed proposal from the Association, and indicated that it would be considered.*

D. Country-specific certifications

1. The new process indicates that future Forms 6166 will have to be country-specific (i.e., with the name of the particular treaty country shown on the Form 6166)
2. The need to obtain country-specific Forms 6166 (and to anticipate the countries in which potential investments may be made for the period for which the certification is to be used) is extremely burdensome on both the taxpayers and the IRS.
 - a) Taxpayers' tendency will be to request multiple certificates for many or all countries, in order to minimize need to go through application process again.
 - b) Result will be huge increase in paper flow for IRS and processors of certificates – some custodian banks are already seeing a 10-fold increase in paper flow
3. **Request for clarification:** The Association would like to understand better what has caused the IRS to institute country-specific certifications.
 - a) The IRS concern appears to be focused on the highly infrequent situation where the relevant taxpayer is a dual resident of the

United States and the treaty partner, or where the taxpayer is a U.S. citizen or green card holder resident in a third country, such that an analysis of the particular treaty's residency article may be necessary to determine whether the taxpayer qualifies as a U.S. resident for treaty purposes.

4. **Suggestion:** This concern is not sufficiently weighty to impose the very significant administrative burden of seeking country-specific certifications upon the vast majority of taxpayers, and that requirement should be eliminated.
- a) To the extent the IRS does have a concern about the dual resident situations, it could presumably be addressed by including required statements in the Form 8802 application process to the effect that the relevant U.S. resident is not currently and does not intend to become within the relevant period a resident of another country.
 - (1) Form 8802 already requires dual residents to identify themselves as such and to provide extra documentation to establish their exclusive U.S. residence under a treaty tiebreaker.
 - b) To the extent the IRS has a concern about the third country resident U.S. citizens and green card holders, that could presumably be addressed by having the Form 8802 application process require such taxpayers to identify themselves so that tailored Forms 6166 could be issued alerting the recipient that the relevant taxpayer is a U.S. resident only for purposes of those U.S. treaties which grant benefits to such individuals without exception (and the list of those treaties could be printed on the Form 6166).
 - (1) Form 8802 already requires U.S. citizens and green card holders who claim foreign tax credits or exclusions with respect to foreign earned income to identify themselves as such and to provide extra documentation to establish their U.S. residence.

Note: *The IRS confirmed that their ultimate objective is to issue generic (i.e., non-country-specific) Forms 6166 except in unusual circumstances involving certain dual resident corporations or individual citizens or green card holders resident outside the United States. The fact that some country-specific Forms 6166 are currently being issued in other cases is a "systems problem" they are striving to fix. They could not predict how quickly that would be fixed, although they seemed hopeful it would be soon.*

With respect to the requirement to specify on Form 8802 the purpose for which the certification is being requested (e.g., income tax, VAT, other; see Line 9) and the country or countries for which certifications are being requested (see Line 10), the IRS representatives said they wanted this information for a variety of reasons. These included: (i) to apply a treaty's legal standard of residence in the dual resident or non-resident citizen/green card holder cases mentioned above; (ii) to identify non-treaty country related requests in order to identify non-treaty-related purposes for which certifications are being requested; (iii) to identify treaty partners for which

non-treaty-related requests are being made in order to determine whether some other procedure might be agreed upon with that treaty partner; and (iv) to respond to internal IRS requests for information on the countries for which certifications are being requested. The Association representatives offered to compile and provide background information from their members on non-treaty-related uses for the Form 6166 certifications.

E. Form 8802 renewal period

1. Annual renewal requirement is unnecessarily burdensome.
 - a) Requiring Forms 8802 to be refreshed annually imposes processing burdens on IRS and on processors of applications.
 - b) Custodians must go back to customers each year for new signatures.
2. **Suggestion:** make Form 8802 valid for up to 3 years (e.g., current year, plus 2 additional years) if taxpayer includes in its Form 8802 a penalties of perjury statement that it is a U.S. resident for the current year and plans to remain a U.S. resident through the end of the second succeeding taxable year.
 - a) This would allow third party processor (e.g., custodian) to submit copies of previously executed Forms 8802 for purposes of obtaining new certificates of residency each year during this period.
 - (1) In other words, a Form 8802 could be signed in 2004 to cover requests for certificates for years 2004, 2005, and 2006.
 - (2) Custodian bank could submit Form 8802 (signed by customer) in 2004 to get 2004 certificate and could submit copies of that Form 8802 in 2005 and 2006 to get certificates for those years.
 - b) This would allow Form 8802 period of validity to coincide with Form 8821 period of validity.
 - c) Adopting this approach would vastly reduce paperwork and expense of annual contacts with each partner or beneficiary, with minimal sacrifice of accuracy of determinations of continued residency status.
 - d) IRS has ability to verify interim filing of resident returns by each partner and beneficiary, further reducing risk of inaccurate determinations based on reliance on statement.

Note: *The IRS appeared willing to consider a submission from the Association which would contain arguments for why a longer validity period is justified and a detailed explanation of how this could work particularly in the case of non-individual applicants.*

F. Transitional relief

1. Public guidance from the IRS indicates that the new procedures take effect on July 5, 2004, but PSC representatives have indicated they will effectively require compliance with the new procedures from early January 2004.

2. Either way, the time period between announcement of the new procedures and implementation is much too short to allow institutions to alter their procedures and obtain updated information from their customers in order to be able to obtain Forms 6166 in a timely manner.
3. An inability to obtain Forms 6166 will in many cases effectively lead to permanent loss of the ability to obtain treaty relief from the foreign government, potentially causing very significant expense to both taxpayers and to the IRS itself (because of increased foreign tax credits).
4. **Suggestion:** At least for those certification requests filed during calendar year 2004, they should be accepted if they contain all the requisite information that was required in practice under the pre-existing procedures.
 - a) We note that this means taxpayers would not be required to make country-specific requests, even though that was ostensibly first required by the December 2001 version of Publication 686, because the PSC was not requiring that in practice.
 - b) We also note that pre-existing procedures did not require penalties of perjury statements from any taxpayers (with the exception of individuals) or from partners in a partnership indicating their intent to remain resident in the United States throughout the current year.

G. Ongoing transition

1. The Association stands ready to work closely with the IRS to develop workable procedures for the issuance of Forms 6166
2. Any future changes to the procedures should be the subject of advance written proposals, involving adequate comment periods, and should allow sufficient transitional periods to enable taxpayers and institutions to adjust their procedures.

Note: The IRS representatives noted that the Form 6166 process did not easily fit within the normal IRS procedures for issuing proposed guidance with a notice and comment period (i.e., because it did not involve a regulations project), but they indicated a willingness to work with the Association on future refinements to the process.

H. Other administrative issues

1. Custodian banks want to work with IRS, including PSC, to address issues of administrative concern relating to handling of applications, issuance of certificates – for example:
 - a) Turn around time for processing applications – banks are frequently finding the 30-day target time for turn around is not being met.
 - b) Applications being processed by multiple personnel at PSC – can lead to contradictory information to applicants.
 - c) Typos on certificates – can lead to rejection by withholding agents or tax authorities in treaty country.
 - d) Processing mistakes – e.g., certificates for non-U.K. use being bundled with certificates for U.K. use and sent directly to U.K. tax

authorities, certificates not sent to designated person named on Form 8802

- e) Overall customer service issues]

Note: A few customer service issues were briefly discussed. The IRS representatives made note of several suggestions, including using faxes to notify custodian banks of any processing problems encountered with faxed applications. To ensure that Forms 6166 or other communications are directed to the proper parties at the custodian banks, they recommended indicating on the Form 8821 or 8802 the appropriate department to which the communications should be sent. The IRS representatives said they shared the Association's desire to see the process work more smoothly and quickly, and they indicated a willingness to consider and pursue appropriate suggestions made by the Association.

I. Conclusion

1. Greatly appreciate IRS's willingness to engage in dialogue with Association on these issues.
2. Pleased to note that concerns similar to those of Association are also being raised by British Bankers Association and New York Clearing House.
3. Want to help streamline process so that it works to achieve maximum appropriate treaty benefits for U.S. residents, minimal foreign tax credit claims, and minimal processing burden on IRS and taxpayers and their designees.
4. Look forward to opportunity to follow up on points discussed today.

Note: IRS likewise expressed interest in pursuing the dialogue and will look forward to a further submission from the Association.

Attachment B

The Association of Global Custodians
Table of Treaty and Non-Treaty Uses for Form 6166 Certifications

Country	Income Tax Treaty in Force with US	COR Required for Investment ¹	Exch. of Info. Agreement in Force with US ²
Bahrain	No	No	No
Brazil	No	No	No
Bulgaria*	No	Yes	No
Chile*	No	Yes	No
China	Yes	No	Yes
Colombia*	No	Yes	Pending
Cyprus	Yes	Yes	Yes
Czech Republic	Yes	Yes	Yes
Ecuador	No	No	No
Greece	Yes	No	Yes
Hungary	Yes	Yes	Yes
Iceland	Yes	No	Yes
India	Yes	Yes	Yes
Japan	Yes	Yes	Yes
Jordan	No	No	No
Kazakhstan	Yes	Yes	Yes
Lebanon	No	No	No
Malaysia	No	No	No
Nigeria	No	No	No
Pakistan	Yes	No	Yes
Poland	Yes	Yes	Yes
Romania	Yes	Yes	Yes
Russia	Yes	Yes	Yes
Slovak Republic	Yes	Yes	Yes
Slovenia	Yes	No	Yes
South Korea	Yes	Yes	Yes
Sri Lanka	Yes	Yes	Yes
Taiwan*	No	Yes	No
Turkey	Yes	Yes	Yes
United Arab Emirates*	No	Yes	No
Ukraine	Yes	Yes	Yes
Venezuela	Yes	No	Yes
Vietnam	No	No	No

¹ Country requires a certificate of residence in order for an investment account to be opened on behalf of custodial client.

² Exchange of information provision may be part of treaty where treaty is in force.

* Countries shaded in yellow are those non-treaty countries which require a certificate of residence in order for an investment account to be opened on behalf of a custodial client.