THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK MELLON CORPORATION
BROWN BROTHERS HARRIMAN
CITIBANK, N.A.
HSBC SECURITIES SERVICES
JPMORGAN CHASE BANK, N.A.
NORTHERN TRUST
RBC DEXIA INVESTOR SERVICES
STATE STREET BANK AND TRUST COMPANY

COUNSEL AND SECRETARIAT TO THE ASSOCIATION:
BAKER & MCKENZIE LLP
815 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20006

TELEPHONE: 202/452-7000
FACSIMILE: 202/452-7074

WWW.THEAGC.COM

18 February 2009

**Via Electronic Transmission**

Ms. Johanne Rian
Legal Adviser
The Royal Norwegian Ministry of Finance
Oslo, Norway

Re: Treaty Eligibility Under Norway-U.S. Income Tax Convention

Dear Ms. Rian:

On behalf of the Association of Global Custodians (the "Association"), we are writing to convey Association members' support for the views expressed and recommendations made in the letter of December 17, 2008 to you from the Investment Company Institute (the "ICI Letter") regarding the treaty eligibility questions that have recently arisen for U.S. regulated investment funds ("RICs") investing in Norway. In addition, as developed below Association members have similar views to express regarding the eligibility for treaty benefits of U.S. pension funds investing in Norway. We respectfully urge the Ministry to confirm that both U.S. RICs and U.S. pension funds are eligible in Norway for reduced withholding tax rates under the Norway-U.S. income tax convention.

As you may know, the Association is an informal group of eight global banking institutions with affiliates and branches in numerous countries that provide global custody services and related securities asset-servicing functions to cross-border institutional investors around the globe.[1] In providing global custody services, Association members routinely seek appropriate tax relief on behalf of their custody clients, which include U.S. RICs and U.S. pensions funds. The Association also seeks to eliminate or minimize existing discrepancies in the current tax relief processes and regimes from jurisdiction to jurisdiction, which can be problematic and costly for custodians and their clients.

---

[1] The members of the Association are listed on the letterhead above.

The concerns and recommendations of Association members with respect to the treatment of RICs and pension funds are explained in turn below.

*Treatment of RICs*

The Association concurs in the factual discussion and analysis set forth in the ICI Letter with respect to the treatment of RICs and encourages the Ministry to issue the clarifications requested by that Letter. Any denial of treaty benefits for investments made by RICs would be of direct concern to Association members as global custodians and to their fund clients and would significantly lessen the attractiveness of investments into Norway.

*Treatment of Pension Funds*

For the same reason, Association members also wish to confirm that U.S. pension funds investing in Norway are eligible for the benefits of the Convention. We were concerned to see a different view expressed in the Ministry's response last year to a 2003 query from an advisory firm, which questions whether U.S. pension funds qualify as residents of the United States for purposes of the Convention. It appears, however, that that view may have been premised on an incomplete understanding of the treatment of pension funds under U.S. tax law and may have not taken into account certain OECD guidance. We respectfully urge the Ministry to reevaluate and clarify the analysis reflected in its 2008 correspondence based upon the additional information provided below.

Like RICs, U.S. pension funds are taxed under U.S. domestic law in a manner similar to charitable organizations. That is, they are subject to the taxing jurisdiction of the United States and are taxed currently on their income as U.S. residents unless they qualify for one of the limited exemptions provided by U.S. law. To qualify for an exemption from current taxation and avoid the imposition of penalties, the pension fund must satisfy a series of strict requirements, including participation requirements and restrictions, limitations on contributions, and minimum distribution requirements. Income that is not taxed currently to the pension fund is taxed to the beneficiaries upon distribution, except in rare cases where contributions to the fund were taxed when made.

In view of this treatment, we respectfully submit that U.S. pension funds qualify as residents of the United States under Article 3 of the Convention, because they are resident in the United States for purposes of its tax. Even if pension funds are treated as trusts, their income is "subject to tax" as the income of a resident of the United States. This result is explicitly confirmed by the U.S. Model Income Tax Convention, which states in Article 4 (Resident) that, like a charitable organization, a pension fund established in a Contracting State is a resident of that State "notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State." This statement merely confirms the long-standing interpretation of the United States.

This position also is consistent with that reflected in the OECD Commentary on Article 4 of the OECD Model Tax Convention at paragraph 8.5, which indicates that most OECD Member States consider pension funds to be "liable to tax" even if they qualify for tax exemption under domestic law. The OECD Commentary further indicates at paragraph 8.6 that States with a different view should address the issue in their bilateral conventions. The Norway-U.S. Convention does not specify a different approach. Nor has Norway filed an observation on the Commentary indicating an intention to take such a view or historically done so in practice.

The Association and its members urge the Ministry to reevaluate the Ministry's earlier analysis and avoid creating a disincentive to investment in Norway by seeking to deny the benefits of the Convention to U.S. RICs or pension funds. We would very much appreciate the Ministry's confirmation of these two points before Norwegian companies begin to pay dividends in March.

* * *

We appreciate the opportunity to provide the Association's views on these matters. If you have questions or would like additional information, please contact the undersigned at +1 202 452-7049 or carol.a.dunahoo@bakernet.com.

Sincerely yours,

Carol A. Dunahoo
Baker & McKenzie LLP
Counsel to the Association