

THE ASSOCIATION OF GLOBAL CUSTODIANS

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BY E-MAIL

Mr. John Sweeney
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Re: Proposed FATCA FAQ for Umbrella Fund / Sub-Fund Issue

Dear Mr. Sweeney,

The member banks of the Association of Global Custodians ("AGC" or "Association")¹ would like to propose an addition to the IRS's FATCA Frequently Asked Questions ("FAQ") webpage to address an uncertainty that exists about how to complete Form W-8BEN-E in situations involving investment funds outside the United States that have an "umbrella" fund structure with multiple sub-funds. An explanation for the proposed Q&A and a draft of the proposed language is included in the Appendix to this letter. The Association members appreciate your willingness to consider this proposal, and we would be pleased to discuss it with you by telephone if desired.

Sincerely yours on behalf of the Association,



Mary C. Bennett
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Counsel to the Association

¹ The Association is an informal group of 11 member banks that provide securities safekeeping and asset serving functions to cross-border institutional investors worldwide. Members provide custody-related services to most types of institutional investors, including investment funds, pension funds, and insurance companies.

APPENDIX

Proposed FATCA Q&A from Association of Global Custodians

Introduction:

Some investment funds created outside of the United States, such as Luxembourg SICAVs, employ an umbrella/sub-fund structure. If the sub-funds have segregated assets and liabilities, they may be considered a distinct/separate entity and beneficial owner for United States federal income tax purposes,¹ notwithstanding that in many countries the sub-funds have no legal or tax identity separate and distinct from that of the umbrella. A different answer may apply based on an analysis under a FATCA intergovernmental agreement.

Issue:

Under FATCA, foreign investment funds are generally required to obtain a GIIN and furnish a Form W-8BEN-E to their withholding agents. This includes a fund utilizing an umbrella/sub-fund structure.

It is uncertain whether:

- the umbrella needs to obtain a GIIN,
- each underlying sub-fund needs to obtain a GIIN, or
- both the umbrella and each underlying sub-fund need to obtain a GIIN.

This has led to uncertainty on how a Form W-8BEN-E is to be validated for an umbrella/sub-fund.

Withholding agents seek flexibility to accept Forms W-8BEN-E completed in the name of either the umbrella or the sub-fund so long as the link between the umbrella and the underlying sub-funds can be established. Some withholding agents have accepted Forms W-8 for either the umbrella or each sub-fund for purposes of the longstanding Chapter 3 regime, while others have attempted to enforce a strict match between line 1 of a Form W-8BEN and the registered owner of the account, which is often opened in the name of the sub-fund (when a Form W-8BEN is provided for each sub-fund, a Form W-8IMY is sometimes provided for the umbrella). Withholding agents seek confirmation that a Form W-8BEN-E in the name of either the umbrella or sub-fund can be accepted for both Chapter 3 and FATCA purposes.

Proposed Question:

Specific Scenario: A non-U.S. investment fund employing an umbrella/sub-fund structure is required to obtain a GIIN and furnish a Form W-8BEN-E to its withholding agents (assume the fund entity or entities are not transparent for U.S. tax purposes). A sponsoring entity will not be utilized.

In this scenario, is it acceptable for a Form W-8BEN-E to be executed reflecting:

¹ By analogy to, e.g., the treatment of series under Prop. Reg. § 301.7701-1(a)(5).

Method 1:

- Line 1: Name of sub-fund
- Line 10: Name of umbrella fund as a reference
- Line 9a: GIIN of sub-fund

For method 1, the Form W-8BEN-E for each sub-fund can be accepted with or without a Form W-8IMY for the umbrella.

Method 2:

- Line 1: Name of umbrella
- Line 10: Name of underlying sub-fund or the phrase “all sub-funds” as a reference*
- Line 9a: GIIN of umbrella

*In lieu of a reference to each sub-fund or the phrase “all sub-funds” on Line 10, a withholding agent may apply a Form W-8 for an umbrella to any of its sub-funds by obtaining written authorization of the same on a medium other than a Form W-8 from any person authorized to sign for the umbrella. Such authorization need not name each sub-fund provided the authorization explicitly covers “all” sub-funds of the umbrella and the withholding agent utilizes a prospectus (or similar offering document) to establish the link between the umbrella and each sub-fund.

Method 3:

- Line 1: Name of umbrella and sub-fund, such as umbrella dba as sub-fund, umbrella fbo sub-fund
- Line 10: No reference
- Line 9a: GIIN of umbrella or sub-fund

Methods other than the above three methods may be acceptable.

Desired Answer:

Yes.