

**TAXATION**

**Foreign Account Tax Compliance**

**Agreement Between the  
UNITED STATES OF AMERICA  
and BERMUDA**

Signed at Hamilton December 19, 2013

*with*

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

**BERMUDA**

**Taxation: Foreign Account Tax Compliance**

*Agreement signed at Hamilton December 19, 2013;  
Entered into force August 19, 2014.  
With annexes.*

**Agreement between the Government of the United States of America and the  
Government of Bermuda for Cooperation to Facilitate the Implementation of FATCA**

Whereas, the Government of the United States of America and the Government of Bermuda (each, a “Party,” and together, the “Parties”) seek to build on their existing relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve their cooperation in combating international tax evasion;

Whereas, Article 3 of the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (on Behalf of the Government of Bermuda) for the Exchange of Information with respect to Taxes, Done at Washington DC on December 2, 1988 (the “TIEA”), which is implemented in Bermuda by the USA Bermuda Tax Convention Act of 1986 (the “Act”), authorizes the exchange of information for tax purposes;

Noting that the Government of the United Kingdom of Great Britain and Northern Ireland (the “United Kingdom”) provided a copy of a Letter of Entrustment, via diplomatic note [no.] of [date] to the Government of the United States of America in which the United Kingdom entrusts the Government of Bermuda to negotiate and conclude a [tax agreement with the United States on information exchange to facilitate implementation of the Foreign Account Tax Compliance Act of America];

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Government of Bermuda is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that Bermuda financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, intergovernmental cooperation to facilitate FATCA implementation would address these issues and reduce burdens for Bermuda financial institutions;

Whereas, the Parties desire to conclude an agreement to provide for cooperation to facilitate the implementation of FATCA based on direct reporting by Bermuda financial institutions to the U.S. Internal Revenue Service, supplemented by the exchange of information upon request pursuant to the TIEA and the Act, and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the TIEA and the Act;

Now, therefore, the Parties have agreed as follows:

**Article 1  
Definitions**

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:

- a) The term “**United States**” means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a “**State**” of the United States includes the District of Columbia.
- b) The term “**U.S. Territory**” means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
- c) The term “**IRS**” means the U.S. Internal Revenue Service.
- d) The term “**Bermuda**” means the islands in the Atlantic Ocean known as Bermuda
- e) The term “**Partner Jurisdiction**” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
- f) The term “**Competent Authority**” means:
  - 1) in the case of the United States, the Secretary of the Treasury or his delegate; and
  - 2) in the case of Bermuda, the Minister of Finance or his delegate.
- g) The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- h) The term “**Foreign Reportable Amount**” means, in accordance with relevant U.S. Treasury Regulations, a payment of fixed or determinable annual or periodical income that would be a withholdable payment if it were from sources within the United States.
- i) The term “**Custodial Institution**” means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- j) The term “**Depository Institution**” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
- k) The term “**Investment Entity**” means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
  - 1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

- 2) individual and collective portfolio management; or
- 3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(k) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

- l) The term “**Specified Insurance Company**” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
- m) The term “**Bermuda Financial Institution**” means (i) any Financial Institution organized under the laws of Bermuda, but excluding any branch of such Financial Institution that is located outside Bermuda, and (ii) any branch of a Financial Institution not organized under the laws of Bermuda, if such branch is located in Bermuda.
- n) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- o) The term “**Reporting Bermuda Financial Institution**” means any Bermuda Financial Institution that is not a Non-Reporting Bermuda Financial Institution.
- p) The term “**Non-Reporting Bermuda Financial Institution**” means any Bermuda Financial Institution, or other Entity resident in Bermuda, that is described in Annex II as a Non-Reporting Bermuda Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations.
- q) The term “**Nonparticipating Financial Institution**” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 4 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.
- r) The term “**New Account**” means a Financial Account opened by a Reporting Bermuda Financial Institution on or after July 1, 2014.
- s) The term “**U.S. Account**” means a Financial Account maintained by a Reporting Bermuda Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S.

Account if such account is not identified as a U.S. Account after application of the due diligence procedures in Annex I.

- t) The term “**Non-Consenting U.S. Account**” means a Financial Account maintained by a Reporting Bermuda Financial Institution as of June 30, 2014 with respect to which (i) a Reporting Bermuda Financial Institution has determined that it is a U.S. Account in accordance with the due diligence procedures in Annex I, (ii) the laws of Bermuda prohibit the reporting required under an FFI Agreement absent consent of the Account Holder, (iii) the Reporting Bermuda Financial Institution has sought, but was unable to obtain, the required consent to report or the Account Holder’s U.S. TIN; and (iv) the Reporting Bermuda Financial Institution has reported, or was required to report, aggregate account information to the IRS as prescribed under sections 1471 to 1474 of the U.S. Internal Revenue Code and relevant U.S. Treasury Regulations.
- u) The term “**Financial Account**” has the meaning set forth in relevant U.S. Treasury Regulations, but does not include any account that is excluded from the definition of Financial Account in Annex II.
- v) The term “**FFI Agreement**” means an agreement that sets forth the requirements, consistent with this Agreement, for the Reporting Bermuda Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code.
- w) The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term “Financial Institution” does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- x) The terms “**Cash Value Insurance Contract**” and “**Annuity Contract**” have the meanings set forth in relevant U.S. Treasury Regulations.
- y) The term “**U.S. Person**” means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This

subparagraph 1(y) shall be interpreted in accordance with the U.S. Internal Revenue Code.

- z) The term “**Specified U.S. Person**” means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.
- aa) The term “**Entity**” means a legal person or a legal arrangement such as a trust.
- bb) The term “**Non-U.S. Entity**” means an Entity that is not a U.S. Person.
- cc) An Entity is a “**Related Entity**” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, Bermuda may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.
- dd) The term “**U.S. TIN**” means a U.S. federal taxpayer identifying number.
- ee) The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “**Controlling Persons**” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 2 Reporting and Exchange of Information

1. **Directive to Bermuda Financial Institutions.** Bermuda shall direct and enable all Reporting Bermuda Financial Institutions to:

- a) register with the IRS by July 1, 2014, and comply with the requirements of an FFI Agreement, including with respect to due diligence, reporting, and withholding;
- b) with respect to Financial Accounts maintained by Reporting Bermuda Financial Institutions as of June 30, 2014 identified as U.S. Accounts,
  - (i) request from each Account Holder the Account Holder's U.S. TIN and consent to report and simultaneously inform the Account Holder in writing that, if the U.S. TIN and consent are not given, (1) aggregate information about the account shall be reported to the IRS, (2) information about the account may give rise to a group request by the IRS for specific information about the account, (3) in such case, the account information shall be transmitted to the Bermuda Competent Authority, and (4) the Bermuda Competent Authority may exchange this information with the IRS in accordance with paragraph 2 of this Article;
  - (ii) report annually to the IRS, in the time and manner required by an FFI Agreement and relevant U.S. Treasury Regulations, the aggregate information required with respect to Non-Consenting U.S. Accounts;
- c) with respect to accounts of, or obligations to, Nonparticipating Financial Institutions that exist as of June 30, 2014, and in connection with which the Reporting Bermuda Financial Institution expects to pay a Foreign Reportable Amount,
  - (i) with respect to calendar years 2015 and 2016, request from each such Nonparticipating Financial Institution the Nonparticipating Financial Institution's consent to report and simultaneously inform the Nonparticipating Financial Institution in writing that, if such consent is not given, (1) aggregate information about Foreign Reportable Amounts paid to the Nonparticipating Financial Institution shall be reported to the IRS, (2) such information may give rise to a group request by the IRS for specific information about the account or obligation, (3) in such case, the information about the account or obligation shall be transmitted to the Bermuda Competent Authority, and (4) the Bermuda Competent Authority may

exchange this information with the IRS in accordance with paragraph 2 of this Article;

- (ii) with respect to calendar years 2015 and 2016, report to the IRS the number of non-consenting Nonparticipating Financial Institutions to which Foreign Reportable Amounts were paid during the year and the aggregate value of all such payments no later than March 15 of the year following the year to which the information relates;
- d) with respect to New Accounts identified as U.S. Accounts, obtain from each Account Holder consent to report, consistent with the requirements of an FFI Agreement, as a condition of account opening; and
- e) with respect to new accounts opened by, or obligations entered into with, a Nonparticipating Financial Institution on or after July 1, 2014, and in connection with which the Reporting Bermuda Financial Institution expects to pay a Foreign Reportable Amount, obtain from each such Nonparticipating Financial Institution consent to report, consistent with the requirements of an FFI Agreement, as a condition of opening the account, or entering into the obligation.

2. **Exchange of Information.**

- a) In the context of FATCA implementation, the U.S. Competent Authority may make group requests to the Bermuda Competent Authority based on the aggregate information reported to the IRS pursuant to the directive described in subparagraphs 1(b)(ii) and 1(c)(ii) of this Article, for all the information about Non-Consenting U.S. Accounts and Foreign Reportable Amounts paid to Nonparticipating Financial Institutions that the Reporting Bermuda Financial Institution would have had to report under an FFI Agreement had it obtained consent. Such requests shall be made pursuant to Article 3 of the TIEA and shall apply to information for the time period beginning on or after the date of signature of this Agreement.
- b) The information requested pursuant to subparagraph 2(a) of this Article shall be considered information that is necessary for carrying out the administration or enforcement of the domestic laws of the United States concerning taxes covered by the TIEA and the Act and under which taxation is not contrary to the TIEA and the Act, without regard to whether the Reporting Bermuda Financial Institution or another party has contributed to non-compliance of the taxpayers in the group request.
- c) The Bermuda Competent Authority shall, within six months of the receipt of the group request, provide the U.S. Competent Authority with all such requested information in the same format in which the information would have been reported if it had been reported directly to the IRS by the Reporting Bermuda Financial Institution. The Bermuda Competent Authority shall notify the U.S.

Competent Authority and the relevant Reporting Bermuda Financial Institution if there will be any delay in the exchange of the requested information. In such case, the provisions of subparagraph 2(b) of Article 3 of this Agreement shall apply with respect to the Reporting Bermuda Financial Institution, and the Bermuda Competent Authority must exchange the requested information with the U.S. Competent Authority as soon as possible.

- d) Notwithstanding subparagraph 2(c) of this Article, the Bermuda Competent Authority is not required to obtain and exchange the U.S. TIN of the Account Holder of a Non-Consenting U.S. Account if such U.S. TIN is not in the records of the Reporting Bermuda Financial Institution. In such a case, the Bermuda Competent Authority shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Bermuda Financial Institution has such date of birth in its records.

### **Article 3**

#### **Application of FATCA to Bermuda Financial Institutions**

1. **Treatment of Reporting Bermuda Financial Institutions.** Subject to the provisions of paragraph 2 of Article 4 of this Agreement, each Reporting Bermuda Financial Institution that registers with the IRS and complies with the terms of an FFI Agreement shall be treated as complying with the requirements of, and as not subject to withholding under, section 1471 of the U.S. Internal Revenue Code.

2. **Suspension of Rules Relating to Non-Consenting U.S. Accounts.**

- a) Subject to subparagraph 2(b) of this Article, the United States shall not require a Reporting Bermuda Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if:
  - (i) the Reporting Bermuda Financial Institution complies with the directives in paragraph 1 of Article 2 of this Agreement with respect to the account; and
  - (ii) the Bermuda Competent Authority exchanges with the U.S. Competent Authority the requested information described in subparagraph 2(a) of Article 2 of this Agreement within six months from the date of the receipt of such request.
- b) If the condition of subparagraph 2(a)(ii) of this Article is not fulfilled, the Reporting Bermuda Financial Institution shall be required to treat the account as held by a recalcitrant account holder as defined in relevant U.S. Treasury Regulations, including by withholding tax where required by those U.S. Treasury Regulations, beginning on the date that is six months after the date of the receipt of the request described in subparagraph 2(a) of Article 2 of this Agreement and ending on the date on which the Bermuda Competent Authority exchanges the requested information with the U.S. Competent Authority.

3. **Specific Treatment of Bermuda Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, Bermuda retirement plans described in Annex II. For this purpose, a Bermuda retirement plan includes an Entity established or located in, and regulated by, Bermuda, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of Bermuda and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

4. **Identification and Treatment of Other Deemed Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting Bermuda Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a Bermuda Financial Institution, that otherwise meets the requirements described in Article 2 of this Agreement or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a nonparticipating FFI solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such Bermuda Financial Institution shall continue to be treated as a participating FFI, deemed-compliant FFI, or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) the Bermuda Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;
- b) each such Related Entity or branch identifies its U.S. accounts and reports to the IRS the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and
- c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the Bermuda Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

6. **Coordination of Definitions with U.S. Treasury Regulations.** Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, Bermuda may use, and may permit Bermuda Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding

definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

#### **Article 4 Verification and Enforcement**

1. **Minor and Administrative Errors.** Consistent with the terms of an FFI Agreement, and subject to any further terms set forth in a competent authority agreement concluded pursuant to paragraph 3 of this Article, the U.S. Competent Authority may make an inquiry directly to a Reporting Bermuda Financial Institution where it has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting inconsistent with the requirements of an FFI Agreement. The competent authority agreement may provide that the U.S. Competent Authority shall notify the Bermuda Competent Authority when the U.S. Competent Authority makes such an inquiry of a Reporting Bermuda Financial Institution regarding the Reporting Bermuda Financial Institution's compliance with the conditions set forth in this Agreement.
2. **Significant Non-Compliance.** The U.S. Competent Authority shall notify the Bermuda Competent Authority when the U.S. Competent Authority has determined that there is significant non-compliance with the requirements of an FFI Agreement or this Agreement with respect to a Reporting Bermuda Financial Institution. If the non-compliance is not resolved within a period of 12 months after notification of significant non-compliance is first provided by the U.S. Competent Authority, the United States shall treat the Reporting Bermuda Financial Institution as a Nonparticipating Financial Institution pursuant to this paragraph 2.
3. **Competent Authority Consultation.** The Competent Authorities of Bermuda and the United States may consult on notified cases of significant non-compliance pursuant to paragraph 2 of this Article.
4. **Reliance on Third Party Service Providers.** In accordance with the provisions of an FFI Agreement and relevant U.S. Treasury Regulations, Reporting Bermuda Financial Institutions may use third party service providers to fulfill the requirements of an FFI Agreement, but these requirements shall remain the responsibility of the Reporting Bermuda Financial Institutions.

#### **Article 5 Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency**

1. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

#### **Article 6 Consistency in the Application of FATCA to Partner Jurisdictions**

1. Bermuda shall be granted the benefit of any more favorable terms under Article 3 or Annex I of this Agreement relating to the application of FATCA to Bermuda Financial

Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as Bermuda described in Article 2 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 4, 6, 8, and 9 of this Agreement.

2. The United States shall notify Bermuda of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of the entry into force of the agreement incorporating the more favorable terms, unless Bermuda declines the application thereof.

#### **Article 7 Reciprocal Information Exchange**

Consistent with its obligations under the TIEA, the United States shall continue to cooperate with Bermuda to respond to requests pursuant to the TIEA to collect and exchange information on accounts held in U.S. financial institutions by residents of Bermuda. In addition, when and to the extent Bermuda seeks to collaborate with the United States to implement FATCA based on direct reporting by Bermuda Financial Institutions to the Government of Bermuda, followed by the transmission of such information to the United States, the United States is willing to negotiate such an agreement on the same terms and conditions as similar agreements concluded with Partner Jurisdictions, subject to the Parties having determined that the standards of confidentiality and other prerequisites for such cooperation are fulfilled.

#### **Article 8 Consultations and Amendments**

1. In case any difficulties in the implementation or interpretation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.

2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 10 of this Agreement.

#### **Article 9 Annexes**

The Annexes form an integral part of this Agreement.

#### **Article 10 Term of Agreement**

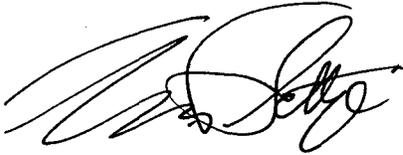
1. This Agreement shall enter into force on the date of Bermuda's written notification to the United States through diplomatic channels that Bermuda has completed its necessary internal procedures for entry into force of this Agreement.

2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party through Diplomatic channels. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Hamilton, in duplicate, in the English language, this 19<sup>th</sup> day of December, 2013.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF  
BERMUDA:



## MEMORANDUM OF UNDERSTANDING

In connection with the signing today of the Agreement between the Government of the United States of America and the Government of Bermuda for Cooperation to Facilitate the Implementation of FATCA (hereinafter the "Agreement"), the representatives of Bermuda and the United States of America wish to confirm their understanding of the following:

1. For purposes of subparagraph B(4)(j)(i) of Section VI of Annex I of the Agreement, an Entity is understood to be "operated in its jurisdiction of residence" if it is administered from its jurisdiction of residence.
2. The United States is committed to discussing concerns raised by Bermuda with respect to Bermuda property and casualty insurance companies treated as passive NFFEs under relevant U.S. Treasury Regulations and to examining potential solutions to those concerns, including through the potential modification of existing U.S. Treasury Regulations.
3. In reference to paragraph 1 of Article 10 (Term of Agreement), the United States issued Notice 2013-43 (the "Notice") on July 12, 2013, which clarifies that: "A jurisdiction will be treated as having in effect an IGA [an intergovernmental agreement to implement FATCA] if the jurisdiction is listed on the Treasury website as a jurisdiction that is treated as having an IGA in effect. In general, Treasury and the IRS intend to include on this list jurisdictions that have signed but have not yet brought into force an IGA. Consistent with the Notice, once the Agreement is signed, the United States Department of the Treasury intends to list Bermuda as having an IGA in effect.

Upon such listing, Reporting Bermuda Financial Institutions, as that term is defined in the Agreement, may register and agree to comply with the terms of an FFI Agreement, as that term is defined in the Agreement. The United States intends to treat a Reporting Bermuda Financial Institution that acts consistently with the requirements for Reporting Bermuda Financial Institutions in the Agreement (including the requirement to register with the IRS by July 1, 2014, and comply with the requirements of an FFI Agreement) as complying with, and not subject to withholding under section 1471 of the U.S. Internal Revenue Code during such time as Bermuda is pursuing the necessary internal procedures for entry into force of the Agreement. If the Agreement has not entered into force prior to March 31, 2015, and assuming that Bermuda is on the list at that time, the United States Department of the Treasury intends to consider removing Bermuda from the list of jurisdictions treated as having an IGA in effect.

If upon consultation with Bermuda, the United States receives credible assurances that such a delay is likely to be resolved in a reasonable period of time, the United States Department of the Treasury may decide to continue to list Bermuda as having an IGA in effect as long as the United States Department of the Treasury assesses that Bermuda is likely to be able to send its notification under paragraph 1 of Article 10 by March 31, 2016. It is understood that should the Agreement enter into force after March 31, 2015, any information that would have been reported by Reporting Bermuda Financial Institutions or the

Competent Authority of Bermuda, as those terms are defined under the Agreement, thereafter (and prior to the entry into force of the Agreement) had the Agreement been in force by March 31, 2015, is owed within six months of the date of entry into force.

Signed at Hamilton in duplicate, this 19<sup>th</sup> day of December, 2013, in the English language.

FOR THE UNITED STATES OF  
AMERICA:

FOR BERMUDA:

Two handwritten signatures are present. The signature on the left is for the United States of America, and the signature on the right is for Bermuda. Both are in black ink and appear to be cursive.

## ANNEX I

### DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS

#### I. General.

A. Reporting Bermuda Financial Institutions must identify U.S. Accounts and accounts held by Nonparticipating Financial Institutions in accordance with the due diligence procedures contained in this Annex I.

B. For purposes of the Agreement,

1. All dollar amounts are in U.S. dollars and shall be read to include the equivalent in other currencies.

2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year, or in the case of a Cash Value Insurance Contract or an Annuity Contract, as of the last day of the calendar year or the most recent contract anniversary date.

3. Subject to subparagraph E(1) of section II of this Annex I, an account shall be treated as a U.S. Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

4. Unless otherwise provided, information with respect to a U.S. Account must be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in each section of this Annex I, Reporting Bermuda Financial Institutions may rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Account or an account held by a Nonparticipating Financial Institution, except that if an account is treated as held by a recalcitrant account holder under procedures described in relevant U.S. Treasury Regulations, such account shall be treated as a U.S. Account for purposes of this Agreement. Reporting Bermuda Financial Institutions may make such election separately for each section of this Annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained). Except as otherwise provided in an FFI Agreement, once a Reporting Bermuda Financial Institution has chosen to rely on the procedures in relevant U.S. Treasury Regulations with respect to any group of accounts, such Reporting Bermuda Financial Institution must continue to apply such procedures consistently in all subsequent years, unless there has been a material modification to relevant U.S. Treasury Regulations.

II. Preexisting Individual Accounts. The following rules and procedures apply for purposes of identifying U.S. Accounts among Preexisting Accounts held by individuals ("Preexisting Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Bermuda Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified group of such accounts, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as U.S. Accounts:

1. Subject to subparagraph E(2) of this section, a Preexisting Individual Account with a balance or value that does not exceed \$50,000 as of June 30, 2014.
2. Subject to subparagraph E(2) of this section, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of \$250,000 or less as of June 30, 2014.
3. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Bermuda or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (*e.g.*, if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Bermuda requires reporting or withholding with respect to insurance products held by residents of Bermuda).
4. A Depository Account with a balance of \$50,000 or less.

B. **Review Procedures for Preexisting Individual Accounts With a Balance or Value as of June 30, 2014, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 ("Lower Value Accounts").**

1. **Electronic Record Search.** The Reporting Bermuda Financial Institution must review electronically searchable data maintained by the Reporting Bermuda Financial Institution for any of the following U.S. indicia:
  - a) Identification of the Account Holder as a U.S. citizen or resident;
  - b) Unambiguous indication of a U.S. place of birth;
  - c) Current U.S. mailing or residence address (including a U.S. post office box);
  - d) Current U.S. telephone number;
  - e) Standing instructions to transfer funds to an account maintained in the United States;
  - f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or

g) An “in-care-of” or “hold mail” address that is the *sole* address the Reporting Bermuda Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an “in-care-of” address outside the United States or “hold mail” address shall not be treated as U.S. indicia.

2. If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account, or the account becomes a High Value Account described in paragraph D of this section.

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Bermuda Financial Institution must treat the account as a U.S. Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B(1) of this section, a Reporting Bermuda Financial Institution is not required to treat an account as a U.S. Account if:

a) Where the Account Holder information unambiguously indicates a *U.S. place of birth*, the Reporting Bermuda Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) A non-U.S. passport or other government-issued identification evidencing the Account Holder’s citizenship or nationality in a country other than the United States; *and*

(3) A copy of the Account Holder’s Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; *or*

(b) The reason the Account Holder did not obtain U.S. citizenship at birth.

b) Where the Account Holder information contains a *current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account*, the Reporting Bermuda Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

c) Where the Account Holder information contains *standing instructions to transfer funds to an account maintained in the United States*, the Reporting Bermuda Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

d) Where the Account Holder information contains *a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account)*, the Reporting Bermuda Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *or*

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

**C. Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts.**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed by June 30, 2016.

2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Bermuda Financial Institution must treat the account as a U.S. Account unless subparagraph B(4) of this section applies.

3. Except for Depository Accounts described in subparagraph A(4) of this

section, any Preexisting Individual Account that has been identified as a U.S. Account under this section shall be treated as a U.S. Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

**D. Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of June 30, 2014, or December 31 of 2015 or Any Subsequent Year (“High Value Accounts”).**

1. **Electronic Record Search.** The Reporting Bermuda Financial Institution must review electronically searchable data maintained by the Reporting Bermuda Financial Institution for any of the U.S. indicia described in subparagraph B(1) of this section.

2. **Paper Record Search.** If the Reporting Bermuda Financial Institution’s electronically searchable databases include fields for, and capture all of the information described in, subparagraph D(3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Bermuda Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Bermuda Financial Institution within the last five years for any of the U.S. indicia described in subparagraph B(1) of this section:

- a) The most recent documentary evidence collected with respect to the account;
- b) The most recent account opening contract or documentation;
- c) The most recent documentation obtained by the Reporting Bermuda Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
- d) Any power of attorney or signature authority forms currently in effect; and
- e) Any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Bermuda Financial Institution is not required to perform the paper record search described in subparagraph D(2) of this section if the Reporting Bermuda Financial Institution’s electronically searchable information includes the following:

- a) The Account Holder’s nationality or residence status;
- b) The Account Holder’s residence address and mailing address currently on file with the Reporting Bermuda Financial Institution;

- c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Bermuda Financial Institution;
- d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Bermuda Financial Institution or another Financial Institution);
- e) Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; *and*
- f) Whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Bermuda Financial Institution must treat as a U.S. Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Specified U.S. Person.

5. **Effect of Finding U.S. Indicia.**

- a) If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D(4) of this section, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.
- b) If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Bermuda Financial Institution must treat the account as a U.S. Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.
- c) Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Account under this section shall be treated as a U.S. Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

E. **Additional Procedures Applicable to High Value Accounts.**

- 1. If a Preexisting Individual Account is a High Value Account as of June 30, 2014, the Reporting Bermuda Financial Institution must complete the enhanced review procedures described in paragraph D of this section with

respect to such account by June 30, 2015. If based on this review such account is identified as a U.S. Account on or before December 31, 2014, the Reporting Bermuda Financial Institution must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Account after December 31, 2014 and on or before June 30, 2015, the Reporting Bermuda Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Preexisting Individual Account is not a High Value Account as of June 30, 2014, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting Bermuda Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Account, the Reporting Bermuda Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified U.S. Person.

3. Once a Reporting Bermuda Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Bermuda Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph D(4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Bermuda Financial Institution must treat the account as a U.S. Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

5. A Reporting Bermuda Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting Bermuda Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(4) of this section, is required to obtain the appropriate documentation from the Account Holder.

**F. Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes.** A Reporting Bermuda Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfill its obligations under chapter 61 of Title 26 of the

United States Code, is not required to perform the procedures described in subparagraph B(1) of this section with respect to Lower Value Accounts or subparagraphs D(1) through D(3) of this section with respect to High Value Accounts.

III. **New Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts among Financial Accounts held by individuals and opened on or after July 1, 2014 (“New Individual Accounts”).

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Bermuda Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, the following New Individual Accounts are not required to be reviewed, identified, or reported as U.S. Accounts:

1. A Depository Account unless the account balance exceeds \$50,000 at the end of any calendar year.
2. A Cash Value Insurance Contract unless the cash value exceeds \$50,000 at the end of any calendar year.

B. **Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting Bermuda Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Bermuda Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Bermuda Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

1. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting Bermuda Financial Institution must treat the account as a U.S. Account and obtain a self-certification that includes the Account Holder’s U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).
2. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Bermuda Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Bermuda Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting Bermuda Financial Institution is unable to obtain a valid self-certification, the Reporting Bermuda Financial Institution must treat the account as a Non-Consenting U.S. Account.

IV. **Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts and accounts held by Nonparticipating Financial Institutions among Preexisting Accounts held by Entities (“Preexisting Entity Accounts”).

A. **Entity Accounts Not Required to Be Reviewed, Identified, or Reported.**

Unless the Reporting Bermuda Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an account balance or value that does not exceed \$250,000 as of June 30, 2014, is not required to be reviewed, identified, or reported as a U.S. Account until the account balance or value exceeds \$1,000,000.

B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds \$250,000 as of June 30, 2014, and a Preexisting Entity Account that does not exceed \$250,000 as of June 30, 2014 but the account balance or value of which exceeds \$1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D of this section.

C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, shall be treated as U.S. Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments are required to be reported under an FFI Agreement.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting Bermuda Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by Nonparticipating Financial Institutions:

1. **Determine Whether the Entity Is a Specified U.S. Person.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a U.S. Person. For this purpose, information indicating that the Account Holder is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

b) If the information indicates that the Account Holder is a U.S. Person, the Reporting Bermuda Financial Institution must treat the account as a U.S. Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified U.S. Person.

2. **Determine Whether a Non-U.S. Entity Is a Financial Institution.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a Financial Institution.

b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting Bermuda Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a U.S. Account.

3. **Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Consistent with the Requirements of an FFI Agreement.**

a) Subject to subparagraph D(3)(b) of this section, a Reporting Bermuda Financial Institution may determine that the Account Holder is a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting Bermuda Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting Bermuda Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

b) If the Account Holder is a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI Agreement.

c) If the Account Holder is not a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Bermuda Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable consistent with the requirements of an FFI Agreement, unless the Reporting Bermuda Financial Institution:

(1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; *or*

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.

4. **Determine Whether an Account Held by an NFFE Is a U.S.**

**Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Bermuda Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting Bermuda Financial Institution must follow the guidance in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Account Holder, a Reporting Bermuda Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting Bermuda Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting Bermuda Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed \$1,000,000; *or*

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that exceeds \$1,000,000.

d) If any Controlling Person of a Passive NFFE is a U.S. citizen or resident, the account shall be treated as a U.S. Account.

**E. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds \$250,000 as of June 30, 2014 must be completed by June 30, 2016.
2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed \$250,000 as of June 30, 2014, but exceeds \$1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds \$1,000,000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Bermuda Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Bermuda Financial Institution must redetermine the status of the account in accordance with the procedures set forth in paragraph D of this section.

**V. New Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened on or after July 1, 2014 (“New Entity Accounts”).

**A. Entity Accounts Not Required to Be Reviewed, Identified or Reported.**

Unless the Reporting Bermuda Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Bermuda Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000.

**B. Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Bermuda Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B(2) of this section, a Reporting Bermuda Financial Institution may determine that the Account Holder is an Active NFFE, a Bermuda Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Bermuda Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder’s Global Intermediary Identification Number or other information that is publicly available or in the possession of the Reporting Bermuda Financial Institution, as applicable.

2. If the Account Holder is a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI Agreement.
3. In all other cases, a Reporting Bermuda Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:
  - a) If the Account Holder is *a Specified U.S. Person*, the Reporting Bermuda Financial Institution must treat the account as a U.S. Account.
  - b) If the Account Holder is *a Passive NFFE*, the Reporting Bermuda Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting Bermuda Financial Institution must treat the account as a U.S. Account.
  - c) If the Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph B(3)(d) of this section, a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Account, and no reporting is required with respect to the account.
  - d) If the Account Holder is a Nonparticipating Financial Institution (including a Bermuda Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI Agreement.

VI. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Bermuda Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Bermuda Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

1. **AML/KYC Procedures.** "AML/KYC Procedures" means the

customer due diligence procedures of a Reporting Bermuda Financial Institution pursuant to the anti-money laundering or similar requirements of Bermuda to which such Reporting Bermuda Financial Institution is subject.

2. **NFFE**. An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in Bermuda or another Partner Jurisdiction and that is not a Financial Institution.

3. **Passive NFFE**. A “Passive NFFE” means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

4. **Active NFFE**. An “Active NFFE” means any NFFE that meets any of the following criteria:

a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market. For purposes of this Agreement, interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange;

c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;

d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;

e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose

purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;

g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

i) The NFFE is an “excepted NFFE” as described in relevant U.S. Treasury Regulations; *or*

j) The NFFE meets all of the following requirements:

i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

ii. It is exempt from income tax in its jurisdiction of residence;

iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

iv. The applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; *and*

v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

5. **Preexisting Account.** A "Preexisting Account" means a Financial Account maintained by a Reporting Bermuda Financial Institution as of June 30, 2014.

C. **Account Balance Aggregation and Currency Translation Rules.**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Bermuda Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Bermuda Financial Institution, or by a Related Entity, but only to the extent that the Reporting Bermuda Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph 1.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Bermuda Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Bermuda Financial Institution, or by a Related Entity, but only to the extent that the Reporting Bermuda Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Bermuda Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. **Currency Translation Rule.** For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting Bermuda Financial Institution must convert the U.S. dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Bermuda Financial Institution is determining the balance or value.

D. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:

1. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.
4. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.
5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

E. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract.** A Reporting Bermuda Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified U.S. Person and may treat such Financial Account as other than a U.S. Account unless the Reporting Bermuda Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting Bermuda Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified U.S. Person if the information collected by the Reporting Bermuda Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph (B)(1) of section II of this Annex I. If a Reporting Bermuda Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person, the Reporting Bermuda Financial Institution must follow the procedures in subparagraph B(3) of section II of this Annex I.

F. **Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section I of this Annex I, Reporting Bermuda Financial Institutions may rely on due diligence procedures performed by third parties, to the extent provided in an FFI Agreement and relevant U.S. Treasury Regulations.

## Annex II

The following Entities shall be treated as exempt beneficial owners or deemed-compliant FFIs, as the case may be, and the following accounts shall be excluded from the definition of Financial Accounts.

This Annex II may be modified by a mutual agreement entered into between the Competent Authorities of Bermuda and the United States: (1) to include additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in this Annex II as of the date of signature of the Agreement; or (2) to remove Entities and accounts that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Any such addition or removal shall be effective on the date of signature of the mutual agreement, unless otherwise provided therein.

- I. **Exempt Beneficial Owners other than Funds.** The following Entities shall be treated as Non-Reporting Bermuda Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, *other than* with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.
  - A. **Governmental Entity.** The government of Bermuda, any political subdivision of Bermuda (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of Bermuda or any one or more of the foregoing (each, a “Bermuda Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of Bermuda.
    1. An integral part of Bermuda means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Bermuda. The net earnings of the governing authority must be credited to its own account or to other accounts of Bermuda, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
    2. A controlled entity means an Entity that is separate in form from Bermuda or that otherwise constitutes a separate juridical entity, provided that:
      - a) The Entity is wholly owned and controlled by one or more Bermuda Governmental Entities directly or through one or more controlled entities;
      - b) The Entity’s net earnings are credited to its own account or to the accounts of one or more Bermuda Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

- c) The Entity's assets vest in one or more Bermuda Governmental Entities upon dissolution.
    - 3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
  - B. **International Organization.** Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with Bermuda; and (3) the income of which does not inure to the benefit of private persons.
  - C. **Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of Bermuda itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Bermuda, whether or not owned in whole or in part by Bermuda.
- II. **Funds that Qualify as Exempt Beneficial Owners.** The following Entities shall be treated as Non-Reporting Bermuda Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.
- A. **Any pension fund established in Bermuda under the National Pension Scheme Act of 1998.**
  - B. **Pension Fund of an Exempt Beneficial Owner.** A fund established in Bermuda by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.
  - C. **Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a Bermuda Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.
- III. **Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.** The following Financial Institutions shall be Non-Reporting Bermuda Financial Institutions

that shall be treated as registered deemed-compliant FFIs or certified deemed-compliant FFIs, as the case may be, for purposes of section 1471 of the U.S. Internal Revenue Code.

A. **Registered Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements is a Non-Reporting Bermuda Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of Bermuda;
2. The Financial Institution must have no fixed place of business outside of Bermuda. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;
3. The Financial Institution must not solicit customers or Account Holders outside Bermuda. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside Bermuda merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within Bermuda but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;
4. The Financial Institution must be required under the laws of Bermuda to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying Bermuda's AML due diligence requirements;
5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution as of the last day of the preceding calendar year must be held by residents (including residents that are Entities) of Bermuda;
6. Beginning on or before July 1, 2014, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of Bermuda (including a U.S. Person that was a resident of Bermuda when the Financial Account was opened but subsequently ceases to be a resident of Bermuda) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Bermuda;

7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. Person who is not a resident of Bermuda or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Bermuda is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a Reporting Bermuda Financial Institution or close such Financial Account;
  8. With respect to a Preexisting Account held by an individual who is not a resident of Bermuda or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S. Account or Financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a Reporting Bermuda Financial Institution or close such Financial Account;
  9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in Bermuda and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II, satisfy the requirements set forth in this paragraph A;
  10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of Bermuda; and
  11. The Financial Institution must satisfy the requirements set forth in paragraph C of section VI of this Annex II.
- B. **Local Bank.** A Financial Institution satisfying the following requirements is a Non-Reporting Bermuda Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:
1. The Financial Institution operates solely as (and is licensed and regulated under the laws of Bermuda as) (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;
  2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;
  3. The Financial Institution satisfies the requirements set forth in subparagraphs A(2) and A(3) of this section, provided that, in addition to the limitations on the website described in subparagraph A(3) of this section, the website does not permit the opening of a Financial Account;

4. The Financial Institution does not have more than \$175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$500 million in total assets on their consolidated or combined balance sheets; and
  5. Any Related Entity must be incorporated or organized in Bermuda, and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through C of section II of this Annex II or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.
- C. **Financial Institution with Only Low-Value Accounts.** A Bermuda Financial Institution satisfying the following requirements is a Non-Reporting Bermuda Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:
1. The Financial Institution is not an Investment Entity;
  2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in Annex I for account aggregation and currency translation; and
  3. The Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.
- D. **Registered Qualified Credit Card Issuer.** A Bermuda Financial Institution satisfying the following requirements is a Non-Reporting Bermuda Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:
1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer;
  2. Beginning on or before July 1, 2014, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of \$50,000, or to ensure that any customer deposit in excess of \$50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns; and

3. The Financial Institution must satisfy the requirements set forth in paragraph C of section VI of this Annex II.

IV. **Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.**

The Financial Institutions described in paragraphs A through D of this section shall be Non-Reporting Bermuda Financial Institutions that shall be treated as registered deemed-compliant FFIs or certified deemed-compliant FFIs, as the case may be, for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph E of this section provides special rules applicable to an Investment Entity.

- A. **Trustee-Documented Trust.** A trust established under the laws of Bermuda to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the Agreement with respect to all U.S. Accounts of the trust. Such a trust is a Non-Reporting Bermuda Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.
- B. **Registered Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B(1) or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B(3) of this section is a Non-Reporting Bermuda Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.
  1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Bermuda that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.
  2. A Financial Institution is a sponsored controlled foreign corporation if (a) the Financial Institution is a controlled foreign corporation<sup>1</sup> organized under the laws of Bermuda that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of

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<sup>1</sup> A "controlled foreign corporation" means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by "United States shareholders" on any day during the taxable year of such foreign corporation. The term a "United States shareholder" means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

3. The sponsoring entity complies with the following requirements:
  - a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill the requirements of an FFI Agreement;
  - b) The sponsoring entity has registered as a sponsoring entity with the IRS;
  - c) Prior to December 31, 2015, the sponsoring entity has registered the Financial Institution with the IRS pursuant to the registration requirements set forth in paragraph C of section VI of this Annex II;
  - d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements (including the requirements set forth in paragraph C of section VI of this Annex II) that the Financial Institution would have been required to perform if it were a Reporting Bermuda Financial Institution;
  - e) The sponsoring entity identifies the Financial Institution and includes the Financial Institution's Global Intermediary Identification Number in all reporting completed on the Financial Institution's behalf; and
  - f) The sponsoring entity has not had its status as a sponsor revoked. The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored Financial Institutions if there is a material failure by the sponsoring entity to comply with its obligations described above with respect to any sponsored Financial Institution.

C. **Sponsored, Closely Held Investment Vehicle.** A Bermuda Financial Institution satisfying the following requirements is a Non-Reporting Bermuda Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and

other requirements that the Financial Institution would have been required to perform if it were a Reporting Bermuda Financial Institution;

3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;
  4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and
  5. The sponsoring entity complies with the following requirements:
    - a) The sponsoring entity has registered as a sponsoring entity with the IRS;
    - b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Bermuda Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;
    - c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and
    - d) The sponsoring entity has not had its status as a sponsor revoked. The IRS may revoke a sponsoring entity's status as a sponsor with respect to all sponsored Financial Institutions if there is a material failure by the sponsoring entity to comply with its obligations described above with respect to any sponsored Financial Institution.
- D. **Investment Advisors and Investment Managers.** An Investment Entity established in Bermuda that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution. Such an Investment Entity is a Non-Reporting Bermuda Financial Institution treated as a certified deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.
- E. **Collective Investment Vehicle.** An Investment Entity established in Bermuda that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions, and

the Investment Entity satisfies the requirements set forth in paragraph C of section VI of this Annex II. Such an Investment Entity is a Non-Reporting Bermuda Financial Institution treated as a registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.

F. **Special Rules.** The following rules apply to an Investment Entity:

1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.
2. With respect to interests in:
  - a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or
  - b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations;

the reporting obligations of any Investment Entity that is a Bermuda Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

3. With respect to interests in an Investment Entity established in Bermuda that is not described in paragraph E or subparagraph F(2) of this section, consistent with paragraph 4 of Article 4 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by first-mentioned Investment Entity pursuant to the Agreement with respect to such interests is reported by such Investment Entity or another person.

V. **Accounts Excluded from Financial Accounts.** The following accounts shall be excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Accounts.

A. **Certain Savings Accounts.**

1. **Retirement and Pension Account.** A Prescribed Retirement Product approved under the National Pension Scheme (Occupational Pensions) Act 1998.

2. **Non-Retirement Savings Accounts.** An account maintained in Bermuda (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Bermuda.

- a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;
- b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Bermuda are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- d) Annual contributions are limited to \$50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.

B. **Certain Term Life Insurance Contracts.** A life insurance contract maintained in Bermuda with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

1. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
3. The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
4. The contract is not held by a transferee for value.

C. **Account Held By an Estate.** An account maintained in Bermuda that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

D. **Escrow Accounts.** An account maintained in Bermuda established in connection with any of the following:

1. A court order or judgment.

2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
  - a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
  - d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - e) The account is not associated with a credit card account.
3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

E. **Partner Jurisdiction Accounts.** An account maintained in Bermuda and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

VI. **Definitions and Other Special Rules.** The following additional definitions and special rules apply to the descriptions above:

A. **Reporting Model 1 FFI.** The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies

thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.

B. **Participating FFI.** The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means where relevant, an FFI Agreement as defined in Article 1 of the Agreement as well as an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.

C. **Registration Requirements for a Financial Institution that Qualifies as a Registered Deemed-Compliant FFI.** A Financial Institution that qualifies as a registered deemed-compliant FFI must satisfy the following requirements:

1. Register with the IRS pursuant to procedures prescribed by the IRS and agree to comply with the terms of its registered deemed-compliant status;
2. Have its responsible officer certify every three years to the IRS, either individually or collectively for such Financial Institution and its Related Entities, that all of the requirements for the deemed-compliant category claimed by the Financial Institution have been satisfied since July 1, 2014;
3. Maintain in its records the confirmation from the IRS of the Financial Institution's registration as a deemed-compliant FFI and the Financial Institution's Global Intermediary Identification Number or such other information as the IRS specifies in forms or other guidance; and
4. Agree to notify the IRS if there is a change in circumstances that would make the Financial Institution ineligible for the deemed-compliant status for which it has registered, and to do so with six months of the change in circumstances unless the Financial Institution is able to resume its eligibility for its registered deemed-compliant status within the six-month notification period.