

Part III

Administrative, Procedural, and Miscellaneous

Proposed Changes to Final Withholding Regulations Under Section 1441; Proposed Model Qualified Intermediary Withholding Agreement.

NOTICE 99-8

Background and Scope

On October 14, 1997, the Department of the Treasury (the "Treasury") and the Internal Revenue Service (the "IRS") issued final Income Tax Regulations (the "final withholding regulations") under chapter 3 (sections 1441-1464) and subpart G of subchapter A of chapter 61 (sections 6041-6050S) of the Internal Revenue Code (the "Code"). Those regulations were published in the Federal Register as T.D. 8734 and, as modified by T.D. 8804, will generally be effective for payments made after December 31, 1999.

Section I of this notice announces some of the changes that Treasury and the IRS will make to those regulations. The changes covered by this notice are those that affect a withholding agent or payor's information systems and the type of beneficial owner or payee documentation that a withholding agent or payor must obtain before January 1, 2000.

Section II of this notice provides a proposed model qualified intermediary (QI) withholding agreement. In Rev. Proc. 98-27, 1998-15 I.R.B. 15, the IRS provided guidance on the provisions to be contained in a QI withholding agreement. In Notice 98-16, 1998-15 I.R.B. 12, issued simultaneously with Rev. Proc. 98-27, the IRS announced that it intended to issue a series of model agreements of broad applicability to make qualified intermediary agreements as widely available as possible. Under these model agreements, a person would be able to accept, sign, and submit the agreement to the IRS without the need for individual negotiations. Notice 98-16 stated that the IRS contemplated that each model agreement would be specific to a particular country or group of countries with similar laws and practices. The IRS invited submissions of proposed model agreements by groups or associations of potential qualified intermediaries.

The IRS has developed a proposed model QI withholding agreement that appears in Section II of this notice. This model will be adapted to reflect the "know-your-customer" rules applicable to each country. Other specific adaptations may be made if the IRS concludes that they are necessary to implement QI withholding agreements in that country, will not result in a competitive advantage for qualified intermediaries in that country, and

do not violate principles that are fundamental to sound tax administration. Once the IRS is satisfied that a particular country's know-your-customer rules can be relied upon, or adapted, to provide reliable information, a final model QI withholding agreement will be issued for that country.

The IRS invites comments on the proposed regulation changes and the model QI withholding agreement set forth in Sections I and II of this notice. Written comments (8 copies) must be received by March 16, 1999. Send submissions to CC:DOM:CORP:R (OGI-118203-98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20004. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (OGI-118203-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C.

Section I. Proposed Changes to the Final Withholding Regulations

A. Withholding and Information Reporting When There Is Unreliable Allocation Information.

Under §1.1441-1(e)(3)(iii), a nonqualified intermediary is required to provide a withholding agent with a withholding certificate (Form W-8IMY) to which it attaches the withholding certificates (Forms W-8) and other appropriate documentation of the beneficial owners and payees for whom it acts. The nonqualified intermediary must also provide a statement that the account holder documentation attached to the Form W-8IMY represents all of the persons to whom the Form W-8IMY relates. If the nonqualified intermediary has not attached documentation for all of the persons to whom the Form W-8IMY relates, the nonqualified intermediary must separately identify the amounts allocable to persons for whom a withholding certificate or other appropriate documentation are lacking or unreliable. Further, under §1.1441-1(e)(3)(iv), a nonqualified intermediary must provide information sufficient for a withholding agent to determine the proportion of each payment of reportable amounts, as defined in §1.1441-1(e)(3)(iv), that is allocable to each person to whom the Form W-8IMY relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. The information for persons for whom documentation is lacking or unreliable may be provided in the aggregate and need not be provided separately for each such person. Section 1.1441-5(c)(3)(iii) provides similar rules for foreign partnerships. The allocation information required by §§1.1441-1(e)(3)(iv) and 1.1441-5(c)(3)(iii) is necessary so that the withholding agent may file Forms 1042-S for each beneficial owner. See §1.1461-1(c)(1).

Sections 1.1441-1(b)(3)(v)(C) and 1.1441-5(d)(3)(ii) contain reporting and withholding rules that apply if a withholding agent receives from a nonqualified intermediary or a foreign partnership the Forms W-8 or other appropriate documentation from all the beneficial owners or payees in a group of beneficial owners or payees, but the withholding agent does not have information that permits it to allocate a payment of an amount subject to chapter 3 withholding to each beneficial owner or payee. In that case,

the payment is presumed to be allocable entirely to the beneficial owner or payee in the group with the highest withholding rate or, if the rates are equal, to the beneficial owner or payee in the group with the highest U.S. tax liability.

Section 1.6049-5(d)(3)(ii) contains similar rules that apply for purposes of Form 1099 reporting of amounts that are not subject to chapter 3 withholding (other than short-term OID and deposit interest). These amounts include foreign source income and broker proceeds. Under §1.6049-5(d)(3)(ii), if a payor pays an amount to a foreign intermediary and has actual knowledge that the foreign intermediary is acting on behalf of a U.S. nonexempt recipient but the payor cannot determine the portion of the payment that is allocable to the U.S. nonexempt recipient, the payor must treat the entire unallocated portion of a payment as allocable to the U.S. nonexempt recipient.

The rules of §§1.1441-1(b)(3)(v)(C), 1.1441-5(d)(3)(ii), and 1.6049-5(d)(3)(ii) permit the account holders of a nonqualified intermediary or partners of a foreign partnership to obtain a reduced rate of withholding under sections 1441 or 1442 (or to avoid imposition of backup withholding) even though the nonqualified intermediary or foreign partnership has not provided a withholding agent with information that allocates the payment to each account holder or partner. For example, a nonqualified intermediary could provide Forms W-8 for all of its beneficial owner account holders and obtain the portfolio interest exemption for those account holders without providing the withholding agent with any allocation information. Similarly, if a nonqualified intermediary provides a payor with a Form W-9 from a U.S. nonexempt payee, the unallocated portion of a payment of an amount not subject to chapter 3 withholding will be reported as if it were made to that U.S. nonexempt recipient, although no backup withholding will be imposed since the U.S. payee has provided a Form W-9.

The Treasury and the IRS have determined that the ability to obtain a reduced rate of withholding, or to avoid imposition of backup withholding, in the absence of information that allocates the payment to each beneficial owner or payee of a nonqualified intermediary or partner of a foreign partnership undermines the general rules of §§1.1441-1(e)(3)(iii) and (iv), 1.1441-5(c)(3)(iii) and (iv), chapter 61, and section 3406, which require allocation information. Further, allocation information is essential for a withholding agent to do beneficial owner reporting on Form 1042-S and payee reporting on Form 1099. Therefore, the regulations will be amended to require a withholding agent that has insufficient information to allocate a payment to treat that payment as made to an undocumented payee, unless the allocation information is received before the withholding agent is required to file (without regard to extensions) Forms 1042-S or Forms 1099. Therefore, if an unallocated payment paid to a foreign intermediary or foreign partnership (other than a withholding foreign partnership) is an amount subject to chapter 3 withholding, it will be treated as if it were paid to an undocumented foreign payee and will be subject to 30 percent withholding. If the unallocated payment paid to a foreign intermediary or foreign partnership (other than a withholding foreign partnership) is deposit interest under section 871(i)(2)(A) or short-term OID under section 871(g)(1)(B),

it will be treated as if paid to a U.S. nonexempt recipient and subject to 31 percent withholding. If the unallocated payment paid to a foreign intermediary or foreign partnership (other than a withholding foreign partnership) is an amount not subject to chapter 3 withholding (other than deposit interest and short-term OID), and the payor knows that at least one payee of the foreign intermediary or foreign partnership is a U.S. nonexempt recipient, then the unallocated portion of the payment will be treated as paid to a nonexempt recipient and subject to 31 percent withholding. If the withholding agent has no amounts from which to withhold, because, for example, it has already paid the amounts to a payee, the withholding agent must satisfy its liability for the 30 or 31 percent amount either from other amounts it holds on behalf of the payee or from its own funds.

The Treasury and the IRS have also determined that it is inappropriate to report an unallocated payment as if it were made in its entirety to a person who may or may not be entitled to receive the entire amount. Therefore, the regulations will also be amended so that an unallocated payment will be reported on a Form 1042-S or Form 1099, as appropriate, sent to the nonqualified intermediary or foreign partnership in the name of an unknown recipient. Further, §§1.1441-1(b)(6) and 1.1441-5(c)(3)(v) of the regulations will be amended so that an intermediary or partnership that fails to provide allocation information is not relieved of its responsibility to file Forms 1042-S even if it has provided a withholding agent with a Form W-8IMY that has documentation from all of its account holders or partners attached and the withholding agent has withheld the appropriate amount. An intermediary or partnership that fails to provide allocation information for a U.S. nonexempt recipient that receives a reportable amount will also be required to file a Form 1099 with regard to reportable payments made to that U.S. nonexempt recipient.

B. Accrued Interest and Original Issue Discount

Under §1.1441-3(b)(2) of the final withholding regulations, a withholding agent is not required to withhold on interest that has accrued up to the date of a sale of a debt obligation when the sale occurs between two interest payment dates. This exception to withholding applies even if the amount is taxable under sections 871 or 881 because, for example, it does not qualify as portfolio interest. Moreover, the exception applies even though there is no documentation establishing that the beneficial owner of the obligation is a foreign person. Documentation may be required, however, for Form 1099 reporting or backup withholding under sections 6045, 6049, and 3406. The exception from withholding does not relieve the withholding agent from reporting on Form 1042-S under section 1.1461-1(c). Withholding is required, however, under §1.1441-3(b)(1) on the gross amount of interest payable on an interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income, unless an exception to withholding, such as the portfolio interest exemption, applies.

By contrast, under §1.1441-2(b)(3), the accrued amount of original issue discount is subject to withholding when a foreign person sells, exchanges, or receives a payment on an original issue discount obligation unless an exemption from withholding applies. A

withholding agent is required to withhold on OID, however, only if it has actual knowledge of the proportion of the payment that is taxable to the beneficial owner of the OID obligation. A withholding agent has actual knowledge of the taxable portion of the OID if it knows how long the beneficial owner has held the obligation, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent is treated as having knowledge if such information is reasonably available. The information is considered to be reasonably available to a withholding agent if the withholding agent maintains a direct account relationship with the beneficial owner of the obligation. However, a withholding agent must withhold, notwithstanding lack of knowledge, if the withholding agent must treat the payment as made to a foreign payee under the applicable presumption rules because the withholding agent cannot reliably associate the payment with documentation and the amount would qualify as portfolio interest if the withholding agent held such documentation.

Because of the similarities between OID and accrued interest on an obligation sold between interest payment dates, the IRS and Treasury believe that they should be treated similarly. Further, the IRS and Treasury are concerned that a withholding exemption for the sale of debt obligations between interest payment dates even in the absence of a beneficial owner Form W-8 provides an easy avenue for the avoidance of the documentation requirements imposed under the portfolio interest provisions of sections 871(h) and 881(c). As a result, the IRS and Treasury issued proposed regulation §1.1441-3(b)(2) (REG-114000-97, 62 FR 53503) which would change the accrued interest rule to conform to the OID rule. Under the proposed regulation, a withholding agent would be required to withhold on the accrued interest portion of the purchase price if it knows the amount of accrued interest. A withholding agent would be deemed to have knowledge of the amount of accrued interest if it had a direct account relationship with the holder of the security. Further, withholding would be required on accrued interest if the interest would qualify as portfolio interest but the withholding agent does not have the beneficial owner documentation required under the portfolio interest rules.

Commentors have raised objections to both the proposed accrued interest rules and to the final OID rules. Regarding the proposed accrued interest rules, they note that most sales of debt obligations of U.S. issuers occur as delivery versus payment (DVP) transactions. DVP transactions are settled quickly and the need to obtain documentation would prohibit quick settlement of transactions. Moreover, sales of debt obligations often take place through several tiers of intermediaries. Since the portfolio interest rules require beneficial owner documentation, each intermediary involved in a transaction, including those with no direct relationship to the beneficial owner, would need to obtain beneficial owner documentation.

Commentors also criticized the presumption that a withholding agent has the information to determine the amount of OID or accrued interest if it has a direct account relationship with the beneficial owner of an obligation. They contend that a direct account relationship does not ensure that a withholding agent will have the information necessary

to determine the amount of withholding. For example, if securities were not acquired by the withholding agent for the beneficial owner but were transferred by the beneficial owner to an account with the withholding agent, the withholding agent may not know the holding period of the security or whether it was acquired at a premium.

In response to these comments, the IRS and Treasury intend to revise the regulations governing the treatment of OID and accrued interest on obligations sold between interest payment dates. Under the revised regulations, only a withholding agent that is required to obtain Form W-8 or other documentary evidence will be required to withhold and report on OID or accrued interest on obligations sold between interest payment dates. No withholding or reporting of OID and accrued interest will be required, however, provided that (1) a withholding agent that is required to obtain a Form W-8 or other documentary evidence obtains the Form W-8 or other documentary evidence and (2) the interest qualifies as portfolio interest or qualifies for a complete exemption from taxation under an income tax treaty. Further, if a withholding agent that is required to obtain Form W-8 or other documentary evidence obtains the Form W-8 or other documentary evidence, but the interest or OID does not qualify for the portfolio interest exemption or a complete exemption from taxation under an income tax treaty, withholding and reporting on accrued interest or OID will be required, but only if the withholding agent knows the amount of accrued interest or OID paid or the withholding agent knows, or has reason to know, that the person selling the obligation has a principal purpose to avoid U.S. tax.

A withholding agent will be required to obtain a Form W-8 or other documentation from a beneficial owner only if the withholding agent is the person who receives the proceeds from the sale or exchange of the obligation against delivery of the obligation or, if the obligation is being retired, the withholding agent is the person responsible for paying the holder, or crediting the holder's account, with the proceeds from the retirement. Notwithstanding the preceding sentence, a withholding agent will not be required to obtain a Form W-8 or other documentation if it is effecting the sale of an obligation for a broker, as defined in §1.6045-1(a)(1), and the withholding agent does not know, and does not have reason to know, that the broker is the beneficial owner of the obligation. In that case, only the broker will be required to obtain a Form W-8 or other documentary evidence.

A withholding agent will be treated as knowing the amount of accrued interest or OID only if it actually knows the seller's holding period of the obligation, the terms of the obligation, and the extent to which the obligation was acquired by the seller at a premium. A withholding agent will not be treated as having knowledge of these facts merely because it has a direct account relationship with the beneficial owner.

If a withholding agent that is required to obtain a Form W-8 or other documentation fails to do so or the withholding agent knows, or has reason to know, that the sale of an obligation is part of a plan to avoid withholding, it must withhold on the amount of accrued

interest or OID determined under the following rules. If the amount subject to withholding is accrued interest, the amount of income subject to withholding is determined as if the seller's income is equal to the amount of interest due as of the next interest payment date pro rated to the date of sale. If the obligation is an original issue discount obligation, the amount of OID is determined by assuming that the seller has held the instrument since its original issuance. A withholding agent may rely on the most recently published "List of Original Issue Discount Instruments" (IRS Publication 1212) to determine the amount of OID in any particular transaction. If a withholding agent cannot determine the amount of OID subject to withholding under these rules, it must withhold an amount, based on the entire amount paid, that is necessary to assure that the tax withheld is not less than 30 percent of the amount that will subsequently be determined to be income subject to tax. See §1.1441-3(c)(4)(i)(A).

Finally, no change will be made to the rule under §1.1441-3(b)(1) that requires withholding on the gross amount of interest payable on an interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income.

C. Delayed Implementation of IRS-Certified TIN

Under §1.1441-6(b), a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based on an income tax treaty only if the withholding agent can reliably associate the payment with a valid withholding certificate (Form W-8BEN). A withholding certificate is valid only if it contains a taxpayer identification number ("TIN"). Further, a TIN is valid to establish proof of residence in a treaty country only if the TIN is certified by the IRS. Under §1.1441-6(b)(2), a TIN is not required to appear on a withholding certificate if treaty benefits are claimed with respect to income from certain types of instruments, which, generally, are publicly traded. The procedures for obtaining a certified TIN are set forth in §1.1441-6(c)(2)(ii).

The IRS will not implement the procedure for obtaining certified TINs under §1.1441-6(c)(2)(ii) until January 1, 2002. Until the IRS begins to issue certified TINs, a withholding agent may treat a beneficial owner as a resident of a treaty country in situations in which a certified TIN would otherwise be required if the withholding agent has a Form W-8BEN from the beneficial owner that contains a TIN, the form contains a statement that the beneficial owner is a resident of a particular treaty country, the beneficial owner's permanent residence address on the form is in that treaty country, and the form is otherwise valid. If a beneficial owner provides a permanent residence address on the Form W-8BEN that is outside the applicable treaty country, the withholding agent may rely on the beneficial owner's claim for benefits under a particular treaty only if the withholding agent obtains, and may rely on, either a certificate of residence as described in §1.1441-6(c)(3) or the documentary evidence as described in §1.1441-6(c)(4) that establishes the beneficial owner's residence in the particular treaty country.

D. Trusts and Estates.

Sections 1.1441-1(c)(6)(i) and (ii)(A) generally treat the beneficial owner of income as the person that is the owner of the income under U.S. tax principles. For flow-through entities, which are defined to be partnerships, trusts, and estates, the beneficial owners are the persons who, under U.S. tax principles, are the owners of the income in their separate or individual capacities. Section 1.1441-1(e)(3)(i) states that a trust or estate is required to use a flow-through certificate, as defined in §1.1441-5(e), to provide the certificates or documentation on the status of the beneficiaries of a trust or estate. Section 1.1441-5(e), however, is reserved. These rules imply that, at least in some cases, the beneficial owners of income paid to a trust or estate are the beneficiaries of the trust or estate. Section 1.1441-1(c)(6)(ii)(B), however, states that the provisions of §1.1441-1(c)(6)(i) and (ii)(A) shall not apply to trusts or estates. Instead, the beneficial owner of income paid to a trust or estate is determined under §1.1441-3(f) and (g) of the regulations in effect prior to January 1, 1999 (see those sections as contained in 26 CFR part 1, revised April 1, 1997). Sections 1.1441-3(f) and (g), however, do not make beneficial owner determinations. Rather, they generally require withholding under section 1441 if the fiduciary of a trust or estate is a foreign person or, in the case of income taxable to a grantor under sections 671 through 679 of the Code, the trust is created by a nonresident alien individual.

Treasury and the IRS intend to issue regulations that will clarify the withholding obligations of income paid to trusts and estates. Under these rules, a foreign trustee or foreign executor of a U.S. or foreign trust or estate must furnish a withholding agent with a Form W-8IMY (Certificate of Foreign Intermediary, Foreign Partnership, or Certain U.S. Branches for United States Tax Withholding). If the foreign person is considered a nonqualified intermediary and is the trustee of a trust described in section 651(a) or a trust, all or a portion of which is treated as owned by the grantor or other persons under sections 671 through 679, the trustee must attach the Forms W-8BEN, Forms W-8EXP, or, if required, Forms W-9, of the beneficiaries or grantors of the trust. In all other cases, the foreign trustee or executor must attach a Form W-8BEN, Form W-8EXP, or if required, Form W-9, completed on behalf of the trust or estate.

E. Application of Negative Confirmation Rules to Existing Accounts.

Section 1.6049-5(c)(4)(i) provides an exception from the normal documentation requirements for payments of amounts not subject to chapter 3 withholding (other than U.S. source OID on certain short-term obligations or U.S. source deposit interest) to an offshore account by a bank or other financial institution. Under that exception, if it is not customary to obtain documentary evidence, a payor may, instead of obtaining a withholding certificate or documentary evidence, rely on an account holder's declaration of foreign status made on an account opening statement if certain conditions are met. Under §1.6049-5(c)(4)(iv), if it is customary to obtain documentary evidence but it is not customary to renew it, then a payor must request such documentary evidence in lieu of a declaration of foreign status. For both the §§1.6049-5(c)(4)(i) and (iv) exceptions, the bank or financial institution must include a "negative confirmation" in a year-end statement

mailed to the payee in which the bank or financial institution states that the payee is being treated as a non-U.S. person and that the payee has an obligation to notify the bank or financial institution if the payee becomes a U.S. citizen or resident.

Section 1.6049-5(c)(4)(v) states that the exceptions of §§1.6049-5(c)(4)(i) and (iv) do not apply to an account opened before January 1, 2000. Prior to January 1, 2000, the rules in §§35a.9999-3(ii) Q&A 34 and 35a.9999-4 Q&A 1 and 5 apply. Under those rules certain foreign payors may treat a payee as a foreign person if the payor has evidence in its records that the payee is a foreign person, including a written indication from the payee that the payee is not a U.S. person. By stating that the rules of §§1.6049-5(c)(4)(i) and (iv) do not apply to accounts opened before January 1, 2000, the regulations inadvertently exclude banks or financial institutions with accounts that have declarations of foreign status, or other documentary evidence of foreign status, from continuing to rely on those statements or documentation provided the bank or financial institution sends the negative confirmation required under §1.6049-5(c)(4)(iii). The rule of §1.6049-5(c)(4)(v) will be changed so that payors who relied on the rules contained in §§35a.9999-3(ii) Q&A 34 and 35a.9999-4 Q&A 1 and 5, as in effect prior to January 1, 2000, with regard to payments of foreign source interest or broker proceeds from sales effected outside the United States may continue to treat the payee as a foreign person under the rules of §1.6049-5(c)(4), provided that the payor sends a negative confirmation to the payee each year as required under §1.6049-5(c)(4)(iii) and does not know, or have reason to know, that the payee is a U.S. person.

F. Expansion of Master Agreement/Confirmation Exception for Notional Principal Contracts. Under §1.1441-4(a)(3) a withholding agent must treat a payment of income on a notional principal contract made to a foreign person as income effectively connected with the conduct of a trade or business within the United States unless the withholding agent can reliably associate the payment with a withholding certificate (Form W-8BEN) on which it can rely to treat the payment as an amount that is not effectively connected. An exception to the Form W-8BEN requirement is provided under §1.1441-4(a)(3)(ii). Under that section, a payment to a financial institution is not treated as effectively connected with the conduct of a trade or business within the United States if the foreign financial institution provides a representation in a master agreement that governs transactions in notional principal contracts between the parties (for example an International Swaps and Derivatives Association (ISDA) Agreement) or in the confirmation the particular notional principal contract transaction that the counterparty is a U.S. person or a non-U.S. branch of a foreign person.

Commentors have asked that the master agreement and confirmation exceptions be expanded to apply to persons other than financial institutions. The regulations will be changed so that persons other than financial institutions can use the master agreement and confirmation exceptions.

G. Use of Documentary Evidence by Foreign Partnerships with U.S. Accounts.

Under §1.6049-5(c)(1) a withholding agent or payor may generally rely on documentary evidence instead of a beneficial owner withholding certificate if an amount is paid outside the United States to an offshore account. An offshore account is an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States and outside of a U.S. possession. Under §1.6049-5(e), an amount is considered paid outside the United States if the payor completes the acts necessary to effect payment outside the United States.

The regulations do not specifically address whether partners of a foreign partnership that has an account in the United States can use documentary evidence to establish their foreign status. Under §1.1441-5(c)(1) it is the partners, and not the partnership, that are considered to be the payees on the amounts credited to an account. Thus, the regulations as currently drafted appear to preclude the use of documentary evidence by the foreign partners of a foreign partnership.

The regulations will be amended to permit foreign partners of a foreign partnership that has an account in the United States to use documentary evidence. As a result, such partners will be treated the same as foreign account holders of a financial institution that has an account in the United States.

H. Withholding on Capital Gain Distributions of a Domestic Real Estate Investment Trust ("REIT").

Section 1.1441-3(c)(4)(i)(C) requires withholding under section 1441 on the portion of a distribution from a REIT that is not designated as a capital gain dividend or a return of basis. Under section 1.1445-8(c), withholding is required under section 1445 on the portion of the distribution designated by a REIT as a capital gain dividend.

By stating that withholding is required on amounts not designated as a capital gain dividend or a return of basis, §1.1441-3(c)(4)(i)(C) requires withholding on a distribution in excess of basis, which under section 301(c)(3) is treated as capital gain from the sale or exchange of stock. The final withholding regulations will be amended to state that withholding under section 1441 is not required on a distribution in excess of basis (which under section 301(c)(3) is treated as a capital gain). However, a distribution in excess of basis is subject to withholding under section 1445 unless the interest in the REIT is not a U.S. real property interest (e.g. an interest in a domestically controlled REIT under section 897(h)(2)).

I. Validity period for documentary evidence.

Under §1.1441-1(e)(4)(ii), the documentary evidence that may be provided under §§1.1441-6(c)(4) and 1.6049-5(c)(1) remains valid until "the earlier of the last day of the third calendar year following the year in which the documentary evidence is created. . . ." Commentors have stated that it is not clear when documentary evidence is created. To

clarify the rule, §1.1441-1(e)(4)(ii) will be amended to permit the validity period to be measured from the date documentation is provided to a withholding agent.

Section II. Model Qualified Intermediary Withholding Agreement.

A. Submission of Know-Your-Customer Information. Before a model QI withholding agreement will be concluded for any country, the Internal Revenue Service must receive certain information regarding that country's "know-your-customer" rules. This information is necessary to evaluate whether those rules are sufficient to establish an account holder's status as a beneficial owner or intermediary and the account holder's nationality and residence. If the "know-your-customer" rules are sufficient for these purposes, they will be incorporated, with any necessary modifications, into the Attachments to the qualified intermediary agreement. The information the IRS must receive is the following:

1. An English translation of the laws and regulations ("know-your-customer" rules) governing the requirements of QI to obtain documentation confirming the identity of QI's account holders. The translation must include the name of the law, and the appropriate citations to the law and regulations.
2. The name of the organization (whether a governmental entity or private association) responsible for enforcing the know-your customer rules. Specify how those rules are enforced (e.g., through audit) and the frequency of compliance checks.
3. The penalties that apply for failure to obtain, or evaluate, documentation under the know-your-customer rules.
4. The definition of customer or account holder that is used under the know-your-customer rules. Specify whether the definition encompasses direct and indirect beneficiaries of an account if the activity in the account involves the receipt or disbursement of funds. Specify whether the definition of customer or account holder includes a trust beneficiary, a company whose assets are managed by an asset manager, a controlling shareholder of a closely held corporation or the grantor of a trust.
5. A statement regarding whether the documentation required under the know-your-customer rules requires QI to determine if its account holder is acting as an intermediary for another person.
6. A statement regarding whether the documentation required under the know-your-customer rules requires QI to identify the account holder as a beneficial owner of income credited to an account.
7. A list of the specific documentation required to be used under the know-your-customer rules, or if those rules do not require use of specific documentation, the

documentation that is generally accepted by the authorities responsible for enforcing those rules.

8. A statement regarding whether the know-your-customer rules require that an account holder provide a permanent residence address.
9. A summary of the rules that apply if an account is not opened in person (e.g., correspondence, telephone, Internet).
10. Whether an account holder's identity may be established, in whole or in part, by introductions or referrals.
11. The circumstances under which new documentation must be obtained, or existing documentation verified, under the know-your-customer rules.
12. A list of all the exceptions, if any, to the documentation requirements under the know-your customer rules.
13. A statement regarding whether the know-your-customer rules do not require documentation from an account holder if a payment to or from that account holder is cleared by another financial institution.¹
14. A statement regarding how long the documentation remains valid under the know-your customer rules.
15. A statement regarding how long the documentation obtained under the know-your-customer rules must be retained and the manner for maintaining that documentation.
16. Specify whether the rules require the maintenance of wire transfer records, the form of the wire transfer records and how long those records must be maintained. State whether the wire transfer records require information as to both the original source of the funds and the final destination of the funds.
17. A list of any payments or types of accounts that are not subject to the know-your-customer rules.
18. Specify whether there are special rules that apply for purposes of private banking activities.

¹ The IRS will not permit a QI to establish the identity of an account holder without obtaining documentation directly from the account holder.

B. Proposed Qualified Intermediary Agreement

SECTION 1. PURPOSE AND SCOPE

- Sec. 1.01. General Obligations.
- Sec. 1.02. Parties to the Agreement.
- Sec. 1.03. Documentation Retention
- Sec. 1.04. Qualified Intermediary Withholding Certificate
- Sec. 1.05. Disclosure of Account Holders.
- Sec. 1.06. Classes of Assets.
- Sec. 1.07. Withholding Obligations
- Sec. 1.08. Return Obligations
- Sec. 1.09. Information Reporting Obligations
- Sec. 1.10. Adjustments for Over- and Under- Withholding and Refunds
- Sec. 1.11. External Audit

SECTION 2. DEFINITIONS

- Sec. 2.01. Account Holder
- Sec. 2.02. Agreement
- Sec. 2.03. Assumption of Withholding Responsibility
- Sec. 2.04. Bank Deposit Interest
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SECTION 14. MISCELLANEOUS PROVISIONS.

THIS AGREEMENT is made in duplicate under and in pursuance of section 1441 of the Internal Revenue Code of 1986, as amended, (the "Code") and Treasury Regulation §1.1441-1(e)(5) by and between [name of QI], any affiliated entities of QI designated in Appendix A of this Agreement that are signatories to this Agreement (collectively referred to as "QI"), and the INTERNAL REVENUE SERVICE (the "IRS"):

WHEREAS, QI has submitted an application in accordance with Revenue Procedure 98-27 to be a qualified intermediary for purposes of Treas. Reg. §1.1441-1(e)(5);

WHEREAS, QI and the IRS desire to enter into an agreement to establish the documentation, withholding, information reporting, tax return filing, deposit obligations, and refund procedures of QI under sections 1441, 1442, 1443, 1461, 3406, 6041, 6042, 6044,

6045, 6049, 6050N, 6302, 6402, 6413, and 6414 of the Code with respect to certain types of payments;

NOW, THEREFORE, in consideration of the following terms, representations, and conditions, the parties agree as follows:

SECTION 1. PURPOSE AND SCOPE

Sec. 1.01. General Obligations. QI is a withholding agent under chapter 3 of the Code and a payor under chapter 61 and section 3406 of the Code for amounts that it pays to its account holders. Except as otherwise provided in this Agreement, QI's obligations with respect to amounts it pays to account holders are governed by chapter 3, chapter 61, and section 3406 of the Code and the regulations thereunder. QI shall act in its capacity as a qualified intermediary pursuant to this Agreement only for those accounts QI has with a withholding agent that QI has designated as accounts for which it acts as a qualified intermediary. QI is not required to act as a qualified intermediary for all accounts that it has with a withholding agent. However, if QI designates an account as one for which it will act as a qualified intermediary, it must act as a qualified intermediary for all payments made to that account.

Sec. 1.02. Parties to the Agreement. This Agreement applies to:

(a) All offices of QI located in the countries described in Appendix A of this Agreement;

(b) All of the offices of the affiliated entities of QI that are signatories to this Agreement that are located in the countries described in Appendix A of this Agreement; and

(c) The Internal Revenue Service.

Appendix A may be amended, in writing, with the agreement of the IRS. Such amendments shall become part of this Agreement.

Sec. 1.03. Documentation Retention. QI agrees to obtain documentation from its account holders, and maintain and retain such documentation, as provided in section 5 of this Agreement.

Sec. 1.04. Qualified Intermediary Withholding Certificate. QI agrees to provide each withholding agent from which QI receives reportable amounts as a qualified intermediary with a qualified intermediary withholding certificate in accordance with section 6 of this Agreement. A qualified intermediary withholding certificate is a Form W-8IMY.

Sec. 1.05. Disclosure of Account Holders. Except as specifically required under section 6 of this Agreement, QI is not required to disclose the identities of its account holders to a withholding agent to whom it provides a Form W-8IMY. Therefore, the documentation given by an account holder to QI does not have to be attached to QI's Form W-8IMY, except as specifically provided in section 6 of this Agreement.

Sec. 1.06. Classes of Assets. QI agrees to provide each withholding agent information regarding the classes of assets determined in accordance with section 7 of this Agreement.

Sec. 1.07. Withholding Obligations. QI agrees to withhold under sections 1441, 1442, 1443, 1461, and 3406 of the Code to the extent provided in sections 3 and 8 of this Agreement.

Sec. 1.08. Return Obligations. QI agrees to file Forms 945 and 1042 as provided in section 9 of this Agreement.

Sec. 1.09. Information Reporting Obligations. QI agrees to file Forms 1042-S, 1096, and 1099 as provided in section 10 of this Agreement.

Sec. 1.10. Adjustments for Over- and Under- Withholding and Refunds. QI agrees to follow the procedures for over- and under- withholding and for claiming refunds, as provided in section 11 of this Agreement.

Sec. 1.11. External Audit. QI agrees to the external audit procedures provided in section 12 of this Agreement.

SECTION 2. DEFINITIONS

For purposes of this Agreement, the terms listed below are defined as follows:

Sec. 2.01. Account Holder. An "account holder" means any person that has an account with a qualified or nonqualified intermediary. Unless the context otherwise requires, an account holder includes another intermediary (e.g., custodian, nominee or other agent) that has an account with the qualified or nonqualified intermediary (whether the other intermediary is acting as a qualified intermediary, nonqualified intermediary, or private arrangement intermediary) and any person who has an account with the other intermediary. The term includes both beneficial owners as defined in Treas. Reg. §1.1441-1(c)(6) and payees as determined under chapters 3 and 61 of the Code. Thus, for example, an account holder may include the owners of an entity classified as a partnership under U.S. tax principles that holds an account with a qualified or nonqualified intermediary.

Sec. 2.02. Agreement. “Agreement” means this agreement, all appendices and attachments to this agreement, and QI’s application to be a qualified intermediary. All such appendices, attachments, and QI’s application are incorporated into this Agreement by reference.

Sec. 2.03. Assumption of Withholding Responsibility. A QI that assumes primary withholding responsibility under chapter 3, or assumes reporting and withholding responsibility under chapter 61 and section 3406 of the Code, assumes the primary responsibility for deducting, withholding, and depositing the appropriate amount from a payment. Generally, a qualified intermediary’s assumption of primary withholding responsibility under chapter 3 of the Code, or the assumption of backup withholding responsibility under section 3406 of the Code, relieves the person who makes a payment to the qualified intermediary from the responsibility to withhold.

Sec. 2.04. Bank Deposit Interest. “Bank deposit interest” means interest described in section 871(i)(2)(A) of the Code.

Sec. 2.05. Beneficial Owner. A “beneficial owner” has the meaning given to that term in Treas. Reg. §1.1441-1(c)(6) and, if treaty benefits are claimed, Treas. Reg. §1.894-1T(d)(2)(ii).

Sec. 2.06. Chapter 3 of the Code. Any reference to "chapter 3 of the Code" means sections 1441, 1442, 1443, 1461, 1463, and 1464 of the Code.

Sec. 2.07. Chapter 61 of the Code. Any reference to "chapter 61 of the Code" means sections 6041, 6041A, 6042, 6044, 6045, 6050N, and 6050P of the Code.

Sec. 2.08. Class of Assets. “Class of assets” has the meanings given to the terms in sections 7 and 10 of this Agreement.

Sec. 2.09. Documentary Evidence. “Documentary evidence” means any documentation obtained pursuant to section 5 of this Agreement other than a Form W-8 or Form W-9.

Sec. 2.10. Documentation. “Documentation” means any valid Form W-8, Form W-9, or documentary evidence obtained pursuant to section 5 of this Agreement.

Sec. 2.11. Documented Account Holder/Payee. A “documented account holder” or “documented payee” is an account holder or payee for whom QI has obtained documentation pursuant to section 5 of this Agreement.

Sec. 2.12. Exempt Recipient. An "exempt recipient" means, for interest, dividends, and royalties, a person described in Treas. Reg. §1.6049-4(c)(1)(ii). For broker proceeds, an

exempt recipient is a person described in Treas. Reg. §§5f.6045-1(c)(3)(i)(B) or 1.6045-2(b)(2)(i).

Sec. 2.13. External Auditor. An “external auditor” is the auditor designated as QI’s (or any private arrangement intermediary’s) external auditor in Appendix B of this Agreement.

Sec. 2.14. Foreign Person. A “foreign person” is any person that is not a “United States person” and includes a “nonresident alien individual,” a “foreign corporation,” a “foreign partnership,” a “foreign trust,” and a “foreign estate,” as those terms are defined in section 7701 of the Code. Notwithstanding the preceding sentence, the term foreign person also includes a foreign branch of a U.S. person that provides QI with a qualified intermediary Form W-8IMY.

Sec. 2.15. Form W-8. “Form W-8” means IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding; IRS Form W-8ECI, Certificate of Foreign Person’s Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Governments and Other Foreign Organizations for United States Tax Withholding; and Form W-8IMY, Certificate of Foreign Intermediary, Foreign Partnership, and Certain U.S. Branches for United States Tax Withholding, as appropriate, or any acceptable substitute form.

Sec. 2.16. Form W-9. “Form W-9” means IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute.

Sec. 2.17. Form 945. “Form 945” means IRS Form 945, Annual Return of Withheld Federal Income Tax.

Sec. 2.18. Form 1042. “Form 1042” means an IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

Sec. 2.19. Form 1042-S. “Form 1042-S” means an IRS Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding.

Sec. 2.20. Form 1042-S Reporting. “Form 1042-S reporting” means the reporting required on Form 1042-S.

Sec. 2.21. Form 1096. “Form 1096” means IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

Sec. 2.22. Form 1099. “Form 1099” means IRS Form 1099-B, Proceeds From Broker and Barter Exchange Transactions; IRS Form 1099-DIV, Dividends and Distributions; IRS Form 1099-INT, Interest Income; IRS Form 1099-MISC, Miscellaneous Income; IRS Form 1099-

OID, Original Issue Discount, and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

Sec. 2.23. Form 1099 Reporting. “Form 1099 reporting” means the reporting required on Form 1099.

Sec. 2.24. Intermediary. An “intermediary” means any person that acts on behalf of another person such as a custodian, broker, nominee, or other agent.

Sec. 2.25. Non-Exempt Recipient. A “non-exempt recipient” or “non-exempt payee” means a person that is not an exempt recipient under the definition in paragraph 2.12 of this section.

Sec. 2.26. Nonqualified Intermediary. A “nonqualified intermediary” is any intermediary that is not a qualified intermediary.

Sec. 2.27. Payee. A “payee” is the person described in Treas. Reg. §§1.1441-1(b)(2) and b(3); 1.1441-5(c), (d) and (e); and 1.6049-5(d).

Sec. 2.28. Payment. A “payment” is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. See Treas. Reg. §1.1441-2(e). For example, a payment includes crediting an amount to an account.

Sec. 2.29. Payor. A “payor” means a person, including a middleman treated as a payor, required to make an information return under chapter 61 of the Code. See Treas. Reg. §§1.6049-4(a)(2) and 31.3406(a)-2.

Sec. 2.30. Presume. “Presume” means the presumptions that a person must make under Treas. Reg. §§1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d), 1.1441-5(e), 1.1441-9(b)(3) and 1.6049-5(d).

Sec. 2.31. Private Arrangement Intermediary. A “private arrangement intermediary” or “PAI” is an intermediary described in section 4 of this Agreement.

Sec. 2.32. Qualified Intermediary. A “qualified intermediary” is a person, described in Treas. Reg. §1.1441-1(e)(5)(ii), that enters into a withholding agreement with the IRS to be treated as a qualified intermediary.

Sec. 2.33. Qualified Intermediary (QI) EIN. A “qualified intermediary EIN” or “QI-EIN” means the employer identification number assigned by the IRS to a qualified intermediary to be used solely in its capacity as a qualified intermediary.

Sec. 2.34. Reduced Rate of Withholding. A “reduced rate of withholding” means a rate of withholding under chapter 3 of the Code that is less than 30% and includes an exemption from withholding.

Sec. 2.35. Reportable Amount. A "reportable amount" means an amount subject to withholding under chapter 3 of the Code (within the meaning of Treas. Reg. §1.1441-2(a)), U.S. source deposit interest (including original issue discount) described in section 871(i)(2)(A) of the Code, and U.S. source interest or original issue discount on short-term obligations described in section 871(g)(1)(B) of the Code. The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in Treas. Reg. §1.6049-5(b)(7), (10), or (11) (relating to certain obligations issued in bearer form). See Treas. Reg. §1.1441-1(e)(3)(vi).

Sec. 2.36. Reportable Payment. A “reportable payment” means any payment described in section 3406(b) of the Code. For example, reportable payments include reportable amounts, as defined in section 2.35 of this Agreement, and, in addition, broker proceeds, foreign source interest, foreign source dividends, and foreign source royalties unless an exception to reporting applies under chapter 61 of the Code.

Sec. 2.37. Short-Term Obligation. A “short-term obligation” is any obligation described in section 871(g)(1)(B)(i) of the Code.

Sec. 2.38. U.S. Person. A “United States (or U.S.) person” is a person described in section 7701(a)(30) of the Code, the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

Sec. 2.39. Undocumented Account Holder/Payee. An “undocumented account holder” or “undocumented payee” is an account holder or payee for whom QI has not obtained documentation in accordance with section 5 of this Agreement.

Sec. 2.40. Withholding Agent. A "withholding agent" has the same meaning as set forth in Treas. Reg. §1.1441-7(a) and includes a payor, as defined in section 2.29 of this Agreement. As used in this Agreement, the term generally refers to the person making a payment to a qualified intermediary.

Sec. 2.41. Other Terms. Any term not defined in this section has the same meaning that it has under the Code, the Income Tax Regulations, or any applicable income tax treaty.

SECTION 3. WITHHOLDING RESPONSIBILITY UNDER SECTION 1441, 1442, AND 1443

Sec. 3.01. Withholding Responsibility. QI is subject to the withholding and reporting provisions applicable to withholding agents and payors under chapters 3, 61, and section 3406 of the Code. QI shall not, however, be required to withhold tax under sections 1441, 1442, and 1443 from any payment of a reportable amount received from a withholding agent, provided that the withholding agent withheld the proper amount of tax.

Sec. 3.02. Assumption of Chapter 3 Primary Withholding Responsibility. QI, upon agreement with a withholding agent, may assume primary withholding responsibility under chapter 3 of the Code for a reportable amount paid by the withholding agent to an account QI has with the withholding agent by providing the withholding agent a Form W-8IMY on which QI designates the account to which the amount is paid as one for which it assumes primary withholding responsibility. QI is not required to assume primary withholding responsibility for all accounts it has with the withholding agent. However, if QI assumes primary withholding responsibility under chapter 3 of the Code for any account, it must assume that responsibility for all payments of reportable amounts made by the withholding agent to that account. QI may assume primary withholding responsibility under chapter 3 of the Code without informing the IRS. See section 8.04 of this Agreement for QI's responsibilities to the extent it has assumed Form 1099 reporting responsibility and backup withholding.

[Use section 3.03, below, if QI is not eligible or does not assume backup withholding and Form 1099 reporting responsibility. A QI is not eligible to assume primary backup withholding and chapter 61 reporting responsibility if it is a foreign person that does not have a branch in the U.S. capable of adequately fulfilling the obligations imposed under chapter 61 and section 3406 of the Code.]

Sec. 3.03. No Assumption of Form 1099 Reporting and Backup Withholding Responsibility. Notwithstanding section 3.01 of this Agreement, QI may not assume Form 1099 reporting responsibility or backup withholding responsibility under section 3406 of the Code in lieu of furnishing a withholding agent with a U.S. non-exempt recipient account holder's Form W-9, or other information regarding the account holder. Therefore, QI must furnish the withholding agent with a U.S. non-exempt recipient's Form W-9, or other information in accordance with section 6 of this Agreement, and separately identify the assets associated with such recipient as required under section 7 of this Agreement.

[Use section 3.03, below, if QI does assumes Form 1099 reporting and backup withholding responsibility.]

Sec. 3.03. Assumption of Form 1099 Reporting and Backup Withholding Responsibility.

[QI maintains the following branch [name and U.S. address] in the United States and represents that the branch can fulfill the Form 1099 reporting obligations and backup withholding obligations of a payor under chapter 61 and section 3406 of the Code].²

or

[QI is a foreign branch of a U.S. financial institution].³

QI assumes Form 1099 reporting responsibility under chapter 61 of the Code and backup withholding responsibility under section 3406 of the Code for reportable payments made to an account QI has with the withholding agent in lieu of furnishing the withholding agent with a U.S. non-exempt recipient account holder's Form W-9, or, in absence of a Form W-9, information regarding the account holder's name, address, and taxpayer identification number, if any. QI shall assume such reporting and withholding obligations by attaching a statement to a Form W-8IMY on which QI designates the account it has with the withholding agent for which it assumes such obligations. QI is not required to assume Form 1099 reporting and backup withholding responsibility for all accounts it has with the withholding agent. However, if QI assumes Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable payments made by the withholding agent to that account. See section 8.04 of this Agreement for QI's responsibilities to the extent it has assumed Form 1099 reporting responsibility and backup withholding.

Sec. 3.04. Requirements of QI Assuming Reporting and Withholding Responsibility Under Sections 3.02 and/or 3.03. If QI assumes primary withholding responsibility under chapter 3 of the Code or assumes Form 1099 reporting and backup withholding responsibility for payments received from a withholding agent in accordance with sections 3.02 and/or 3.03 of this Agreement, then—

(A) QI shall assume that responsibility for all other intermediaries (whether qualified or nonqualified) that may precede QI in the chain of payment, but

(B) QI shall not be required to withhold on any payment made to another qualified intermediary that follows QI in the chain of payment and that has assumed primary withholding responsibility for that payment.

SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES

² This language is to be used by a foreign QI with a U.S. branch.

³ This language is to be used by a QI that is a foreign branch of a U.S. person.

Sec. 4.01. In General. QI may enter into a private arrangement with another intermediary under which the other intermediary agrees to perform all of the obligations of QI under this Agreement, except as provided in section 4.02 of this Agreement. Such agreement shall be between the QI and all the offices of the other intermediary located in a specified country. The specified country must be one for which there is a model qualified intermediary agreement available. Such an intermediary is referred to in this Agreement as a private arrangement intermediary (“PAI”). By entering into a PAI agreement, QI is not assigning its liability for the performance of any of its obligations under this Agreement. Therefore, QI shall remain liable for any tax, penalties, interest, and any other sanction that may result from the failure of the PAI to meet any of the obligations imposed by its agreement with QI. QI shall assert no defenses against the IRS for the failures of the PAI that the PAI may assert against QI. For purposes of this Agreement, the PAI’s actual knowledge or reason to know of facts relevant to withholding or reporting shall be imputed to QI. QI’s liability for the failures of the PAI shall apply even though the PAI is itself a withholding agent under chapter 3 of the Code and a payor under chapter 61 and section 3406 and is itself separately liable for its failure to meet its obligations under the Internal Revenue Code. The PAI is not required to enter into an agreement with the IRS. For purposes of this Agreement, an intermediary shall be considered a PAI only if the following conditions are met:

(A) The PAI is, pursuant to a written agreement between QI and the PAI, subject to all the obligations of QI under this Agreement, except to the extent modified by section 4.02 of this Agreement;

(B) QI files a notice with the Assistant Commissioner (International), at the address set forth in section 14.06 of this Agreement, before the first payment for which the intermediary acts as a PAI giving the name, address, taxpayer identification number, if any, of the intermediary, and the name of the country or countries in which the offices of the PAI are located;

(C) The PAI is subject to the identical external audit procedures that apply to QI under this Agreement and the PAI uses the same external auditor designated as QI’s external auditor in Appendix B of this Agreement, or another auditor approved by the IRS for that PAI, before the agreement between QI and the PAI is executed; and

(D) The PAI furnishes QI with a Form W-8IMY described in paragraph (C) of section 5.09 of this Agreement.

Sec. 4.02. Modification of Obligations for PAI Agreements. The agreement between QI and the PAI must provide that QI shall include in its Forms 945, 1042, 1099, and 1042-S all payments made by QI to designated accounts the PAI has with QI as if QI had made those payments directly to the PAI’s account holders. QI shall require the PAI to provide QI with all the information necessary for QI to meet its withholding and reporting

obligations under chapters 3, 61, and section 3406 of the Code. No provisions shall be contained in the agreement between QI and a PAI that preclude, and no provisions of this Agreement shall be construed to preclude, the PAI's joint and several liability for tax, penalties, and interest under chapters 3, 61, and section 3406 to the extent that underwithholding, penalties, and interest have not been collected from QI. QI's agreement with the PAI must require the PAI to disclose any beneficial owner or payee information that QI is required to disclose to the IRS or a withholding agent under this Agreement. Nothing in the agreement between QI and the PAI shall permit the PAI to assume primary withholding responsibility under chapter 3 or assume Form 1099 reporting and section 3406 withholding obligations.

Sec. 4.03. Termination of Arrangement. QI shall cease to treat an intermediary as a PAI within 90 days of learning that the PAI is in default of its agreement with QI unless the PAI has cured the event of default prior to the expiration of such 90 day period. QI must provide the IRS with notice of any PAI agreement that has been terminated within 30 days of the termination.

SECTION 5. DOCUMENTATION REQUIREMENTS

Sec. 5.01. Documentation Required For Withholding Rate Reduction. QI shall not reduce the rate of withholding, or instruct a withholding agent to reduce the rate of withholding, that applies under the presumption rules to a payment of a reportable amount unless QI can reliably associate the payment, within the meaning of Treas. Reg. §1.1441-1(b)(2)(vii), with valid documentation described in this section 5. QI shall obtain, review, and maintain documentation in accordance with this section 5 and, for documentary evidence, in accordance with the laws and procedures set forth in the Attachments to this Agreement. QI shall make Forms W-8, Forms W-9, and documentary evidence (together with any attachments to those documents) available upon request for inspection by the external auditor designated in Appendix B of this Agreement. See section 5.13 of this Agreement if documentation for an account holder is lacking or unreliable.

Sec. 5.02. Reliance on Forms W-8 or W-9. Subject to the due diligence procedures described in section 5.11 of this Agreement, QI may rely upon a valid Form W-8 or Form W-9 furnished by an account holder to determine whether the account holder is a foreign or U.S. person, and, if appropriate, whether the account holder is entitled to a reduced rate of withholding.

Sec. 5.03. Documentary Evidence. In lieu of relying on a Form W-8, QI may determine whether an account holder that is a beneficial owner is a foreign person on the basis of documentary evidence of the type described in the Attachments to this Agreement. QI may not, however, rely on documentary evidence for those persons described in sections 5.06, 5.07, 5.08, and 5.09 of this Agreement. Reliance on documentary evidence is subject to the due diligence requirements of section 5.11 of this Agreement. Documentary evidence

may also form the basis for a foreign beneficial owner's claim to a reduced rate of withholding under an income tax treaty, provided that the documentation is supplemented with a statement described in section 5.04 of this Agreement, and provided that a taxpayer identification number is obtained when required pursuant to section 5.05 of this Agreement. Documentary evidence need not be obtained under penalties of perjury. QI shall notify the IRS of any changes (whether or not material) in the laws and procedures set forth in the Attachments to this Agreement. QI may also rely upon documentary evidence to determine if an account holder is a U.S. exempt recipient. Nothing in this section 5.03, however, shall relieve QI of the responsibility for obtaining Form W-9 from account holders that are U.S. non-exempt recipients.

Sec. 5.04. Limitation on Benefits and Section 894 Representations. If an account holder that is a beneficial owner (other than an individual) claims, based on documentary evidence, entitlement to a reduced rate of withholding under an income tax treaty, QI must obtain a statement that the account holder meets the Limitation on Benefits article, if any, contained in the applicable income tax treaty. In addition, the account holder must state that it derives the income within the meaning of Treas. Reg. §1.894-1T(d) for which it claims a treaty benefit as a resident of the applicable treaty country, it is the beneficial owner of that payment, and that it meets all other applicable requirements for the benefits claimed. The statements need not be made under penalties of perjury and may be made as part of an account opening statement.

Sec. 5.05. TIN Requirement. Notwithstanding Treas. Reg. §1.1441-6(b)(1), providing that a withholding agent must require a taxpayer identification number before reducing the rate of withholding on certain payments, QI shall require a taxpayer identification number only for those account holders who meet the criteria for disclosure as set forth in section 10.02(D) of this Agreement.

Sec. 5.06. Documentation for International Organizations. QI shall treat an account holder as an international organization (as defined under section 7701(a)(18) of the Code), exempt from taxation under section 892 of the Code only if it obtains a Form W-8EXP or if the account holder's name is one that is designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f) and other facts surrounding the transaction reasonably indicate that the international organization is the beneficial owner of the payment.

Sec. 5.07. Documentation for Foreign Governments. QI shall treat an account holder as a foreign government or foreign central bank of issue exempt from taxation under section 892 or 895 of the Code, only if it has obtained a Form W-8EXP from the account holder.

Sec. 5.08. Documentation for Foreign Tax-Exempt Organizations. QI shall treat an account holder as a foreign organization exempt from tax under section 501(c) of the Code

or, if a foreign private foundation, subject to withholding at a 4 percent rate under section 1443(b) of the Code, only if QI obtains a Form W-8EXP from the account holder. Further, QI shall treat a foreign organization as tax-exempt pursuant to a treaty only if QI obtains a Form W-8BEN from the organization.

Sec. 5.09. Documentation From Intermediaries. QI shall obtain the following documentation from any person that is an intermediary or foreign partnership:

(A) Nonqualified Intermediaries and Foreign Partnerships (Other Than Withholding Foreign Partnerships). If the account holder is a nonqualified intermediary or a foreign partnership (other than a withholding foreign partnership), QI shall obtain from the nonqualified intermediary or foreign partnership a Form W-8IMY (as required under Treas. Reg. § 1.1441-1(e)(3)(iii)). QI may rely on the Form W-8IMY, and the attachments to that form, received from the nonqualified intermediary or foreign partnership as the basis for the information that QI furnishes to a withholding agent under section 7 of this Agreement.

(B) Qualified Intermediaries and Withholding Foreign Partnerships. If the account holder is a qualified intermediary or withholding foreign partnership, QI shall obtain from the qualified intermediary or withholding foreign partnership a Form W-8IMY (as required under Treas. Reg. § 1.1441-1(e)(3)(ii) or § 1.1441-5(c)(2)(iv)). QI may rely upon the Form W-8IMY, and the attachments to that form, received from the qualified intermediary or withholding foreign partnership as the basis for the information that QI furnishes to a withholding agent under section 7 of this Agreement. QI is not required to obtain documentation from the qualified intermediary or withholding foreign partnership's account holders.

(C) Private Arrangement Intermediaries. If QI has an agreement with a PAI, the PAI shall furnish QI a Form W-8IMY completed as if it were a qualified intermediary, with the exception that the PAI must not provide a QI-EIN on the Form W-8IMY. Further, the PAI must attach to its Form W-8IMY a statement that provides the information required under section 10 rather than section 7 of this Agreement. QI may rely on the Form W-8IMY, and the attachments to that form, received from the PAI as the basis for the information that QI furnishes to a withholding agent under section 7 of this Agreement. QI is not required to obtain documentation from the PAI's account holders.

Sec. 5.10. Documentation Validity Period. QI may rely on a Form W-8 until its validity expires under Treas. Reg. § 1.1441-1(e)(4)(ii). QI may rely on a Form W-9 as long as it may reasonably rely on the form under the rules of Treas. Reg. § 31.3406(h)-3(e). QI may rely on documentary evidence obtained in accordance with this section 5 for as long as the documentary evidence remains valid under the laws and procedures set forth in the Attachments to this Agreement, or until QI knows, or has reason to know, that the information contained in the documentary evidence is incorrect.

Sec. 5.11. Due Diligence Requirements. (A) In General. QI may rely on documentation provided to it by an account holder unless and until QI has actual knowledge or reason to know that the information or statements contained in the documentation are unreliable or incorrect. If QI discovers that information contained in documentation is unreliable or incorrect, or if QI discovers it has not conveyed information contained in documentation accurately to a withholding agent, QI must provide the corrected information to the withholding agent, to the extent necessary for the withholding agent to make any changes to QI's classes of assets, within 30 days after QI discovers that the information or statement is unreliable or incorrect. See section 8.01 of this Agreement for QI's responsibility to withhold on amounts for which QI knows, or has reason to know, that the withholding agent underwithheld. If QI receives notification from the IRS that claim of U.S. or foreign status, or, if applicable, a reduced rate of withholding, is incorrect, QI is treated as having actual knowledge on the date that is 30 calendar days after the date it receives the notice.

(B) Reason to know. QI shall be considered to have reason to know that relevant facts or statements contained in documentation are unreliable or incorrect if a reasonably prudent person in the position of a withholding agent would question the claims made.

(C) Limitation on Reason to Know. For payments described in this section 5.11(C), QI has reason to know that documentation is not reliable only if any one or more of the circumstances described in Treas. Reg. §1.1441-7(b)(2)(ii) exist. QI may rely upon the documentation, however, if additional documentation is provided that supports the account holder's claims. This paragraph (C) applies to the following types payments:

- Dividends and interest from stocks and debt obligations that are actively traded within the meaning of section 1092(d) of the Code;
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 United States Code 80a-1);
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 United States Code 77a); and
- Amounts paid with respect to loans of the securities described above.

Sec. 5.12. Maintenance, and Retention of Documentation.

(A) Maintaining Documentation. QI shall maintain documentation by retaining the original, certified copy, photocopy, or microfiche or similar means of record retention of the

documentation and noting in its records the date on which, and by whom, the document was received and reviewed.

(B) Retention Period. QI shall retain an account holder's documentation obtained under this section 5 (other than Form W-9) until the expiration of the statute of limitations for the assessment of tax under section 6501 of the Code has expired for the Form 1042 that includes a payment made to that account holder. QI shall retain an account holder's Form W-9 for the period specified in Treas. Reg. §31.3406(h)-3(g).

Sec. 5.13. Application of Presumption Rules. QI shall apply the presumption rules of Treas. Reg. §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e), 1.1441-9(b)(3) and 1.6049-5(d) to payments made to an account holder for whom it holds no documentation or holds documentation on which it can not rely.

SECTION 6. QUALIFIED INTERMEDIARY WITHHOLDING CERTIFICATE AND DISCLOSURE OF ACCOUNT HOLDERS TO WITHHOLDING AGENT

Sec. 6.01. Certification to Withholding Agent. QI shall furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount from an account for which it acts as a qualified intermediary. The qualified intermediary withholding certificate is a Form W-8IMY that certifies QI is acting as a qualified intermediary and that contains QI's qualified intermediary EIN. QI shall provide the withholding agent a statement associated with Form W-8IMY that designates those accounts for which QI acts as a qualified intermediary and sufficient information regarding classes of assets as determined under section 7 of this Agreement for the withholding agent to determine the correct withholding and reporting on amounts paid to those accounts. The attached statement shall also clearly identify those accounts for which QI assumes primary withholding responsibility under chapter 3 of the Code and/or those accounts for which QI assumes Form 1099 reporting and backup withholding responsibility. The statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 61, and section 3406 of the Code.

Sec. 6.02. Disclosure of Certain Account Holder Documentation. QI shall be required to disclose to the withholding agent the Form W-9 obtained from each U.S. non-exempt recipient account holder that receives reportable amounts to the extent QI does not assume Form 1099 reporting and backup withholding responsibility for the account. If QI has not obtained a Form W-9 from the account holder but actually knows that an account holder is a U.S. non-exempt recipient, QI shall disclose to the withholding agent any information QI has in its possession regarding the name, address, and taxpayer identification number of such person. The Form W-9 (or name, address, and taxpayer identification number) of the U.S. non-exempt recipient must be sent to the withholding agent with instructions to associate it with the appropriate account for which QI is acting

as a qualified intermediary. QI need not disclose to the withholding agent any other account holder documentation.

SECTION 7. DETERMINATION OF ASSET CATEGORIES AND CLASSES FOR QI'S WITHHOLDING CERTIFICATE

Sec. 7.01. Statement of Asset Classes. QI shall furnish to the withholding agent a written statement described in this section 7. The statement forms an integral part of the Form W-8IMY. The statement shall separate those assets that generate, or could generate, reportable amounts into the three overall categories described in section 7.02 of this Agreement and into the classes of assets described in section 7.03 of this Agreement. The written statement may be provided in any form and in any manner the QI and withholding agent choose. QI shall use the documentation obtained under section 5 of this Agreement, or the presumption rules under section 5.13 of this Agreement, as the basis for determining categories and classes of assets. QI shall update the statement as often as necessary so that the withholding agent has the information necessary to satisfy its reporting and withholding obligations. All such updates form an integral part of QI's Form W-8IMY.

Sec. 7.02. Categories of Assets. QI must separate assets into the following three overall categories of assets:

- (A) Assets associated with documented foreign account holders;
- (B) Assets associated with documented U.S. account holders; and
- (C) Assets associated with undocumented account holders.

Sec. 7.03. Class of Assets. A class of assets is a group of assets within a category of assets that produces the same type of income, is subject to the same rate of withholding, and is associated with the same type of account holders as specified in paragraphs (A) through (G) of this section 7.03. A type of income is any item of income subject to the same income code and, unless the income is allocable to U.S. account holders, the same exemption code on Form 1042-S. Notwithstanding the preceding two sentences, assets that generate a specific type of income and that are allocable to each U.S. non-exempt recipient are a separate class of assets, unless QI assumes Form 1099 reporting and backup withholding responsibility for reportable payments allocable to U.S. non-exempt recipient account holders. If QI has an account holder that is another intermediary (whether a qualified intermediary, a nonqualified intermediary, or a private arrangement intermediary) or a foreign partnership (whether or not a withholding foreign partnership), QI shall combine the asset information provided by the intermediary or partnership to QI's own classes of assets. Thus, QI shall identify classes of assets as follows:

(A) Assets that are associated with documented foreign account holders and that generate a specific type of income (as determined by reference to the income and exemption codes on Form 1042-S) subject to a single withholding rate. If QI assumes primary withholding responsibility for assets in an account, the income from those assets is considered subject to a zero rate of withholding;

(B) Assets that are associated with all documented U.S. exempt recipient account holders and that generate a specific type of income (as determined by reference to the income, but not exemption, codes on Form 1042-S);

(C) Assets that are associated with each documented U.S. non-exempt recipient account holder for which QI does not assume Form 1099 reporting and backup withholding responsibility. In addition, for any U.S. non-exempt recipient account holder that receives a reportable amount from a withholding agent, QI shall inform the withholding agent of the assets associated with such U.S. non-exempt recipient account holder that generate, or could generate, reportable payments that are not included in reportable amounts (e.g., broker proceeds, foreign source interest, or foreign source dividends);

(D) Assets that are associated with all documented U.S. non-exempt recipient account holders for which QI does assume Form 1099 reporting and backup withholding responsibility and that generate a specific type of income (as determined by reference to the income, but not exemption, codes on Form 1042-S);

(E) Assets that are associated with each undocumented account holder that QI actually knows is a U.S. non-exempt recipient;

(F) Assets that are associated with undocumented account holders that generate reportable amounts (other than U.S. source bank deposit interest or interest and OID on short-term obligations) that a withholding agent must presume is paid to an undocumented payee that is a foreign person (30 percent withholding applies); and

(G) Assets that are associated with undocumented account holders that generate bank deposit interest or interest and OID on short-term obligations that a withholding agent must presume are made to a payee that is a U.S. non-exempt recipient (31percent backup withholding applies).

SECTION 8. WITHHOLDING OBLIGATIONS

Sec. 8.01. Primary Withholding Responsibility Under Chapter 3 Not Assumed. QI shall withhold the difference between the amount of tax required to be withheld under chapter 3 of the Code and the amount actually withheld by any other withholding agent to the extent that QI knows, or has reason to know, that the appropriate amount has not been withheld. In addition, if QI has insufficient information to allocate the reportable amounts

(other than bank deposit interest and short-term interest or OID) to each of a nonqualified intermediary's account holders (or partners of a foreign partnership that is not a withholding foreign partnership) then QI must withhold the difference between 30 percent of the amount paid to those account holders (or partners) for whom QI does not hold allocation information and the amount, if any, actually withheld by the withholding agent. Notwithstanding the preceding sentence, QI shall not have any liability for tax under section 1461 of the Code if QI obtains the allocation information by the time that QI is required to file Forms 1042 and 1042-S for the calendar year. The amounts so withheld shall be deposited in accordance with section 8.05 of this Agreement and shall be reported on Forms 1042 and 1042-S in accordance with sections 9 and 10 of this Agreement. QI is not required, however, to withhold on amounts it pays to another qualified intermediary or withholding foreign partnership that has certified to QI on Form W-8IMY that it has assumed primary withholding responsibility.

Sec. 8.02. Primary Withholding Responsibility Under Chapter 3 Assumed. To the extent that QI has assumed primary withholding responsibility for reportable amounts it receives from a withholding agent, QI shall withhold the amount of tax required to be withheld under chapter 3 of the Code. The amounts withheld shall be deposited in accordance with section 8.05 of this Agreement and shall be reported on Forms 1042 and 1042-S in accordance with sections 9 and 10 of this Agreement. QI is not required, however, to withhold on amounts it pays to another qualified intermediary or withholding foreign partnership that has certified to QI on Form W-8IMY that it has assumed primary withholding responsibility.

Sec. 8.03. Backup Withholding Responsibility Not Assumed. Notwithstanding its ineligibility to assume backup withholding or its election not to assume backup withholding, QI shall withhold under section 3406 on any reportable payments that it pays to an account holder only if it has actual knowledge that the account holder is a U.S. non-exempt recipient on whose behalf QI has received a reportable amount and QI cannot reliably associate the reportable payment with a valid Form W-9 and another payor has not withheld under chapter 3 or section 3406 of the Code. That is, in accordance with Treas. Reg. §31.3406(g)-1(e), QI shall not be required to withhold under section 3406 on a reportable payment that QI makes outside the United States to an offshore account (or, in the case of broker proceeds, effects a sale outside the United States) unless QI has actual knowledge that the account holder is a United States non-exempt recipient who has not provided a valid Form W-9. An offshore account means an account maintained at an office or branch of QI at any location outside the United States and outside possessions of the United States. Whether a payment is made outside the United States is determined under the rules of Treas. Reg. §1.6049-5(e). QI is not required to withhold under section 3406 on any reportable payment that was subject to 30 percent withholding under chapter 3 of the Code by another payor. The amounts withheld shall be deposited in accordance with section 8.05 of this Agreement and shall be reported on Forms 945 and 1099 filed in accordance with sections 9 and 10 of this Agreement. QI is not required, however, to withhold on amounts it pays to another qualified intermediary if that other qualified

intermediary has certified to QI on Form W-8IMY that it has assumed primary backup withholding responsibility.

Sec. 8.04. Backup Withholding Responsibility Assumed. To the extent that QI has assumed Form 1099 reporting and backup withholding responsibility for reportable payments it receives from a withholding agent, QI shall report and withhold in accordance with chapter 61 and section 3406 of the Code. Notwithstanding the preceding sentence, the exceptions to Form 1099 reporting under chapter 61 that apply to a foreign source amount paid outside the United States by a non-U.S. payor or non-U.S. middleman shall not apply to QI to the extent those amounts are received from an account for which QI is acting as a qualified intermediary. In addition, the exception from backup withholding under Treas. Reg. §31.3406(g)-1(e) shall not apply. That is, QI must backup withhold on amounts it actually knows, or must presume, to be paid to a U.S. non-exempt recipient. The amounts withheld shall be deposited in accordance with section 8.05 of this Agreement and shall be reported on Forms 945 and 1099 filed in accordance with sections 9 and 10 of this Agreement. QI is not required, however, to withhold on amounts it pays to another qualified intermediary if that other qualified intermediary has certified to QI on Form W-8IMY that it has assumed primary backup withholding responsibility.

Sec. 8.05. Deposit Requirements. QI must deposit amounts withheld under sections 1441, 1442, 1443, or 3406 of the Code with a Federal Reserve bank or authorized financial institution as provided in Treas. Reg. §1.6302-2(a) or §31.6302-1.

SECTION 9. TAX RETURN OBLIGATIONS

Sec. 9.01. Form 1042 Filing Requirement. (A) In general. QI shall file a return on Form 1042 on or before March 15 of the year following the calendar year in which QI acts as a qualified intermediary. Form 1042 shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. In addition to the information specifically requested on Form 1042 and the accompanying instructions, QI shall attach to the form the following information:

(i) A schedule setting forth the reportable amounts that QI received in its capacity as a qualified intermediary during the calendar year, and the name, address, and employer identification number of each withholding agent from whom the reportable amounts were received; and

(ii) A statement setting forth the amounts of any overwithholding (overpayment) or underwithholding (balance due) adjustments made under Treas. Reg. §1.1461-2 and sections 11.02 and 11.05 of this Agreement, and an explanation of the circumstances that resulted in the over- or under- withholding.

(B) Extensions For Filing Returns. QI may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns on or before the due date of the return. The application must be in writing, properly signed by a duly authorized agent of QI, and shall clearly set forth the following:

- (i) The calendar year for which the extension is requested;
- (ii) Whether the extension request is for the return, information required to be attached to the return, or both; and
- (iii) A full explanation of the reasons for requesting the extension to assist the IRS in determining the period of extension, if any, that will be granted.

Sec. 9.02. Form 945 Filing Requirement. QI shall file a return on Form 945 on or before January 31 following the calendar year in which QI withholds any amount under section 3406 of the Code. The form must be filed at the address specified in the instructions for Form 945.

Sec. 9.03. Retention of Returns. QI shall retain Forms 945 and 1042 for the applicable statute of limitations on assessments and collection for the amount reported on the form.

SECTION 10. INFORMATION REPORTING OBLIGATIONS

Sec. 10.01. Form 1042-S Reporting. Except as otherwise provided in section 10.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each beneficial owner account holder or payee for whom such reporting would otherwise be required. In place of such Forms 1042-S, QI shall file a Form 1042-S reporting the income from classes of assets as determined in sections 10.03 and 10.04 of this Agreement. QI must file its Forms 1042-S in the same manner as required by the instructions to the form. Any Form 1042-S required by this section 10 shall be filed on or before March 15 following the calendar year in which the payment reported on the form was made. QI may request an extension of time to file Forms 1042-S by submitting Form 8809, Request for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by Form 8809.

Sec. 10.02. Beneficial Owner Reporting. QI is required to file Forms 1042-S for amounts paid to each beneficial owner account holder or other payee as described in this section 10.02.

(A) QI must file Forms 1042-S, by income type, exemption code, and withholding rate, for each qualified intermediary or withholding foreign partnership from whom it receives a Form W-8IMY;

(B) QI must file a Form 1042-S for each of the account holders of a nonqualified intermediary (other than the account holders of a PAI) or foreign partnership (other than a withholding foreign partnership) for which the nonqualified intermediary or foreign partnership has provided documentation and allocation information sufficient to determine the amount of income paid to such account holder of the nonqualified intermediary or foreign partnership;

(C) QI must file a Form 1042-S made out to an unknown person for income paid to account holders of a nonqualified intermediary or foreign partnership (other than a withholding foreign partnership) that are undocumented and presumed to be foreign persons;

(D) QI must file a Form 1042-S made out to an unknown person for income paid to documented foreign account holders of the nonqualified intermediary or foreign partnership (other than a withholding foreign partnership) for which QI does not have allocation information sufficient to determine the amount of income paid to such account holders; and

(E) Upon request by the IRS, QI must provide, in the manner requested, the names, addresses, taxpayer identification number, if any, and the amounts paid to those account holders who receive annually \$100,000 or more of income for which the account holder claimed a reduced rate of withholding under an income tax treaty and who certify in accordance with section 5.04 of this Agreement that they meet the Limitation on Benefits provision of an income tax treaty and that they derive the income within the meaning of Treas. Reg. §1.894-1T(d). The \$100,000 threshold is determined by aggregating all the accounts of an account holder. The threshold shall be determined separately for QI and for each of the affiliated entities of QI described in Appendix A; however, accounts of an account holder at all the branches of any one entity must be aggregated. Notwithstanding the preceding sentence, accounts of an account holder with QI and affiliates of QI must be aggregated if QI, or any of its affiliates, knows, or has reason to know, that the account holder is attempting to avoid disclosure by opening separate accounts. Further, QI, and any of its affiliated entities, must aggregate the accounts of an account holder, and any persons having the relationship described in section 267(b) of the Code with the account holder if QI, or any of its affiliates, actually know that the account holder is attempting to avoid disclosure by having such persons open accounts in their names.

Sec. 10.03. Categories of Assets For Form 1042-S Reporting. For purposes of determining amounts to be reported on Form 1042-S, QI shall determine classes of assets by first dividing all of the assets for which it acts as a qualified intermediary into the three overall categories described in this section 10.03 and then dividing each of those

categories into classes of assets as described in section 10.04 of this Agreement. Income from each class of assets shall be reported on a separate Form 1042-S. QI must separate its assets into the following 3 overall categories:

- (A) Assets associated with documented foreign account holders;
- (B) Assets associated with documented U.S. account holders; and
- (C) Assets associated with undocumented account holders.

Sec. 10.04. Classes of Assets for Form 1042-S Reporting. A class of assets is a group of assets within a category of assets that produces the same type of income, is subject to the same rate of withholding, and is associated with the same type of account holders located in the same country. A type of income is determined by reference to the income and exemption codes on Form 1042-S. A type of account holder is determined by reference to the recipient codes to be used solely by a qualified intermediary on Form 1042-S. Thus, QI shall report on a separate Form 1042-S income from each of the following classes of assets:

- (A) Assets that are associated with documented foreign beneficial owners that are the same type of account holder, are located in the same foreign country, receive the same type of income, and are subject to the same rate of withholding;
- (B) Assets associated with all documented U.S. exempt recipients who receive the same type of income;
- (C) Assets that are associated with all undocumented account holders that generate reportable amounts (other than U.S. source bank deposit interest or U.S. source interest and OID on short-term obligations); and
- (D) Assets associated with a PAI whose account holders are of the same type, located in the same foreign country, receive the same type of income, and are subject to the same rate of withholding.

Sec. 10.05. Form 1099 Reporting Responsibility. QI shall file Forms 1099 and, unless filing magnetically, Form 1096, for reportable payments paid to the persons specified in this section 10.05. Forms 1099 shall be filed on or before the date prescribed for the particular Form 1099 under chapter 61 of the Code. Extensions on the time to file Forms 1099 may be requested by submitting Form 8809, Request for Extension of Time to File Information Returns, in the manner required by the form.

- (A) QI must file a Form 1099 for each U.S. non-exempt recipient receiving payments for which QI has assumed Form 1099 reporting responsibility;

(B) If QI assumes Form 1099 reporting and backup withholding responsibility, QI must file a Form 1099 made out to an unknown person for income that is paid to a nonqualified intermediary or foreign partnership that QI must presume is made to a nonexempt recipient (e.g., short-term OID or bank deposit interest for which QI does not hold Forms W-8, W-9 or documentary evidence or reportable payments (other than reportable amounts) for which a nonqualified intermediary or foreign partnership has failed to provide allocation information;

(C) QI must file a Form 1099 for each U.S. non-exempt recipient for whom QI has failed to provide a Form W-9 in its possession to a withholding agent or failed to provide sufficient information to the withholding agent for the withholding agent to report the amount on Form 1099;

(C) QI must file a Form 1099 for each person QI actually knows to be a U.S. non-exempt recipient who has not provided QI with a Form W-9 if QI has not given that person's name, address, taxpayer identification number, if any, and asset allocation information to another payor; and

(D) QI must file a Form 1099 for each person to whom QI has made a payment on which QI withheld an amount under section 3406 of the Code.

SECTION 11. ADJUSTMENTS FOR OVER- AND UNDER- WITHHOLDING; REFUNDS

Sec. 11.01. Adjustments for Overwithholding by Withholding Agent. QI may request a withholding agent to make an adjustment for amounts paid to QI on which the withholding agent has overwithheld under chapter 3 of the Code by applying either the reimbursement or set-off procedures described in this section within the time period prescribed for those procedures.

(A) Reimbursement Procedure. QI may request a withholding agent to repay QI for any amount overwithheld under chapter 3 of the Code and for the withholding agent to reimburse itself under the reimbursement procedures of Treas. Reg. §1.1461-2(a)(2)(i) by making the request to the withholding agent prior to the due date for filing the Form 1042 and Form 1042-S (without regard to extensions) for the calendar year of overwithholding. Nothing in this section shall be interpreted to require a withholding agent to reimburse QI under Treas. Reg. §1.1461-2(a)(2)(i).

(B) Set-off Procedure. QI may request a withholding agent to repay QI by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code to be withheld from income paid by the withholding agent to QI. QI must make the request before the earlier of the due date (without regard to extensions) for the withholding agent to file Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS.

Sec. 11.02. Adjustments for Chapter 3 Overwithholding by QI. QI may make an adjustment for amounts paid to its account holders that it has overwithheld under chapter 3 of the Code by applying either the reimbursement or set-off procedures described in this section within the time period prescribed for those procedures.

(A) Reimbursement Procedure. QI may repay its account holder for an amount overwithheld and reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under section 6302 of the Code and Treas. Reg. §1.6302-2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if:

(i) QI states on a timely filed (not including extensions) Form 1042-S for the calendar year of withholding issued to the recipient of the income or, if appropriate, the Form 1042-S reporting income from a class of assets as described in section 10.04 of this Agreement, the amount of tax withheld and the amount of any actual repayments; and

(ii) QI states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with Treas. Reg. §1.6414-1.

(B) Set-Off Procedure. QI may repay its account holder by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code or the regulations thereunder to be withheld from income paid by QI to the account holder before the earlier of the due date (without regard to extensions) for filing the Form 1042-S for the account holder or the withholding pool, as appropriate, for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S (or an amended form) for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code.

Sec. 11.03. Repayment of Backup Withholding. If QI erroneously withholds, as defined under Treas. Reg. §31.6413(a)-3, an amount under section 3406 of the Code from a payee, QI may refund the amount erroneously withheld as provided in Treas. Reg. §31.6413(a)-3.

Sec. 11.04. Collective Refund or Credit Procedures for Chapter 3 Overwithholding. If there has been overwithholding under chapter 3 of the Code on the total amount of reportable payments paid to QI's account holders during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures under sections 11.02 or 11.03 of this Agreement, QI may request a refund or credit of the total amount

overwithheld for account holders for whom QI acts as a qualified intermediary by following the procedures of this section 11.04. QI shall not include in its collective refund claim payments made to another qualified intermediary, a withholding foreign partnership, a nonqualified intermediary, or the account holders of a nonqualified intermediary. QI shall follow the procedures set forth under sections 6402 and 6414 of the Code, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511 of the Code. QI may use the collective refund procedures under this section 11.04 only if the following conditions are met:

(A) QI must not have issued a Form 1042-S to the account holders from whose payment the amount has been overwithheld;

(B) QI must submit together with its amended return on which it claims a credit or refund a statement that QI has repaid the tax to the account holder prior to filing the claim for refund or credit; and

(C) QI must retain a record that it paid, or credited the account of, the account holder the amount of the overwithholding.

Sec. 11.05. Adjustments for Chapter 3 Underwithholding. If QI knows that an amount should have been withheld under chapter 3 of the Code from a previous payment to an account holder but was not withheld, QI may either withhold from future payments made to the same account holder or satisfy the tax from property that it holds in custody for the account holder or property over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of the Form 1042 (not including extensions) for the calendar year in which the underwithholding occurred.

Sec. 11.06. Underwithholding After Form 1042 Filed. If, after a Form 1042 has been filed for a calendar year, QI, the external auditor designated in Appendix B of this Agreement, or the IRS determines that QI has underwithheld tax for such year, QI shall file an amended Form 1042 to report and pay the underwithheld tax for such year. QI shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties, at the time of filing the amended Form 1042. If QI fails to file an amended return, the IRS shall make such return under section 6020 of the Code.

SECTION 12. EXTERNAL AUDIT PROCEDURES.

Sec. 12.01. In General. The IRS shall not conduct an on-site audit of QI, or any PAI with which QI has an agreement, provided that the external auditor designated in Appendix B of this Agreement conducts an audit of QI, and any PAI, in accordance with this section 12. QI shall permit the external auditor to have access to all relevant records of QI for purposes of performing the external audit. QI shall permit the IRS to communicate directly

with the external auditor in regard to the audit and to review the audit procedures followed by the external auditor. QI shall permit the IRS to examine the external auditor's work papers and reports prepared by the external auditor. However, the external auditor is not required to divulge the identity of QI's account holders to the IRS.

Sec. 12.02. Designation of External Auditor. QI's external auditor must be approved by the IRS before this Agreement is executed. The IRS and QI agree that the auditor designated in Appendix B of this Agreement shall be the external auditor, unless QI and the IRS agree to substitute another auditor. QI shall not propose an external auditor to the IRS unless the auditor is subject to regulatory supervision under the laws of the country, or countries, designated in Appendix A of this Agreement.

Sec. 12.03. Timing and Scope of External Audits. QI shall have the external auditor conduct an audit of the second calendar year and the fifth calendar year that this Agreement is in effect, subject to section 12.05 of this Agreement. The external auditor shall verify whether QI is in compliance with this Agreement by conducting an audit that meets the requirements of this section 12.03. The external auditor shall verify whether QI has complied with its obligations under all provisions of sections 4 through 11 of this Agreement by:

(A) Verifying that QI has in place adequate procedures to comply with QI's obligations under sections 5 through 11 of this Agreement;

(B) Interviewing employees responsible for complying with QI's obligations under sections 5 through 11 of this Agreement to determine if they are knowledgeable and adequately trained with regard to such obligations; and

(C) Reviewing account holder information using valid sampling techniques (including, if appropriate, a statistical sampling) to determine if QI has complied with its obligations under sections 5, 6, 7, 8, 10, and 11 of this Agreement; and

(D) With respect to QI's obligations under sections 9, 10, and 11, obtaining copies of original and amended Forms 1042, 945, 1042-S, 1096, and 1099, and any schedules or statements required to be filed with those returns, and reviewing those forms for accuracy.

(E) Reviewing QI's agreements with PAIs, if any, to verify that PAI has agreed to perform all of the obligations of QI under this Agreement, except as provided in section 4.02 of this Agreement.

Sec. 12.04. External Auditor's Report. Upon completion of the audit of QI and any PAI, the external auditor shall issue a report, or reports, of audit findings directly to the IRS by sending the original report to the IRS at the address set forth in section 14.06 of this Agreement by June 30 following the calendar year being audited, or if that date falls on a

Saturday or Sunday, the next U.S. business day. The report must be in writing, in English, and currency amounts must be stated in U.S. dollars. The report must fully describe the scope of the audit, the methodologies (including sampling techniques) used to determine whether QI is in compliance with each provision of section 5 through 11 of this Agreement, and the result of each such determination.

Sec. 12.05. Expanding Scope and Timing of External Audit. Upon review of the external auditor's report, the IRS may request, and QI must permit, the external auditor to perform additional audit procedures, or to expand the external audit to cover some or all of the calendar years for which the period of limitations for assessment of taxes has not expired. In addition, the IRS may request, and QI must permit, that the external auditor perform an audit for one or more calendar years not scheduled for audit pursuant to section 12.03 of this Agreement.

SECTION 13. EXPIRATION, TERMINATION AND DEFAULT

Sec. 13.01. Term of Agreement. This Agreement shall be in effect on January 1 of the calendar year following the year in which this agreement is executed and shall expire on December 31, of the sixth calendar year for which this Agreement is in effect. This Agreement may be renewed as provided in section 13.06 of this Agreement.

Sec. 13.02. Termination of Agreement. This Agreement may be terminated by either the IRS or QI prior to the end of its term by delivery of a notice to the other party in accordance with section 14.06 of this Agreement. The IRS, however, shall not terminate the Agreement unless there has been a significant change in circumstances, as defined in section 13.03 of this Agreement, or an event of default has occurred, as defined in section 13.04 of this Agreement, and the IRS determines, in its sole discretion, that the significant change of circumstances or the event of default warrants termination of this Agreement. In addition, the IRS shall not terminate this Agreement in the event of default if QI can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify QI, in writing, that an event of default has occurred and that the IRS intends to terminate the Agreement unless QI cures the default in accordance with section 13.05 of this Agreement. A notice of termination sent by either party shall take effect on the date specified in the notice.

Sec. 13.03. Significant Change in Circumstances. For purposes of this Agreement, a significant change in circumstances means:

(A) An acquisition of all, or substantially all, of QI's assets in any transaction in which QI is not the surviving legal entity;

(B) A change in U.S. federal law that affects the validity of, or materially affects, the procedures contained in this Agreement;

(C) A ruling of any court that affects the validity of any provision of this Agreement;

(D) A change in the laws and procedures set forth in any Attachment to this Agreement;
or

(E) A significant change in QI's business practices that affects QI's ability to meet its obligations under this Agreement.

Sec. 13.04. Events of Default. For purposes of this Agreement, an event of default occurs if QI fails to perform any material duty or obligation required under this Agreement, and includes, but is not limited to, the occurrence of any of the following:

(A) QI fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

(B) QI underwithholds the amount required to be withheld under chapter 3 of the Code and fails to correct the underwithholding or file an amended Form 1042 reporting, and paying, the appropriate tax under sections 11.05 and 11.06 of this Agreement;

(C) QI underwithholds the amount required to be withheld under section 3406 of the Code;

(D) QI makes a misrepresentation on Forms W-8IMY or attaches to the form information regarding classes of assets that results in underwithholding by the withholding agent;

(E) QI makes excessive refund claims;

(F) QI knows or has reason to know that the documentation required under section 5 of this Agreement is lacking, incorrect, or unreliable for a significant number of account holders;

(G) QI fails to timely file Forms 945, 1042, 1042-S, or 1099 or files forms that are materially incorrect or fraudulent;

(H) QI fails to have an external audit performed when required, fails provide an external auditor's report directly to the IRS on a timely basis, or QI or its external auditor fails to cooperate with the IRS;

(I) QI fails to disclose to a withholding agent or to the IRS those account holders required to be disclosed under sections 6 and 10 of this Agreement;

(J) QI fails to inform the IRS of any change in the laws and procedures described in any Attachment to this Agreement within 90 days of the change becoming effective;

(K) QI fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under this Agreement;

(L) QI fails to inform the IRS of any private arrangement, as described in section 4 of this Agreement;

(M) QI fails to cure a defect identified in an external audit report;

(N) QI makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or its external auditor;

(O) The IRS determines that the external auditor is not sufficiently independent to adequately perform its audit function; or

(P) An intermediary with which QI has a PAI agreement is in default with that agreement and QI fails to meet its obligation to terminate that agreement within the time period specified in section 4.03 of this Agreement.

Sec. 13.05. Notice and Cure. Upon the occurrence of an event of default, the IRS may deliver to QI a notice of default specifying the event of default that has occurred. QI shall respond to the notice of default within 60 days from the date of the notice. The response shall contain an offer to cure the event of default, and the time period in which the cure will be accomplished, or shall state the reasons why QI does not agree that an event of default has occurred. If QI does not respond within 60 days of the notice of default, the IRS may deliver a notice of termination as provided in section 13.02 of this Agreement. The IRS shall respond to QI's response, by either accepting or rejecting the offer of cure, or by setting forth a counter-proposal for cure of the event of default. If QI has stated that it does not agree that an event of default has occurred, or if the IRS rejects an offer of cure by QI and QI does not accept the IRS's counterproposal within 30 days of receiving that counterproposal, the parties shall seek to resolve their disagreement within 30 days of the IRS's receipt of QI's response. At the end of this latter 30-day period, or, to the extent QI failed to reply to the IRS's rejection or counter-proposal within 30 days, at the end of the earlier 30 day period, the IRS may terminate this Agreement in accordance with section 13.02 of this Agreement. If QI receives a notice of termination from the IRS, it may appeal the determination to terminate this Agreement by sending a written notice to the Director, International District, OP:IN:D, 950, L'Enfant Plaza South, SW, Washington DC, 20024.

Sec. 13.06. Renewal. If QI intends to renew this Agreement, it shall submit an application for renewal to the IRS no earlier than one year and no later than six months prior to the expiration of this Agreement. Any such application for renewal must contain an update of

the information provided by QI to the IRS in connection with the application to enter into this Agreement, and any other information the IRS may request in connection with the renewal process. This Agreement shall be renewed only upon the signatures of both QI and the IRS. Either the IRS or QI may seek to negotiate a new qualified intermediary agreement rather than renew this Agreement.

SECTION 14. MISCELLANEOUS PROVISIONS.

Sec. 14.01. QI's application to become a qualified intermediary and all the Appendices and Attachments to this Agreement are hereby incorporated into and made an integral part of this Agreement. This Agreement, QI's application, and the Appendices and Attachments to this Agreement constitute the complete agreement between the parties.

Sec. 14.02. This Agreement may not be amended, modified, or superceded other than by written agreement of QI and the IRS.

Sec. 14.03. Any waiver of a provision of this Agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

Sec. 14.04. This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States.

Sec. 14.05. QI's rights and responsibilities under this Agreement can not be assigned to another person.

Sec. 14.06. Notices provided under this Agreement shall be directed as follows:

To the IRS

Office of the Assistant Commissioner (International)
Foreign Payments Branch
OP:IN:D:WT
950 L'Enfant Plaza South, SW
Washington D.C. 20024

To QI:

Notices shall be mailed registered, first class air mail.

Sec. 14.08. QI, acting in its capacity as a qualified intermediary or any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.

Signed this day of , 1998

(name and title of person signing for QI)

Internal Revenue Service

By _____
Assistant Commissioner (International)

Appendix A

[Name of QI]

[Name of country] (see Attachment 1, for description of know-your customer rules).

[Name of country] (see Attachment 2, for description of know-your customer rules).

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. .
. .

[Name of entity affiliated with QI]

[Name of country] (see Attachment ____, for description of know-your customer rules).

[Name of country] (see Attachment ____, for description of know-your customer rules).

ATTACHMENT⁴

1. QI is subject to the following laws and regulations of [name of country] governing the requirements of QI to obtain documentation confirming the identity of QI's account holders.
2. QI represents that [name and citations to laws and regulations identified in item 1, above] are enforced by [name of enforcement body] and QI shall provide the IRS with an English translation of any reports or other documentation issued by [name of enforcement body] that relates to QI's compliance with [laws and regulations identified in 1, above].
3. QI represents that the following penalties apply for failure to obtain, maintain, and evaluate documentation obtained under [name and citations to laws and regulations identified in item 1].
4. QI shall use the following documentary evidence to comply with section 5.03 of this Agreement:
 - a. For natural persons:
 - b. For legal persons:
5. QI shall follow the procedures set forth below to establish a person's permanent residency address.
6. QI shall follow the procedures set forth below to confirm the identity of account holders that do not open accounts in person.
7. QI represents that it will follow the procedures set forth below to determine whether an account holder is acting as an intermediary, and, if it is, to identify the beneficial owners for whom the intermediary is acting.
8. QI shall follow the procedures set forth below to obtain new documentation, or renew existing documentation, in accordance with [name and citations to laws and regulations identified in item 1].

⁴ A separate attachment will be created for each country in which QI, or an entity affiliated with QI, operates.

8. QI shall retain the documentary evidence obtained under [name and citations to laws and regulations identified in item 1] for the following period.

Section 3. Contact Information

The principal authors of this notice are Kate Y. Hwa and Laurie Hatten-Boyd of the Office of the Associate Chief Counsel (International). For further information regarding Section I of this notice, contact Ms. Hwa at 202-622-3840 (not a toll-free number). For further information regarding Section II of this notice, contact Ms. Hatten-Boyd at (202) 622-3840 (not a toll-free call) or Tom Logan at 202-874-1800 (not a toll-free number).