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27.04.2012

Mail

Re: Prop. Regs. §§1.1471-1 – 1.1474-1 (REG-121647-10) (Foreign Account Tax Compliance Act)

Dear Sir or Madam:

Allianz S.E. is pleased to provide comments on issues raised by Prop. Regs. §1.1471-1 and following.

Allianz S.E. is one of the leading integrated financial services providers worldwide, headquartered in Munich, Germany. The Allianz Group serves approximately 78 million customers in more than 70 countries, and includes some 1,300 legal entities. On the insurance side, Allianz is the market leader in the German market, and has a strong international presence. The Allianz Group's product portfolio includes a wide array of life/ health insurance and property-casualty insurance products for both individual and corporate clients. Within its life insurance business, the Allianz Group operates in nearly 40 countries with approximately 30 million customers. The Allianz Group also offers asset management services, both in the fixed income and equity area, to retail and institutional clients. It conducts business in almost every European country, the United States, South America and the Asia-Pacific region.

In response to your request, the comments are listed in the order in which they appear in the proposed regulation. If they had been listed in order of importance, however, the disproportionate impact of the affiliated group rule would have led the list.

### EXECUTIVE SUMMARY

- Life insurers receive information about their policyholders at inception, and at payment of benefits, withdrawals, or termination amounts. Industry experience demonstrates that policyholders routinely ignore interim requests for information. If Treasury insists upon annual reporting or three year revalidation, the requests will yield little useful information, but will have the unfortunate consequence of creating a large

number of "recalcitrant accounts" in contravention of the insurer's obligations under the FFI Agreement.

- Because it is likely that some members of an affiliated group will operate in countries that prohibit the information exchange required by FATCA, it is essential to provide relief to companies in the affiliated group that are compliant. The Affiliated Group rule that penalizes all companies if a single company is noncompliant should be modified.
- The Lead FFI proposal in Notice 2011-34 should be included in the final regulation, with modifications. Incorporating a Lead FFI structure will enable groups to develop centers of expertise that will enhance compliance and reduce costs. Companies should be given great flexibility in designing their compliance structures so that they may designate compliance officers based upon geographic areas, business segments, or other operational structures, to achieve consistency and reduce costs.
- In defining "financial account, the definition of term life insurance imposes a requirement for "equal periodic payments" that eliminates many common term products which present no threat of tax avoidance. The final regulation should eliminate the requirement for equal periodic payments.
- To require a foreign insurer to determine whether a life insurance or annuity product qualifies as a financial account by reference to the U.S. tax code is inappropriate and confusing. The regulation should adopt the approach used in Code Section 953(e): a product is determined to qualify as insurance or annuity if it is regulated as such by the home country law.
- The definition of "retirement plan" is too narrow. The final regulation should permit all plans that satisfy the definition of a retirement or savings plan under the law of the country of organization to qualify for the exception.
- To prevent uncertainty, the definition of "cash value" insurance should expressly provide exceptions for property-casualty and indemnity reinsurance. The final regulation should make it clear that reinsurance of cash value contracts does not create a financial account, unless there is assumption reinsurance for such contracts.
- Allianz, like many other insurers, does not collect electronically searchable information about irrevocable beneficiaries. To comply with the requirement for reporting irrevocable beneficiaries, the insurance companies would be required to establish entirely new programs. The cost would be unreasonable, and we believe that the need to identify individuals receiving payments can be satisfied by reporting at the time of payment.
- The definition of an insurance company brings into FFI status any holding company whose subsidiaries include an insurance company, even though the holding company has no financial accounts. Since no useful information about account holders will be produced by this requirement, we believe holding companies should be eliminated from the definition of "insurance company" used to determine FFI status.
- The vast majority of Allianz insurance subsidiaries operate solely within one country, because of regulatory restrictions, as well as customer preferences for dealing with home country insurers and agents. Local FFI treatment should be extended to life insurance companies.
- The Allianz group includes some small banks operating within one country which could satisfy the "Local FFI" requirements. However, they would be precluded from Local FFI status by the requirement that all members of the affiliated group must be Local FFIs. This requirement should be deleted.
- In the past, many investment funds issued "Physical Certificates" in bearer form. Because holders can only obtain payment from the fund's depository bank that is an FFI, these certificates do not present a risk of tax avoidance. However, to permit such funds to qualify as Collective Investment Vehicles, the requirements should be clarified.

- Some investment funds, complying with regulations in certain countries such as Poland, must sell directly to investors and maintain records of those investors. Other units held by investors are registered with a Central Securities Depositor (Global Certificates) or Transfer Agent. Funds with hybrid registries should be permitted to qualify as CIVs by agreeing to provide the information on accounts maintained by the fund directly to the U.S. government or through Framework Agreements.
- Allianz welcomes the development of the European Framework Agreements which address the conflict of laws between FATCA information reporting and European privacy laws. Extending similar agreements to other governments is critical.

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## DISCUSSION

1. **FFI Agreements/ Report on life insurance and annuity contracts only at inception and payment (Prop. Reg. §1.1471-4(d)(3)(ii) and Prop. Reg. §1.1471-3(c)(6)(ii))**

In contrast to banks and investment funds, insurance companies have only limited contact with their policyholders. Banks and investment funds provide quarterly or monthly reports of the account value, typically by mail, to account holders, and therefore maintain accurate records of the account holders' address. Account holders frequently make deposits and withdrawals from their bank accounts and in-

vestment accounts. In contrast, life insurance companies do not have frequent contacts with their policyholders. Typically, their only contact comes at inception, at change of circumstances, and then upon payment of benefits.

Insurers report on changes in the account value, but only annually. Even though reports are mailed to policyholders, the insurer does not receive any confirmation of receipt, and policyholders are not accustomed to responding to information requests from insurers. Quite simply, contacts between and insurer and policyholder are a one way street. It is not uncommon for policyholders who have had no contact with an insurer for ten or twenty years --- not even notice of a change of address --- to present a policy for payment of benefits and to receive payment. The annual reporting requirement imposes upon insurers costly compliance burdens that will not yield useful information to the IRS. It would create a growing number of "recalcitrant accounts" that undermine the compliance status of the insurer as a participating FFI.

Under German law, policyholders have no right to any increase in account value of life insurance or annuities during the accrual period unless in case of extraordinary termination (in contrast to banks and investment funds, where the account holder has the right to withdraw the full account value, including investment income, at any time). The death benefit, annuity payment, or surrender value and payment on maturity is determined at the time of payment, for both traditional and variable products. Because most European countries treat death benefits and annuity payments as taxable in whole or in part, insurers are required to report to national tax authorities at the time payments are made. Moreover, the FATCA reporting requirements far exceed any reporting requirements on U.S. insurers. In the U.S., in contrast, no reports are required for annual increases in account values or for payment of life insurance death benefits. Reports are filed on distributions from annuities only at the time that distributions are made.

A more reasonable reporting structure for FATCA purposes would follow existing reporting requirements at time of payment. FATCA's primary purpose is to prevent tax evasion. Information reporting at time of payment would provide the essential information about payment so that the IRS could examine the taxation of the non-U.S. insurance or annuity payments received by a U.S. person.

Similarly, there is no benefit to requiring revalidation of policyholder information every three years, as required by Prop. Reg. §1.1471-3(c)(6)(ii). Given the low response rate to insurers' mailings, we expect that the vast majority of policyholders will not provide the necessary information. In fact, the regulation requires foreign insurers to undertake solicitations of their foreign policyholders which will result in an ever increasing number of "recalcitrant" accounts.

Quite simply, interim revalidation of life insurance and annuity holders is a wasteful and unproductive requirement. It will yield little or no information that will contribute to FATCA's goal of preventing tax evasion by U.S. persons.

Recommendation: A more suitable regime for life insurance and annuities would require reporting of FATCA information (1) at the time a policy is issued, (2) in the event the insurer is notified of a change of circumstances, such as a new U.S.

address, U.S. bank where payments are to be sent, U.S. power of attorney, etc., and (3) upon payment of benefits, withdrawals or termination amounts. This would provide the IRS with all information needed to identify U.S. taxpayers receiving payments, avoid the creation of "recalcitrant" accounts, and significantly reduce costs for life insurers.

## **2. Affiliated Group Rule (Prop. Reg. Sec. 1.1471-4(e)(2))**

Section 1471(e) of the Code provides that each member of an expanded affiliated group must be in compliance with FATCA reporting and withholding requirements or all members of the group will be considered nonparticipating FFIs. This rule presents serious challenges to very large multinationals, such as Allianz SE. Although Allianz intends to comply to the fullest extent possible under local laws, it has subsidiaries in countries whose privacy laws prohibit submission of the personal information required by FATCA. Although the European Framework Agreements will allow Allianz to comply with information reporting requirements in many of its largest subsidiaries, even with the three year transition period for this rule, there may be countries that fail to modify their privacy rules so as to permit compliance.

Allianz SE has 1,300 subsidiaries operating in approximately 70 countries. Allianz faces the daunting prospect of having *all* of its FFI subsidiaries tainted by the inadvertent missteps of a single subsidiary, or by a conflict of laws between one subsidiary's home country and FATCA reporting requirements. While we do not anticipate that there will be widespread or substantial noncompliance, we fear that one or more subsidiaries may fail to comply, because of honest mistakes or privacy rules that prevent information reporting.

The proposed penalty will also result in disparate treatment of companies within a consolidated group. For example, companies operating within one of the bilateral "Framework" Agreements are not subject to withholding under any circumstances. A company not covered by a Framework Agreement might be in compliance itself, but an affiliate in a third country might be prohibited from providing FATCA information by local privacy laws. In this example, the non-Framework company would be subject to withholding as well as the company subject to local prohibitions. We believe it is unjust to penalize the non-Framework company. Instead, each company should be subject to withholding penalties independently. A more reasonable approach --- and one within the Secretary's authority --- is to craft an exception that permits each company to be classified as compliant or noncompliant depending upon its own level of compliance.

Recommendation: The Treasury Secretary has the authority to modify these regulations as appropriate. Some form of relief must be provided where an affiliated group has subsidiaries operating in countries that prohibit the required information exchange. To prevent a disproportionate penalty --- 30 per cent withholding upon payments to companies in compliance --- the regulation should provide that members of an affiliated group will only be treated as nonparticipating FFIs subject to withholding on a single entity basis.

## **3. Lead FFI Rule (Notice 2011-34)**

IRS Notice 2011-34 suggested that Treasury would consider adopting a "lead FFI" rule which would permit corporations with many subsidiaries to designate a single point of contact with responsibility for overseeing FATCA compliance by the many subsidiaries in different countries. However, the proposal for a lead FFI was omitted from the proposed regulation.

Allianz believes that allowing affiliated groups to appoint a single entity as the lead for FATCA compliance offers many advantages: it would ensure a coordinated application process, consistent FATCA implementation, enhance overall compliance, and ultimately reduce costs.

These cost savings could only be achieved if (1) the Lead FFI is the sole point of contact with the IRS for the affiliated group, (2) the lead FFI is not at risk of individual liability for noncompliance, (3) the appointment of the lead FFI is optional, and, most important, (4) multi-national groups have great flexibility in designing a Lead FFI structure, so that they may appoint Deputy Lead FFIs for the subgroups within the group. The final regulation should permit compliance officers for holding companies covering a particular region (Asia, Latin America), or business segment (life insurance, banking, or investment companies). The Lead FFI must have flexibility in developing the group's compliance structure so that it is consistent with the organization of the multinational group.

#### **4. Insurers Do Not Collect Data on Irrevocable Beneficiaries in Electronically Searchable Form (Prop. Reg. Sec. 1.1471-5(a)(3)(v))**

Irrevocable Beneficiaries: Prop. Reg. Sec. 1.1471-5(a)(3)(v) requires that an FFI reports the name of an irrevocable beneficiary. Under current regulations, insurers are not required to collect this data in a standardized method, and it is not available in their electronically searchable databases. Because this information is not available in our systems (and we believe we are not alone in this), Allianz strongly recommends that reporting on irrevocable beneficiaries be made only at the time of benefit payment, withdrawal, termination, or premium refund. The cost of developing programs to collect this data solely for FATCA purposes cannot be justified. It does not prevent tax evasion by U.S. persons as reporting at the time of payment will reveal all relevant information about the recipient, whether it is the policyholder or the beneficiary.

#### **5. Definition of Financial Account/ Insurance Contracts and Annuities (Prop. Regs. §1.1471-5(b) and Prop. Reg. §1.1471-1(b)(4) and Prop. Reg. §1.1471-1(b)(35))**

Term Life Insurance: Term life insurance is defined as one with "equal periodic premiums." Prop. Regs. §1.1471-5(b)(2)(ii). The narrow definition in the proposed regulation would preclude the qualification of a substantial number of contracts that are not investment products and present no risk of tax avoidance. Term life insurance covering one or more years may be funded through a single premium or installment premiums (e.g. annual). Premiums for term products may increase or decrease over time as the insured ages, but the regulation would limit the exception to level term policies.

Recommendation: The requirement that term life products have equal periodic payments should be deleted from Prop. Regs. §1.1471-5(b)(2)(ii).

US Definitions of Life Insurance Contract and Annuity: Prop. Regs. §1.1471-1(b)(35) defines a life insurance contract as "a contract that satisfies section 7702 (without regard to subsections (b), (c), and (d) and sections 101(f) and 817(h)." Translated, the statutory reference means a life insurance contract must be a life insurance contract under local law, without regard for the limitations placed on investment features of life insurance by the cash value accumulation test or the guideline premium test and the cash value corridor test, as well as the rules for flexible premiums in Section 101(f) and the investment diversification rules of section 817(h). Similarly, an annuity contract is defined by reference to Code Section 72, "without regard to subsections (s) and (u) and section 817(h)." Prop. Regs. Sec. 1.1471-1(b)(4).

These critical definitions are opaque because they depend on U.S. statutes and the many precedents developed thereunder, a perplexing approach for a standard to be applied by foreign institutions.

A better statement of the requirement appears in Section 953(e)(5)(A) of the Code, which defines a life insurance contract issued by a controlled foreign corporation under Subpart F as one "regulated as a life insurance or annuity contract by the corporation's or unit's home country." Quite simply, we do not understand the rationale for insisting on a U.S. statutory reference to local law, but refusing to state that requirement in clear language in the regulation. If Congress has seen fit to expressly determine that the home country's regulation is the controlling definition --- as it has done in Code Section 953(e) --- we believe a regulation should state the requirement with equal clarity.

Recommendation: Since the intent is that a life insurance contract and annuity should be defined by applicable law, the regulation should state that rule clearly and in plain English, as Section 953(e)(5)(A) of the Code has done.

Retirement Plans: We applaud the IRS's decision to offer deemed compliant status to pension products. Nevertheless, the definition is too narrow and excludes many products commonly provided within other countries. Allianz recommends that the final regulation adopt a broader definition for retirement plans and savings plans, since these products vary widely from country to country. For example, the \$50,000 limit on contributions falls below annual limits in the U.K. and elsewhere, and would prevent a broad range of plans that satisfy the requirements of the country of organization from qualifying for the exception. In some countries, contributions are not limited by reference to earned income, as Prop. Reg. section 1.1471-5(b)(2)(i)(A)(2) requires.

We note that U.S. double tax treaties have recognized retirement plans for treaty exceptions if they satisfy applicable law in the treaty country, without regard for limits on contributions or reference to earned income. For example, the Sixth Protocol to the U.S. - German Tax Treaty in Article 18A designates qualifying pension plans as, "In the case of the Federal Republic of Germany, arrangements under section 1 of the German law on employment-related pensions (*Betriebsrentengesetz*)."

Allianz recommends that a similar approach --- recognizing retirement and savings plans as defined by local law --- would be more efficient in the final regulation. In addition, Allianz supports the ACLI recommendation for modification of the definition of pension and savings plans.

Recommendation: The final regulation should permit deemed compliant qualification of all plans that satisfy the definition of a retirement or savings plan under the law of the country in which the plan is established. This approach would enable the definition to continue to apply to retirement and savings plans, even though there may be changes in home country requirements several years after promulgation of the final regulation.

Cash Value Insurance/ Exception for Reinsurance: Because the definition of "financial account" is limited to cash value life insurance and annuity contracts, it appears that reinsurance contracts are excluded from the definition of "financial account." In particular, IRS officials have said that IRS intends that all indemnity reinsurance will be excluded, including reinsurance of cash value life insurance contracts and annuities. Assumption reinsurance, in which the reinsurer "stands in the shoes" of the primary insurer and agrees to pay benefits directly to policyholders or their beneficiaries, is intended to be treated as a "financial account" subject to reporting.

Recommendation: The final regulation would gain much needed clarity if the treatment of reinsurance and property-casualty insurance were stated unambiguously in Prop. Regs. §1.1471-5(b)(3)(v)(C).

Allianz recommends that a three-tier approach be adopted in the final regulation to distinguish insurance contracts that are classified as financial accounts:

1. All indemnity reinsurance would be excluded, since it is not used by individuals or entities for tax avoidance purposes.
2. Property-casualty insurance should be clearly made an exception in the final regulation. Regulators in many countries require insurers to separate P&C insurance and life insurance. Payments made from P&C insurance policies are contingent upon the happening of a contingent event, not on investment returns. P&C insurance does not present the risk of tax avoidance that FATCA is designed to prevent.
3. Allianz supports the regulation's definition of cash value. Differentiating by cash value is a feasible method of limiting an insurer's product range subject to FATCA.

#### **6. Foreign Financial Institution/ Holding Company Should Not Be an FFI ((Prop. Regs. Sec. 1.1471-5(e))**

In many cases, holding companies have no financial accounts and do not engage in financial transactions with customers. However, the definition of life insurance company in Prop. Reg. Sec. 1.1471-5(e)(1)(iv) expressly states that a holding company for a life insurance company is a financial institution. This definition is overly broad. If a holding company without life insurance contracts or other financial accounts is required to report, it will be forced to engage in a useless exercise. The entire search process will yield nothing. Even if the holding company writes reinsurance of life and property/casualty insurance (as Allianz S.E. does), it would be unproductive to classify it as a FFI, because it has no financial accounts subject to reporting. Requiring reporting from holding companies that do not themselves hold financial accounts (cash value life insurance and annuity contracts) does nothing to achieve FATCA's goal of preventing tax evasion by U.S. persons.

Recommendation: Prop. Reg. Sec. 1.1471-5(e)(1)(iv) should be amended so that a holding company is not required to register as an FFI merely because it has a life insurance company subsidiary that writes cash value life insurance or annuities.

#### **7. Local FFI Rule/ Banks and Life Insurance Companies Operating in a Single Country (Notice 2011-60 and proposed amendment to Prop. Regs. Sec. 1.1471-5(f)(1)(A))**

The Proposed Regulations allow "local FFIs" to qualify as "registered deemed compliant" FFIs not subject to withholding or reporting. Local FFI status is unavailable to life insurance companies. There is no sound policy reason to prohibit life insurance companies from attaining local FFI treatment. If banks and investment managers can qualify as local FFIs, life insurance companies should have similar treatment. Because of regulatory restrictions, the vast majority of Allianz life company subsidiaries operate only within one country. Although sales are limited to the home country by regulators, as a practical matter, clients insist upon dealing with a local agent and local insurer. Almost all Allianz life companies could satisfy the requirement that a local FFI have 95% of all contracts within the

home country. Making local FFI status available to life insurers would substantially reduce the administrative burden on foreign groups and on the IRS.

The Allianz group includes a number of small one-country banks that would qualify as local FFIs, except for the requirement that all members of an affiliated group must be one-country entities. Many of Allianz SE's subsidiaries operate within a single country, but not all. This restriction is counterproductive. Deemed compliant status should be available to all low risk FFIs irrespective of their membership in an EAG. The "all local FFI" restriction makes the exception unavailable to banks (and potentially insurers) that present no risk of tax avoidance.

Recommendations:

(1) Life insurance companies should be permitted to qualify as local FFIs.

(2) The final regulation should make local FFI status available to affiliated groups that include both Local FFIs and others operating cross-border.

## 8. Investment Fund Issues

Qualified collective investment vehicles:

Allianz Group welcomes the creation of a qualified collective investment vehicle ("CIV") in Prop. Reg. Sec. 1.1471-5(f)(1)(i)(C), which would allow investment funds to obtain deemed compliant status. However, some clarification is needed in order to enable investment funds launched in certain countries to meet the qualification requirements.

Prop. Reg. Sec. 1.1471-5(f)(1)(i)(C)(2) requires that "each holder of record ... (for example, the holders of its units or global certificates)" must be a participating FFI, registered deemed compliant FFI, or other exempted category. Although the majority of investment funds now use global certificates held by a Central Securities Depositor ("CSD"), an earlier method of securitization was to issue physical fund certificates in bearer form to individual investors via the depository bank of the fund. This method was used in certain European countries, e.g. Germany and Luxembourg, until approximately 2000, in addition to the Transfer Agent Model or the Global Certificate Model, though it has almost lost its practical importance for issuing new fund units nowadays for administrative and cost reasons. However, such physical certificates in bearer form still exist. Some of the industry's long standing investment funds might have as much as fifty per cent of their investment units represented by fund units which are these physical certificates. The investment fund does not know the identity of the holder of the certificate, and cannot determine whether the holder is a participating FFI or other exempt holder. As a consequence, the investment fund is not able to declare that "each holder of record of interest" is a participating FFI or other exempt holder, as required by Prop. Reg. §1.1471-5(f)(1)(i)(C)(2). Moreover, under law, the fund cannot confiscate the physical certificate and replace it with other forms of securitization. However, there is no secondary market for these bearer certificates, since the buyer would need to verify that they are valid, a process that might be possible for a bank, but not for individuals since the settlement with respect to physical certificates is very complicated, risky and long lasting.

These physical certificates in bearer form do not present a risk of tax avoidance, because the holder must present the certificate to the investor's custodian bank or the depository bank used by the fund. Payments on fund units (*i.e.* fund's distribution, redemption price) which are originally securitized in a physical certificate will only be made **via the custodian bank of the investor and the depository bank of the fund**. The depository bank

of the fund will be required to be an PFFI by FATCA and the investor's custodian bank or US financial institution may also be a PFFI. Each PFFI would be required to report any payment to a US person.

Recommendation: We recommend that Prop. Reg. Sec. 1.1471-5(f)(1)(i)(C)(2) add a grandfathering rule that enables funds which have issued physical certificates in bearer form (in addition to other forms of securitization) to qualify as a collective investment vehicle. The grandfathering rule might even be combined with the requirement that the fund halt the issuance of new physical certificates for new subscriptions (please be aware that this would require a change in the fund rules and therefore would need time – probably, two years after applying for the PFFI status). Alternatively the requirements for a collective investment vehicle could be amended by the following wording:

(2) Each holder of record of direct debt interests in excess of \$50,000 or equity interests in the FFI (for example the holders of its units or global certificates) or any other account holder of a financial account with the FFI must a be participating FFI, registered deemed-compliant FFI, U.S. person described in any of §1.1473-1(c)(1) through (12), or exempt beneficial owner.

*If the FFI has issued physical certificates in bearer form, under which the FFI is not able to identify each holder of interests, but payment stemming originally from the interests in the FFI can only be made by presentation of the physical certificate to a custodian bank or depository bank, the FFI may qualify as a qualified collective investment vehicle if there will be at least one participating FFI involved in the process of paying out.*

Deemed Compliant Status for Fund with Hybrid Registry:

Typically, records of investors are held by the Central Securities Depositor or the Transfer Agent for the fund. However, laws in certain countries, e.g. in Poland, require that the investment fund must sell units directly to Polish investors, leading to direct register entries of individual persons. Furthermore, certain industry members offer an option for direct register entry as additional method of issuing fund units (in addition to the Transfer Agent System and/or a Global Certificate Model) in order to establish a stronger client relationship.

A handful of Allianz's funds have units held as Global Certificates by a CSD, or by a Transfer Agent register which is restricted to the qualified investors in the meaning of §1.1471-5(f)(1)(i)(C)(2), and, in addition, maintain records for the limited number of individual investors at the fund offices/transfer agent. The addition of this small number of individual investors would prevent the fund from satisfying the requirement of Prop. Reg. §1.1471-5(f)(1)(i)(C)(2) that all units or certificates be held by participating FFIs or other exempt holders.

The proposed regulation, as drafted, would prevent such a fund from qualifying as either a qualified CIV or a participating FFI. On the one hand, it is impossible for the fund to become deemed compliant as qualified CIV because it has individual investors. On the other hand, it is impossible for the fund to become a PFFI because it does not know the individual investors with respect to the Global Certificates. Imposing thirty per cent withholding on this fund would create hardship. An alternate solution for funds with a hybrid registry is critical.

Recommendation: This dilemma can be solved by allowing a fund with a hybrid registry to qualify for deemed compliant status if the fund agrees to conduct due diligence pro-

cedures for both new and pre-existing individual holders and to report to the IRS the names of any account holders who are U.S. persons according to the general rules. A limited FFI agreement with hybrid funds may provide a solution to this dilemma. A limited FFI agreement would require reporting of information about individual account holders but relieve the fund from the obligation to report with respect to accounts represented by units or global certificates held by qualified holders as defined in Prop. Reg. Sec. 1.1471-5(f)(1)(i)(C)(2) first sentence or represented by physical certificates in bearer form.

In order to solve this dilemma the requirements for a qualified collective investment vehicle should be amended by the following wording:

(2) Each holder of record of direct debt interests in excess of \$50,000 or equity interests in the FFI (for example the holders of its units or global certificates) or any other account holder of a financial account with the FFI must be a participating FFI, registered deemed-compliant FFI, U.S. person described in any of §1.1473-1(c)(1) through (12), or exempt beneficial owner.

A FFI that maintains records of individual account holders in addition to any other method of issuing units or certificates may qualify as a qualified collective investment vehicle if it agrees to provide information about individual account holders in accordance with Prop. Reg. Sec. 1.1471-4 and to enter into a limited FFI Agreement covering the individual account holders.

Qualified collective investment vehicle (aggregated amended version):

All in all, the definition of a qualified collective investment vehicle could be amended as follows:

(C) Qualified collective investment vehicles. An FFI is described in this paragraph (f)(1)(i)(C) if it meets the requirements of paragraphs (f)(1)(i)(C)(1) through (3).

(1) The FFI must be an FFI solely because it is described in paragraph (e)(1)(iii) of this section, and must be regulated in its country of incorporation or organization as an investment fund.

(2) Each holder of record of direct debt interests in excess of \$50,000 or equity interests in the FFI (for example the holders of its units or global certificates) or any other account holder of a financial account with the FFI must be a participating FFI, registered deemed-compliant FFI, U.S. person described in any of §1.1473-1(c)(1) through (12), or exempt beneficial owner.

*(a) If the FFI has issued physical certificates in bearer form, under which the FFI is not capable to identify each holder of interests, but payment stemming originally from the interests in the FFI can only be made by presentation of the physical certificate to a custodian bank or depository bank, the FFI may qualify as a qualified collective investment vehicle if there will be at least one participating FFI involved in the process of paying out.*

(b)  
A FFI that maintains records of individual account holders in addition to any other method of issuing units or certificates may qualify as a qualified collective investment vehicle if it agrees to provide information about individual account holders in

accordance with Prop. Reg. Sec. 1.1471-4 and to enter into a limited FFI Agreement covering the individual account holders.

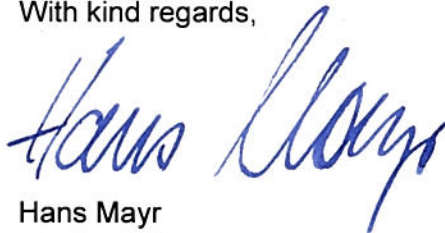
(3) In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.

**9. European Framework Agreements (U.S. Treasury Department Joint Statement, 2/8/12)**

Allianz welcomes the creation of Framework Agreements that will allow companies to provide information to their governments. This is a significant step in preventing the conflict of laws that could arise between FATCA and European Union privacy rules. Although Treasury and foreign governments seek a high degree of uniformity in these agreements, we believe that they offer an important opportunity to address issues arising under local laws, such as the higher level of contributions permitted under German and U.K. retirement and savings plans. It is important to clarify that the agreements take precedence over the requirements in the regulations, if there is an apparent conflict between the two.

Please let me know if you have questions about the comments in this letter.

With kind regards,



Hans Mayr