

## Qualified Intermediary Agreement

### Revenue Procedure 2017-15

#### SECTION 1. PURPOSE

.01 In General. This Revenue Procedure sets forth the final qualified intermediary (QI) withholding agreement (QI agreement) entered into under §1.1441-1(e)(5).<sup>1</sup> In general, the QI agreement allows foreign persons to enter into an agreement with the Internal Revenue Service (IRS) to simplify their obligations as withholding agents under chapters 3 and 4 and as payors under chapter 61 and section 3406 for amounts paid to their account holders. The QI agreement also allows certain foreign persons to enter into an agreement with the IRS to act as qualified derivatives dealers (QDDs) and to assume primary withholding and reporting responsibilities on all dividend equivalent payments that they make.

.02 Withholding Foreign Partnership and Withholding Foreign Trust Agreements. Revenue Procedure 2014-47, 2014-35 I.R.B. 393, includes the withholding foreign partnership (WP) and withholding foreign trust (WT) agreements that are currently in effect, and that are supposed to expire on December 31, 2016. This revenue procedure

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<sup>1</sup> Unless otherwise provided, all citations in this Revenue Procedure and the QI agreement included in this Revenue Procedure are to the Internal Revenue Code of 1986, as amended (Code) and the Income Tax Regulations thereunder.

announces that because the updated WP and WT agreements will not be published before December 31, 2016, WPs and WTs with agreements currently in effect may continue to treat those agreements as in effect until updated agreements are issued in January 2017.

## SECTION 2. SCOPE

.01 Entities Eligible to Execute a QI Agreement. A QI agreement may be entered into by persons described in §1.1441-1(e)(5)(ii), including foreign financial institutions (FFIs) (as defined in §1.1471-5(d)), foreign clearing organizations, and foreign branches of U.S. financial institutions and clearing organizations. An eligible entity (as defined in §1.1441-1(e)(6)(ii)) may also enter into a QI agreement for purposes of becoming a qualified derivatives dealer (QDD).

An FFI may apply to enter into a QI agreement if the FFI is able to, and agrees to, satisfy the requirements and obligations of (1) a participating FFI (including a reporting Model 2 FFI), (2) a registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), or (3) a registered deemed-compliant Model 1 IGA FFI (as defined in section 2.17(C) of the 2017 QI Agreement). An FFI that is a certified deemed-compliant FFI (including a nonreporting IGA FFI, as defined in §1.1471-1(b)(83)) may enter into a QI agreement if the FFI is able to and agrees to assume the obligations of, and to be treated as, a participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI (including a reporting Model 1 FFI or a nonreporting Model 2 FFI treated as registered deemed-compliant), or a registered deemed-compliant Model 1 IGA FFI with respect to

all accounts that it maintains (even if the FFI does not intend to act as a QI for all of the accounts it maintains). A central bank of issue may enter into a QI agreement provided that it meets and agrees to assume the obligations of, and to be treated as, a participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (including a reporting Model 1 FFI) with respect to any account that it maintains that is held in connection with a commercial financial activity described in §1.1471-6(h) and for which it receives a withholdable payment (as defined in §1.1471-1(b)(145)). A foreign branch of a U.S. financial institution or clearing organization may also apply to enter into a QI agreement provided that it is a reporting Model 1 FFI or it agrees to assume the requirements and obligations of a participating FFI (including a reporting Model 2 FFI).

An entity that is a territory financial institution (territory FI) (as defined in §1.1471-1(b)(130)) or a nonparticipating FFI (as defined in §1.1471-1(b)(82)) may not apply to enter into a QI agreement.

A foreign corporation that is a non-financial foreign entity or NFFE (as defined in §1.1471-1(b)(80)) that is described in one of the categories in §1.1441-1(e)(5)(ii) may also apply to enter into a QI agreement. An NFFE that seeks to act as an intermediary on behalf of its shareholders should not apply for QI status and instead should apply for withholding foreign partnership status as a reverse hybrid entity. An NFFE that enters into a QI agreement to act as an intermediary on behalf of persons other than its shareholders will be required to satisfy the withholding and reporting requirements of §§1.1472-1(a) and 1.1474-1(i) with respect to any NFFE that is a beneficial owner for whom the QI is acting with respect to a withholdable payment. The QI agreement generally does not apply to a foreign partnership or foreign trust. A foreign partnership

or foreign trust may apply for status as a withholding foreign partnership or withholding foreign trust. See §§1.1441-5(c)(2)(ii) and 1.1441-5(e)(5)(v).

.02 Effect on Other Documents. Revenue Procedure 2014-39, 2014-29 I.R.B. 150, is superseded with respect to a QI's requirements that apply after December 31, 2016. A QI agreement in effect prior to December 31, 2016 expires, in accordance with its terms, on December 31, 2016.

### SECTION 3. BACKGROUND – WITHHOLDING AND REPORTING REQUIREMENTS UNDER CHAPTERS 3, 4, AND 61 AND SECTION 3406

.01 Withholding and Reporting under Chapter 4 on Payments Made to FFIs and Other Payees. Section 1471(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an FFI, unless the FFI agrees to and complies with the terms of the FFI agreement to satisfy the obligations specified in section 1471(b) (a participating FFI); is deemed to meet the requirements under section 1471(b) (a deemed-compliant FFI), or is treated as an exempt beneficial owner under §1.1471-6. Section 1472(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an NFFE (other than an excepted NFFE) unless such entity provides a certification that it does not have any substantial U.S. owners or provides information regarding its substantial U.S. owners.

A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (other than a reporting Model 1 FFI) will satisfy its requirement to withhold under sections 1471(a) and 1472(a) on withholdable payments made to accounts held

by entities by withholding on accounts that the FFI is required to treat as held by nonparticipating FFIs and recalcitrant account holders under the FFI agreement, §1.1471-5(f), or an applicable Model 2 IGA. A participating FFI (including a reporting Model 2 FFI) or registered deemed-compliant FFI (other than a reporting Model 1 FFI) is also required to withhold on withholdable payments made to accounts held by individuals that the FFI is required to treat as recalcitrant account holders to the extent required under the FFI agreement, §1.1471-5(f), or an applicable Model 2 IGA. See, however, the Model 2 IGA for the suspension of withholding on non-consenting U.S. accounts. A QI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI will satisfy its requirement to withhold under section 1471(a) on withholdable payments made to accounts held by entities by withholding on accounts that the FFI is required to treat as held by nonparticipating FFIs.

A participating FFI (including a reporting Model 2 FFI), a registered deemed-compliant FFI, and a registered deemed-compliant Model 1 IGA FFI must report certain account information regarding each U.S. account (or U.S. reportable account) that it maintains to the extent required under the FFI agreement, §1.1471-5(f), or a Model 1 or Model 2 IGA. A participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (other than a reporting Model 1 FFI) must report certain information about accounts that it maintains that are held by recalcitrant account holders (or non-consenting U.S. accounts). A withholding agent making payments to an NFFE that is not reported by an FFI as a U.S. account (or U.S. reportable account) is also required to report withholdable payments made to an NFFE (other than an excepted NFFE) with substantial U.S. owners on Form 8966, *FATCA Report*. See §§1.1472-

1(b)(1)(iii) and 1.1474-1(i). A withholding agent (including a participating FFI or registered deemed-compliant FFI) that is required to withhold on a withholdable payment must report the payment on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.

.02 Withholding and Reporting under Chapter 3 on Payments to Foreign Persons. Sections 1441 and 1442 require a withholding agent to deduct and withhold a tax equal to 30 percent on any payment of U.S. source fixed or determinable annual or periodical (FDAP) income that is an amount subject to withholding (as defined in §1.1441-2(a)) made to a foreign person. A lower rate of withholding may apply under the Code (for example, section 1443), the regulations, or an income tax treaty. Generally, a withholding agent must also report the payments on Form 1042-S regardless of whether withholding was required. See §1.1461-1(c).

.03 Backup Withholding under Section 3406 and Reporting on Payments to Certain U.S. Persons under Chapter 61. Under sections 6041, 6042, 6045, 6049, and 6050N (chapter 61 or the Form 1099 reporting provisions), payors of interest, dividends, royalties, gross proceeds from the sales of securities, and other fixed or determinable income must report payments made to certain U.S. persons (that is, U.S. non-exempt recipients or presumed U.S. non-exempt recipients) on the appropriate Form 1099 unless an exception to reporting applies. See §§1.6041-4(a); 1.6042-3(b)(1)(iii); 1.6045-1(g)(1)(i); 1.6049-5(b)(12); and 1.6050N-1(c)(1)(i). Under section 3406, a payor must generally obtain a Form W-9, *Request for Taxpayer Identification Number and Certification*, from a U.S. non-exempt recipient receiving a payment reportable on a Form 1099 or must otherwise backup withhold under section 3406 and report the

payment on Form 1099.

.04 Coordination of Withholding and Reporting Requirements under Chapters 3 and 4. With respect to a withholdable payment that is subject to withholding under chapter 4, a withholding agent may credit any tax withheld under chapter 4 against its liability for any tax due with respect to the payment under chapter 3. A withholding agent is required to report on a single Form 1042-S the information required under both chapters 3 and 4 with respect to a payment subject to withholding under both chapters 3 and 4. With respect to a withholdable payment that is not subject to withholding under chapter 4 and that is an amount subject to withholding under chapter 3, a withholding agent is also required to report on Form 1042-S the applicable chapter 4 exemption code for the payment and the recipient's chapter 4 status.

.05 Responsibilities of Intermediaries that Enter into QI Agreements. When the IRS enters into a QI agreement with a foreign person (or foreign branch of a U.S. person), that foreign person (or foreign branch of a U.S. person) becomes a QI. A QI is a withholding agent under chapters 3 and 4 and a payor under chapter 61 and section 3406 for amounts that it pays to its account holders. The general obligations of a QI as a withholding agent and payor are described in section 1.01 of the QI agreement and are relevant to whether an event of default occurs under section 11.04 of the QI agreement.

#### SECTION 4. SUMMARY OF CHANGES TO THE QI AGREEMENT

Notice 2016-42, 2016-19 I.R.B. 67, set forth a proposed QI agreement (the Proposed QI Agreement) that included revisions to the QI agreement currently in effect, contained

in Revenue Procedure 2014-39 (the 2014 QI Agreement) as well as provisions relating to QDDs. Comments were received in response to the Proposed QI Agreement. This section provides a summary of changes reflected in the QI agreement provided in this Revenue Procedure (the 2017 QI Agreement), including changes made in response to certain of the comments received to the Proposed QI Agreement.

.01 Provisions Applicable to Qualified Derivatives Dealers. On September 18, 2015, final and temporary regulations under section 871(m) and sections 1441, 1461, and 1473 (collectively, the 871(m) regulations) were published in T.D. 9734, which addressed the treatment of dividend equivalents from U.S. sources. On July 1, 2016, the Treasury Department and the IRS released Notice 2016-42, containing the Proposed QI Agreement that describes requirements and obligations that were proposed to be applicable to QDDs and that requested comments. On December 2, 2016, the Treasury Department and the IRS released Notice 2016-76, 2016-51 I.R.B. 834, providing guidance for complying with the section 871(m) regulations in 2017 and 2018 and explaining how the IRS intends to administer those regulations in 2017 and 2018. The QDD provisions of the 2017 QI Agreement reflect anticipated changes to the 871(m) regulations, which are discussed below.

(1) Updates to reflect Notice 2016-76. The Proposed QI Agreement provided rules for how a QDD calculates its section 871(m) amount and determines its QDD tax liability. Based on comments received on the Proposed QI Agreement, Notice 2016-76 revised the methodology for determining the section 871(m) amount to use a net delta approach and announced that the regulations under §1.871-15(q)(1) would be revised to provide that a QDD will remain liable for tax under section 881(a)(1) and subject to



withholding under chapters 3 and 4 on dividends on physical shares and deemed dividends received. Notice 2016-76 also makes calendar year 2017 a phase-in year for QDDs, as it provides that, in enforcing and administering the QDD rules in the section 871(m) regulations and the relevant provisions of the QI agreement for 2017, the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement.

The 2017 QI Agreement further modifies the computation of a QDD's section 871(m) amount for 2017 and describes certain anticipated changes to the 871(m) regulations, which are expected to be released in January 2017. To provide QDDs with the time necessary to implement the computation of the section 871(m) amount announced in Notice 2016-76, a QDD will not be liable for tax under section 881(a)(1) on dividends on physical shares (including deemed dividends) or on dividend equivalents that the QDD receives in its capacity as an equity derivatives dealer in calendar year 2017. Both the Proposed QI Agreement and Notice 2016-76 provided that a QDD will remain liable for tax under section 881(a)(1) on dividends and dividend equivalents that a QDD receives in any capacity other than as an equity derivatives dealer. The 2017 QI Agreement does not change this result. In addition, a QDD is responsible for withholding on dividend equivalents it pays to a foreign person on a section 871(m) transaction, whether in its capacity as an equity derivatives dealer or otherwise.

The 2017 QI Agreement provides that a QDD will be required to compute its section 871(m) amount using the net delta approach (as defined in section 2.47 of the 2017 QI Agreement) beginning in 2018, and will be subject to withholding on dividends (including deemed dividends) received on or after January 1, 2018. The Treasury Department

and the IRS will consider comments recommending approaches for alleviating any overwithholding (and preventing any underwithholding) that might occur on dealer transactions with customers and on positions that hedge customer transactions when withholding on dividends (including deemed dividends) begins in 2018.

(2) Eligible entity. The Proposed QI Agreement provided that an entity must enter into a QI agreement and be an eligible entity to be a QDD. Comments to the Proposed QI Agreement requested that the definition of an eligible entity be expanded.

In response to comments regarding the application of the QDD rules to branches, the 2017 QI Agreement clarifies the treatment of branches. The 2017 QI Agreement provides that the home office (as defined in section 2.43 of the 2017 QI Agreement) and each branch of the person that is applying for the QI agreement must separately qualify and be approved for QDD status. The home office and any branch that wants to be a QDD must each separately meet the eligible entity requirements as if it were a separate entity. When approved as a QDD, the home office and each branch are treated as a separate QDD and must apply the QDD provisions as if each home office and branch were separate entities. If a foreign person has one or more branches, the home office is the foreign person, excluding any branches of the foreign person.

As provided in section 1.02 of the 2017 QI Agreement, if a QI is an FFI, it can only have a branch also act as a QI if that branch is located in a jurisdiction identified on the IRS's Approved KYC List. This rule applies to QIs that are FFIs and are applying for QDD status on behalf of the home office or any branch. The QI agreement does not require NFFEs applying for QI status to be located or operating in an approved KYC jurisdiction (because NFFEs under the QI agreement are required to document their

account holders by collecting withholding certificates and are not allowed to document their account holders solely with documentary evidence). Similarly, a branch of a NFFE is not required to be located in a jurisdiction identified on the IRS's Approved KYC List (and must document its account holders with withholding certificates) to be able to act as a QI, including a branch acting as a QDD.

Comments also requested that the definition of an eligible entity be expanded to include bank holding companies and their subsidiaries. The comments noted that bank holding companies are subject to extensive regulation, including compliance with risk management standards. In response to comments, the 2017 QI Agreement expands the eligible entity definition to include a bank holding company that is subject to regulatory supervision as a bank holding company by the governmental authority in the jurisdiction in which it is organized or operates. The eligible entity definition is also expanded in the 2017 QI Agreement to include an entity that is wholly-owned (directly or indirectly) by a bank holding company subject to regulatory supervision as a bank holding company by a governmental authority in the jurisdiction in which the bank holding company is organized or operates. To qualify as a QDD, any bank holding company or wholly-owned subsidiary of a bank holding company must satisfy the other requirements of the eligible entity definition. Finally, to provide the IRS with flexibility to administer the QDD regime, an eligible entity will be defined to include any other person acceptable to the IRS, which is similar to the allowance provided to the IRS in defining persons eligible to enter into QI agreement as provided in §1.1441-1(e)(5)(ii)(D).

(3) Section 871(m) amount. The Proposed QI Agreement described the section 871(m) amount as the sum of the amounts by which, for each dividend on each

underlying security, (A) the dividends on underlying securities associated with potential section 871(m) transactions and dividend equivalent payments that a QDD receives in its dealer capacity exceed (B) the dividend equivalent payments and the qualifying dividend equivalent offsetting payments that a QDD makes with respect to the same dividend in its dealer capacity. Comments requested that a QDD calculate its section 871(m) amount based on its net delta exposure to an underlying security. Comments noted that the net delta exposure is used for business or non-tax regulatory purposes. The net delta exposure is calculated by multiplying the relevant dividend amount per share by the net delta exposure (measured in number of shares) of the QDD in its dealer capacity generally as of the close of the day before the ex-dividend date for the underlying security.

In response to comments, the 2017 QI Agreement provides that the section 871(m) amount is determined for each dividend on each underlying security by multiplying (A) the QDD's net delta exposure to the underlying security for the applicable dividend by (B) the applicable dividend amount per share. The net delta exposure to an underlying security for an applicable dividend is the amount (measured in number of shares) by which (A) the aggregate number of shares in the underlying security that the QDD has exposure to as a result of positions in the underlying security (including as a result of owning the underlying security) with values that move in the same direction as the value of the underlying security (the long positions) exceeds (B) the aggregate number of shares of in the underlying security that the QDD has exposure to as a result of positions in the underlying security with values that move in the opposite direction from the value of the underlying security (the short positions). The net delta exposure

calculation only includes long positions and short positions that the QDD holds in its equity derivatives dealer business. Any long positions or short positions that are treated as effectively connected with the QDD's conduct of a trade or business in the United States for U.S. federal income tax purposes are excluded from the net delta exposure computation. The net delta exposure to an underlying security is determined at the end of the day on the date provided in §1.871-15(j)(2) for the applicable dividend. If a QDD calculates net delta for non-tax business purposes, that net delta ordinarily will be used for this purpose, subject to the modifications required by the net delta exposure definition. Each QDD must determine its net delta exposure separately only taking into account transactions that exist and are attributable to that QDD for federal income tax purposes.

(4) QDD tax liability. Under the Proposed QI Agreement, the QDD tax liability was the sum of a QDD's section 881 tax liability for (A) its section 871(m) amount, (B) its dividends that are not on underlying securities associated with potential section 871(m) transactions and its dividend equivalent payments received as a QDD in its non-dealer capacity, and (C) any payments, such as interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend or dividend equivalent payments.

As a result of the changes announced in Notice 2016-76 to modify the section 871(m) amount and to require withholding on dividends paid to a QDD, the 2017 QI Agreement makes corresponding changes to the QDD tax liability. The 2017 QI Agreement revises the section 871(m) amount to reflect the net delta exposure computation and permit a QDD to reduce the tax liability on its section 871(m) amount

by taking into account withholding taxes paid on that same dividend. While the section 871(m) amount computation was expanded to permit offsets for amounts that do not give rise to withholding tax payments under the 2017 QI Agreement, the QDD is liable for tax on any dividends received, without offset or credit forward to address concerns raised by the expansion of offsets in the section 871(m) amount computation. The 2017 QI Agreement is also revised to reflect that QDDs are subject to withholding on all U.S. source FDAP payments made to a QDD on underlying securities, other than dividend equivalents.

Under the 2017 QI Agreement, a QDD's QDD tax liability is the sum of (A) for each dividend on each underlying security, the amount by which its tax liability under section 881 for its section 871(m) amount exceeds the amount of tax paid by the QDD in its capacity as an equity derivatives dealer under section 881(a)(1) on that dividend, (B) its tax liability under section 881 for dividend equivalent payments received as a QDD in its non-equity derivatives dealer capacity, and (C) its tax liability under section 881 for any payments, such as dividends or interest, received as a QDD with respect to potential section 871(m) transactions that are not dividend or dividend equivalent payments to the extent the full liability was not satisfied by withholding.

Under the Proposed QI Agreement, a QDD was required to pay its QDD tax liability based on the withholding timing and deposit rules for those payments. Comments requested that the timing for QDD tax liability payments be changed. After considering the comments, the 2017 QI Agreement removes the requirement that the QDD tax liability be paid in the same time and manner as would have been required for withholding on the applicable payments. Instead, the general rules regarding the time

for a taxpayer to pay its tax liability will apply, which will typically require a QDD to make quarterly estimates of its QDD tax liability that will be added to the QI's tax liability and filing an appropriate U.S. tax return.

(5) QDD withholding and reporting of payments. A QDD must assume primary withholding responsibility for purposes of chapters 3 and 4 for all payments it makes as a QDD. The amount subject to withholding is determined under the Internal Revenue Code and the regulations promulgated thereunder and is not reduced by any taxes paid by the QDD, including any tax paid as part of its QDD tax liability. A QI can elect whether or not to assume primary withholding responsibility for purposes of chapters 3 and 4 for payments for which it is not required to act as a QDD. Comments requested that the Proposed QI Agreement be revised to clarify that a QI that is not acting as a QDD may elect whether to assume primary withholding responsibility for payments that are not related to its QDD activities. While the Proposed QI Agreement already contained a rule that allowed a QI to elect whether or not to assume primary withholding responsibility for payments for which it was not required to act as a QDD, the 2017 QI Agreement further clarifies this rule.

The Proposed QI Agreement provided that there would be no withholding or reporting on payments made to a QDD with respect to potential section 871(m) transactions and underlying securities, other than reporting for dividends and substitute dividends. A comment requested that the exclusion be limited to dividends and dividend equivalents. As a result of changes to the section 871(m) amount in the 2017 QI Agreement, all payments (other than dividend equivalent payments) made to a QDD with respect to underlying securities will be subject to withholding and reporting if the

payments would be subject to withholding and reporting to a non-QDD. As described in section 4.01(1) of the preamble to the 2017 QI Agreement, however, a QDD will be subject to withholding on dividends (including deemed dividends) beginning with those payments received on or after January 1, 2018. The 2017 QI Agreement retains the same withholding and reporting rules for payments made to a QDD with respect to potential section 871(m) transactions as in the Proposed QI Agreement.

The Proposed QI Agreement expanded the scope of payments that QDDs would receive without withholding to include any payments on underlying securities or potential section 871(m) transactions. A comment requested that the withholding exclusion be limited to dividends and dividend equivalents. The 2017 QI Agreement provides that a QDD will be subject to withholding on all payments, other than dividend equivalents, received by the QDD with respect to underlying securities. In addition, the 2017 QI Agreement removes the withholding timing and deposit rules for these payments.

(6) Securities lending and sale-repurchase transactions. The Proposed QI Agreement provided that a QI must act as a QDD for any securities lending or sale-repurchase transaction it enters into that is a section 871(m) transaction, and that for purposes of the agreement, a QDD is deemed to make and receive payments pursuant to those securities lending and sale-repurchase transactions as a principal. Comments requested that this provision be revised to permit entities acting as agents of lenders in securities lending or sale-repurchase transactions to act as intermediaries and not be required to obtain QDD status. In response to that comment, the 2017 QI Agreement provides that to the extent a QI determines that it is acting as an intermediary with



respect to a securities lending or sale-repurchase transaction that is a section 871(m) transaction, it will not be treated as entered into by the QI as a principal; therefore, those transactions will not be treated as entered into by the QI in its QDD capacity.

Pursuant to Notice 2016-76, taxpayers may continue to rely on Notice 2010-46, 2010-24 I.R.B. 757, during calendar year 2017. As a result, the 2017 QI Agreement addresses QIs who are qualified securities lenders (QSLs) during 2017. If a QI is acting as a QDD, the QI must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities. Therefore, a QI cannot be both a QSL and a QDD, except with respect to a securities lending or sale-repurchase transaction for which the QI has determined that it is acting as an intermediary.

(7) Form 1042-S reporting. Comments to the Proposed QI Agreement requested that a QI that is also acting as a QDD be allowed to separate its Form 1042-S reporting and report payments separately when acting as a QI and when acting as a QDD. Consistent with the 2017 Form 1042-S and the box 12b requirement on Form 1042-S that a withholding agent provide its chapter 3 status code, a QI that is also acting as a QDD is required to file separate Forms 1042-S to report payments made in each capacity by identifying its specific chapter 3 status code as a QI or QDD. Section 8.01 of the 2017 QI Agreement has been updated to reflect this requirement. In addition, when a withholding agent makes a payment to a QDD that is subject to reporting under chapter 3 or 4, a separate Form 1042-S is required for each QDD, identifying the QDD by its home office or branch, if applicable.

(8) Responsible officer and scope of certification. A comment to the Proposed QI Agreement requested that QIs that also act as QDDs be able to designate different responsible officers for purposes of their QDD compliance. Because there is already flexibility for a QI's responsible officer to rely on any process, procedure, review, or certification in making its certification and for a QI's responsible officer to delegate its responsibilities as appropriate, this request was not adopted. A QI's responsible officer may designate a specific person to be responsible for QDD compliance, but only the responsible officer may make the certification to the IRS.

.02 Periodic Review and Certifications of Compliance. The 2014 QI Agreement replaced the previous external audit requirement applicable to a QI with an internal compliance and review program. As part of this compliance program, the responsible officer is required to make periodic compliance certifications and provide, with the certifications, certain factual information to the IRS based, in part, on the results of a periodic review. After the 2014 QI Agreement was published, comments raised concerns about the administration of the compliance procedures, including potential costs of implementing and conducting a compliance program, difficulties in allocating resources to conduct the periodic review in the last year of the certification period (as required by the 2014 QI Agreement), and the lack of detailed standards for performance of the QI's periodic review similar to those provided in Rev. Proc. 2002-55, 2002-2 C.B. 435. To address these comments, the Proposed QI Agreement modified and expanded upon the compliance provisions in section 10 and included, in Appendix I, the factual information to be provided by the QI, and, in Appendix II, a statistical sampling procedure that a QI's reviewer may use for conducting the periodic review.

(1) Certification of internal controls. The 2017 QI Agreement requires the QI's responsible officer to make a periodic certification of internal controls provided in Appendix I, as previewed in the Proposed QI Agreement. The Proposed QI Agreement also listed the elements of the certification both in section 10.03 and in Appendix I. The 2017 QI Agreement retains the specified list of elements but eliminates the duplication by only listing the elements of the certification in Appendix I.

In making the periodic certification of internal controls, the responsible officer may rely on, in addition to the results of the periodic review (if required), any other processes, procedures, reviews, or certifications made by other persons that the responsible officer has determined are necessary in order to make the certification. This flexibility allows the responsible officer to decide, for example, whether to hire an external reviewer (for example, a law firm or accounting firm) and what the scope of the engagement should be (for example, whether the external reviewer will conduct a review of the sufficiency of the QI's internal controls or whether the review will be limited to the periodic review, if required). A responsible officer may also rely on a review, report, or certification made by another officer or employee who may, for example, have greater subject matter expertise in a particular area (including a responsible officer for FATCA purposes). The responsible officer must, however, document what he or she has relied on in making the certification and retain such documentation for the same period of time for which the compliance review report and certifications are required to be retained pursuant to section 10.06(D) of the 2017 QI Agreement. For example, if the responsible officer relies on an internal or external reviewer to conduct a review of the QI's internal controls, the responsible officer must retain any report delivered by the

reviewer.

Comments to the Proposed QI Agreement requested further clarification regarding the certification of internal controls, including what a responsible officer should rely on if the QI requests and obtains a waiver of the periodic review requirement. When a QI does not request, or does not obtain, a waiver, the responsible officer must take into account the results of the periodic review in making the certification of internal controls and must also use any other process, certification, or review necessary in order to be able to certify to the QI's internal controls. When a QI does request and obtain a waiver and does not conduct a periodic review, the responsible officer must use the other processes, certifications, or reviews that he or she determines are necessary in order to be able to make the required certification.

Generally, regardless of whether a waiver is applied for and obtained, the 2017 QI Agreement does not provide further prescriptive requirements about what process or documentation the responsible officer must rely on to make the certification of internal controls because such prescriptive guidance may unnecessarily limit a responsible officer's discretion to structure a compliance program that, in his or her judgment, is necessary for the responsible officer to make the certification of internal controls.

A comment to the Proposed QI Agreement also requested that a QI be able to designate different responsible officers based on lines of business (such as for making the certification when the QI acts as a nonqualified intermediary for payments). Because there is already flexibility allowing a responsible officer to rely on others in making his or her certification of internal controls to the IRS, as noted above with respect to requests for separate responsible officers for QDD purposes, this comment

was not adopted.

(2) Certification period. Under the 2014 QI Agreement and the Proposed QI Agreement, the initial certification period ends at the end of the third full calendar year that the agreement is in effect. Each subsequent certification period is three full calendar years thereafter. A comment to the Proposed QI Agreement requested that the initial certification period be shortened and/or the second certification period be extended, so that the initial certification period would end on December 31, 2016, the termination date of the 2014 QI Agreement. Because the certification periods include any renewals of the QI agreement, it is not necessary that the certification period and an interim termination date be the same. In addition, the proposed solution fails to address cases of those QIs that had QI agreements with effective dates in 2015 and 2016. As a result, the 2017 QI Agreement does not incorporate this change.

Another comment to the Proposed QI Agreement requested that a QI be allowed to apply the provisions of the 2014 QI Agreement to its initial certification period for purposes of making the initial periodic certification of compliance and providing the factual information required. This comment was not adopted because the 2014 QI Agreement, unlike the 2017 QI Agreement, does not contain compliance provisions and requirements specific enough for a QI to apply that agreement to its initial compliance period and provide the factual information required with the periodic certification.

With respect to the requirement in Part II.F of Appendix I of the Proposed QI Agreement that a QI certify to its FATCA status, a comment requested clarification whether the requirement that the QI certify to its FATCA status over the certification period meant certification period or calendar year. As having an appropriate FATCA

status is a prerequisite to enter into a QI agreement and to maintain the agreement, a QI is required to certify to its FATCA status for the entire certification period and not just the calendar year selected for the periodic review.

(3) Periodic review. In addition to making the periodic certification of internal controls, a QI is required to report certain factual information regarding its documentation, withholding, reporting, and other obligations under the QI agreement. This factual information will be gathered, in part, through the testing of accounts and transactions required as part of the periodic review, as described in sections 10.04 and 10.05 of the 2017 QI Agreement. This review is focused on the testing of accounts and transactions rather than a substantive evaluation of the sufficiency of a QI's policies and procedures. Section 10.05(A) through (E) of the 2017 QI Agreement provides the objectives for performing the review, and Appendix I to the 2017 QI Agreement describes the factual information that will be required to be reported to the IRS following the review when making the periodic certification.

The 2014 QI Agreement required that the periodic review be conducted for the last year of the certification period. In response to comments regarding potential difficulties with this requirement, including resource constraints, the Proposed QI Agreement allowed a QI to choose any year within the certification period to select for its periodic review. The 2017 QI Agreement retains this allowance.

Comments to the Proposed QI Agreement requested that QIs that are also acting as QDDs be allowed to select different years within the certification period for the QI and QDD portions of their periodic reviews. Requiring a QI to use the same year for both the QI and QDD portions of the periodic review (when required) improves the efficiency

of the IRS review process and assists the IRS with its compliance and administration of the QI program. As a result, the request was not adopted.

(4) Certification date. The 2014 QI Agreement provides that the initial certification period ends at the end of the third full calendar year that the 2014 QI Agreement (and any superseding agreement) is in effect. Therefore, for a QI with a 2014 QI Agreement with an effective date of June 30, 2014 through December 31, 2016, the initial certification period would end December 31, 2017, and the certification would be required to be provided to the IRS on or before July 1, 2018. The Proposed QI Agreement included these provisions without modification. Comments to the Proposed QI Agreement requested a six-month extension of the July 1 certification due date, and some comments also requested an additional, automatic six-month extension. Because it would be difficult for QIs that choose the last year of the certification period for their periodic reviews to make the certification on July 1 of the following year, the 2017 QI Agreement provides QIs using the third year of the certification period for their periodic review an additional six months to make the certification. In such cases, the certification will be due December 31 of the year following the end of the certification period (for example, December 31, 2018 for a certification period ending December 31, 2017). For QIs that choose either the first or second year for their periodic review, the same concerns are not present, and the certification will continue to be due on July 1 following the end of the certification period.

(5) Consolidated Compliance Program. Comments raised questions regarding the consolidated compliance program, specifically what is required to apply for a consolidated compliance program and whether NFFEs are allowed to be in consolidated

compliance programs. There is no restriction against NFFEs participating in consolidated compliance programs. For more information about consolidated compliance programs or to apply to operate a consolidated compliance program, contact the Foreign Intermediaries Program by e-mail at: [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

A comment also requested that, in a consolidated compliance program, the responsible officer of the compliance QI be allowed to rely on certifications by other responsible officers of the other QIs in the group. A responsible officer (of a QI or a compliance QI) may rely on any process, procedure, review, or certification that he or she determines is appropriate in making the periodic certification of compliance. Therefore, the responsible officer of a compliance QI may rely on certifications made by other officers or individuals in the QI compliance group. Notwithstanding that the responsible officer may rely on certifications made by other officers or individuals within the group, the periodic certification of compliance for the group may only be made by the responsible officer of the compliance QI.

(6) FATCA requirements. A QI that is an FFI is required to comply with the FATCA requirements applicable to its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. In response to concerns raised following the 2014 QI Agreement, the Proposed QI Agreement clarified that a QI's responsible officer may rely on other personnel with oversight or responsibility for the QI's FATCA compliance in making its certifications relating the QI's compliance with its FATCA obligations. The Proposed QI Agreement also clarified that in conducting the periodic review relating to its FATCA compliance, a QI is only required to review those accounts for which it is acting as a QI. Comments to the Proposed QI



Agreement raised this question again, so further revisions were made to the 2017 QI Agreement to clarify the scope of QI's FATCA requirements (and related certifications).

(7) Standards for internal and external reviewers. A QI may use either an internal or an external reviewer to conduct the periodic review required by section 10.04 of the 2017 QI Agreement. In response to comments to the 2014 QI Agreement and as previewed in the Proposed QI Agreement, section 10 of 2017 QI Agreement has been clarified to prevent unintended inferences in the 2014 QI Agreement that the periodic review must satisfy the standards of a financial audit or other attestation engagement of a certified public accountant. References to an "auditor" (whether internal or external) in the 2014 QI Agreement have been replaced with "reviewer" in the Proposed QI Agreement and the 2017 QI Agreement.

The Proposed QI Agreement also clarified the description of the standard of independence required of a reviewer. Whether the reviewer is an internal or external reviewer, the reviewer must have sufficient independence to objectively conduct the review and cannot review his or her own work (for example, systems that the reviewer designed, or documentation that the reviewer validated in assisting a QI in its account opening processes).

Comments to the Proposed QI Agreement have requested further clarification of the independence standard, particularly as applicable to external reviewers. Many of these comments requested that this standard, which is described differently for internal and external reviewers, be relaxed to allow a wider range of external reviewers who have connections to, or experience with, the QI's systems or compliance. For example, comments requested that independence for external reviewers be determined based on

an individual or team basis (that is, even if an individual or team had established a QI's compliance program, another individual or team in the same company or firm could review the first individual's or team's work). One comment suggested that the independence standard be clarified so that any individual with management responsibility for implementation of the QI agreement would not be allowed to have significant involvement with the review. The comment also proposed that people who review client tax forms, perform withholding for clients, and calculate amounts required to be reported be disqualified from performing the review. Under this proposal, people who advise on what the FATCA and QI rules are and how they are applied to a particular situation, provide advice on how the withholding rules apply to a particular fact pattern, assist in reporting by physical submission of data to a tax authority (without responsibility for the underlying data), or provide quality assurance review services would be permitted to conduct the review.

The provisions of the 2017 QI Agreement regarding the independence of the reviewer are unchanged from the Proposed QI Agreement. The independence of a reviewer necessarily depends on specific facts and circumstances, and, as a result, providing more prescriptive rules than what is in the 2017 QI Agreement would likely be both over and under-inclusive. Even though the 2017 QI Agreement does not contain comprehensive rules regarding what constitutes independence, the independence standard, as applied to external reviewers, should not be applied on an individual or team basis but should be applied on a company or firm-wide basis when the firm has developed or assisted in the development of policies and procedures relevant to a QI's compliance with the agreement. To maintain an appropriate level of independence and

integrity in the review process, reviewers should not be reviewing their own work and should be in a position where they would be able to make a negative assessment of the QI's practices and procedures without concern about any negative impact for themselves or their employers. With respect to the comment that requested a specific allowance for a reviewer that also assisted with physical submission of client data, it is unclear why that activity would raise questions about independence with respect to a QI's compliance with the QI Agreement.

A comment also requested the QI agreement not reference a reviewer's "independence" because that term might have a particular meaning for public accounting firms that may not be relevant for this purpose, however, no suggestions for alternative language were offered. This comment was not accepted as the term "independent" or "independence" is appropriate in this context, and it is appropriate for a reviewer to consider the standards of independence applicable to a public accounting firm to the extent they apply to a review it is engaged to conduct for a QI.

The terms of the Proposed QI Agreement also required that an internal reviewer be "competent" to perform the review. A comment requested that the definition of "competence" in this context be clarified, particularly with respect to an internal reviewer. A reviewer must have enough knowledge and experience (including that received by training) to conduct the required review in order to provide the necessary information to the IRS, as required by Appendix I to the 2017 QI Agreement, and to enable the responsible officer to make the required certification.

(8) Waiver. Section 10.07 of the Proposed QI Agreement allowed, under certain circumstances, a QI that is an FFI that is not acting as a QDD and that is not part of a

consolidated compliance group to apply for a waiver of the requirement to conduct the periodic review. In cases where a QI applies for a waiver, it is required to provide certain factual information along with its periodic certification, as specified in Parts I and III of Appendix I. Comments to the Proposed QI Agreement requested that the information required to be provided with a waiver request be reduced. In order to obtain the necessary information to approve a waiver request, it is important for the IRS to receive information regarding the QI's account population that is specified in Part III of Appendix I (information that is generally consistent with the information that was required for a waiver of a QI audit under the QI agreement that was in effect prior to the 2014 QI Agreement). As a result, this request was not adopted, and the information required to be provided with a waiver request remains unchanged from the Proposed QI Agreement. However, in response to comments, Part III of Appendix I of the 2017 QI Agreement clarifies that a QI is not required to conduct a periodic review in order to provide the factual information required for the waiver request.

In addition, a comment to the Proposed QI Agreement requested that QIs in a consolidated compliance group also be allowed to apply for a waiver of the periodic review. This request was not adopted due to concerns that allowing a waiver for QIs that participate in a consolidated compliance program would reduce the effectiveness of the consolidated compliance program. Thus, the 2017 QI Agreement retains this prohibition, consistent with the terms of the QI agreements prior to the 2014 QI Agreement.

(9) Statistical sampling for periodic review. The Proposed QI Agreement allowed for the use of statistical sampling of a QI's accounts for purposes of the periodic review

(rather than requiring a review of all accounts) provided that the QI has 50 or more accounts to review. The Proposed QI Agreement also included, in Appendix II, a safe harbor method for determining a statistical sample of accounts for the periodic review.

Comments were received on Appendix II to the Proposed QI Agreement, and changes in response to certain of those comments are reflected in Appendix II to the 2017 QI Agreement. One comment requested that a QI's reviewer be permitted to perform a "spot check" (rather than take a statistical sample) for certain parts of the review to the extent that spot check procedures were permitted for a QI's audit under the former QI agreement audit guidelines in Rev. Proc. 2002-55. In response to this comment, Appendix II has been revised to permit the use of spot check procedures with respect to the review procedures performed pursuant to sections 10.05(B) through (D) of the 2017 QI Agreement and to specify the requirements for these procedures.

Other comments requested that a QI's reviewer not be required to project an amount of underwithholding determined as a result of a sample tested for the periodic review unless specifically requested to do so by the IRS during its review of a QI's compliance. One comment also requested that projection not be required as a result of a single error. In response to these comments, Appendix II to the 2017 QI Agreement provides that a QI will pay any underwithheld tax without regard to projection and that the IRS will determine if a projection of any underwithholding from a sample is required at the time of the IRS's review of the QI's periodic certification (and, if so, will direct the reviewer in performing the projection). Appendix II to the 2017 QI Agreement was also revised to indicate that when a reviewer determines an amount of underwithholding, the QI should pay the amount determined and report both the underwithholding determined by the

review and any amount of underwithholding that was cured (that is, for which valid documentation to support a reduced rate of withholding applied by the QI was obtained after the selection of the sample) following the review.

Another comment requested that the U.S. account population used for the sample be limited to accounts that received a reportable amount (rather than a reportable payment, as required by the Proposed QI Agreement) given the additional requirements for a QI that is a non-U.S. payor to determine reportable payments made to an account that are not reportable amounts. The comment was not accepted because sampling of U.S. accounts receiving reportable payments (not just reportable amounts) is useful for determining whether such payments have been properly reflected on Forms 1099 or identified on Forms 8966 for purposes of the review steps under section 10.05(D) of the 2017 QI Agreement. Additionally, this requirement imposes minimal additional burden on a QI's review as the reviewer may determine such payments based on the determinations made by the QI for purposes of identifying the population of U.S. accounts for the sample.

Other changes were made to Appendix II to the 2017 QI Agreement upon further consideration by the IRS. Appendix II to the 2017 QI Agreement does not include a sample of QDD accounts, which will be added in 2017 for use by QIs that act as QDDs to conduct a periodic review when the QI's certification period ends after December 31, 2017. Appendix II to the 2017 QI Agreement specifies that a reviewer, when applying statistical sampling based on the Appendix, is required to take into account the principles of Notice 2011-42, 2011 I.R.B. 318 (providing guidance on taxpayers applying statistical sampling). To better target circumstances where the statistical sampling

approach is appropriate, the 2017 QI Agreement has been revised to permit statistical sampling to be used for purposes of the periodic review only when there are 60 or more accounts to review (rather than 50, as in the Proposed QI Agreement). This requirement applies regardless of whether the QI's reviewer applies the provisions of Appendix II in determining a statistical sample.

The strata required for determining the sample have been consolidated in Appendix II to the 2017 QI Agreement, and the separate stratum for those accounts for which the QI has assumed primary withholding responsibilities for substitute interest has been removed (that is, such accounts are now included in the population of QI accounts). This consolidation will reduce the number of transactions required to be reviewed for purposes of the spot check procedures.

Appendix II to the 2017 QI Agreement has also been revised to address how accounts of those partnerships and trusts to which a QI applies the agency option are to be included in the sample for cases in which the partnership or trust did not arrange for the performance of its own periodic review. These accounts, similar to accounts held by private arrangement intermediaries (PAIs), are to be included in separate strata in addition to the strata already applicable to the sample of QI accounts, and the number of sample units required has been specified.

(10) Information and certifications in Appendix I. The Proposed QI Agreement required a QDD to report certain factual information (described in Appendix I) related to the determination of its QDD tax liability (as described in section 3.09 of the Proposed QI Agreement). The factual information relating to a QDD's tax liability in Appendix I of the 2017 QI Agreement is reserved and will be added in 2017. In addition, Appendix I

to the 2017 QI Agreement was also revised to include a limited number of changes and minor corrections to conform to the changes to Appendix II and in response to comments.

(11) Form 8966 XML schema. Comments to the Proposed QI Agreement noted that section 10.05(D)(3) requires review of Form 8966 reporting and requested clarification of whether review of the Form 8966 XML schema rather than paper forms would be sufficient. Although no change is being made to the 2017 QI Agreement, in this context an “original” Form 8966 does not refer exclusively to a paper form, and review of the Form 8966 XML schema would be appropriate. In addition, for purposes of the review, a QI that is a reporting Model 1 FFI should include in its review any analogous forms used for reporting account information pursuant to the applicable Model 1 IGA.

.03 Limited FFIs and Limited Branches. As noted in the preamble to the Proposed QI Agreement, because limited FFI (and limited branch) status will no longer be available as of January 1, 2017 (pursuant to the regulations under chapter 4), and, as previewed in the Proposed QI Agreement, the 2017 QI Agreement removes limited FFI as a category of entity eligible to enter into a QI agreement.

.04 Entities Eligible for QI Agreements. Pursuant to §1.1441-1(e)(5)(ii) and the 2014 QI Agreement, the QI Agreement may be entered into by (1) FFIs that are participating FFIs, registered deemed-compliant FFIs, or registered deemed-compliant Model 1 IGA FFIs, (2) foreign branches of U.S. financial institutions or clearing organizations that are either reporting Model 1 FFIs or agree to the reporting requirements of a PFFI; (3) foreign corporations (that is, NFFEs) for purposes of presenting claims of benefits under



an income tax treaty on behalf of their shareholders, and (4) any other persons acceptable to the IRS. In the preamble to the Proposed QI Agreement, the Treasury Department and the IRS requested comments on the types of entities where an NFFE would be acting as a QI on behalf of its shareholders rather than entering into a withholding foreign partnership agreement as a reverse hybrid. No comments were received. As a result, and consistent with revisions to the chapter 3 regulations, this category of NFFE is removed from the 2017 QI Agreement as an entity eligible to enter into the QI agreement, together with the related requirement for such QIs to also act as direct reporting NFFEs for purposes of chapter 4.

.05 Assumption of Withholding on Substitute Interest. As noted in the preamble to the Proposed QI Agreement, comments requested that, as the QSL regime is incorporated into the QDD regime, consideration be given to covering payments of substitute interest on debt securities under the QI agreement in addition to substitute dividend payments. The Proposed QI Agreement previewed this allowance for a QI to assume primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and section 3406 backup withholding responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a securities dealer. The 2017 QI Agreement retains this allowance.

Enabling a QI to assume primary withholding responsibility for payments of interest and substitute interest will allow a QI to provide a Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*, to a withholding agent to certify that the QI is a QI

assuming primary withholding responsibility without requiring the QI to distinguish between payments of interest and substitute interest the QI receives as a principal and those that it receives as an intermediary. QIs that assume primary withholding responsibility for payments of interest and substitute interest as described in this paragraph will be required to assume primary withholding responsibility for all such payments.

Some comments to the Proposed QI Agreement asked for more clarity as to whether the allowance for a QI to assume primary withholding responsibility for payments of interest and substitute interest required a QI to be a QDD. A QI's assumption of primary withholding responsibility for payments of interest and substitute interest is independent from responsibilities the QI has when it acts as QDD or whether a QI is eligible to act as a QDD, and thus a QI is permitted to assume primary withholding responsibility for such payments without having to act as a QDD and without regard to whether the QI is eligible to act as a QDD.

.06 Partnerships or Trusts Applying the Joint Account or Agency Options. The Proposed QI Agreement previewed two changes to the application of the joint account and agency options. Comments were received on the 2014 QI Agreement regarding the chapter 4 statuses required of a partnership or trust to which a QI may apply these options. As previewed in the Proposed QI Agreement, sections 4.05(A)(1) and 4.06(A)(2) of the 2017 QI Agreement have been modified to allow a QI to apply the joint account or agency option to partnerships or trusts that are covered as accounts that are excluded from the definition of financial accounts under Annex II of an applicable IGA or under §1.1471-5(a). In addition, consistent with the withholding foreign partnership and

withholding foreign trust agreements, a QI can apply the joint account or agency option to partnerships or trusts that are owner-documented FFIs with respect to the QI.

Comments to the Proposed QI Agreement noted an inconsistency between section 4.05(B)(3) of the Proposed QI Agreement and section 8.02(E) and Appendix I to the Proposed QI Agreement with respect to whether a QI would be required to specifically report and provide the names of partnerships or trusts to which it applies the joint account option. Consistent with the obligations described in section 4.05(B)(3) that do not require specific reporting for a partnership or trust to which a QI applies the joint account option, the 2017 QI Agreement does not require that the partnership or trust be identified on a Form 1042-S; accordingly, section 8.02(E) was removed, and Appendix I was modified to remove the requirement that a QI disclose to the IRS the names of these partnerships and trusts.

Similarly, comments requested that Appendix I be modified to remove the requirement that QIs provide the names of partnerships or trusts to which they apply the agency option. This requirement has been removed from Appendix I to the 2017 QI Agreement, except for cases in which the QI reports a material failure with respect to the partnership or trust.

A comment to the Proposed QI Agreement requested clarification regarding the requirement in section 4.05(A)(1) that a partnership or trust to which a QI applies the joint account option is required to provide the QI with a certification regarding its chapter 4 status. This certification requirement was a new requirement in the Proposed QI Agreement and is maintained in the 2017 QI Agreement, although the partnership or trust to which a QI applies the joint account or agency option, even prior to this change,

was required to maintain a certain chapter 4 status and to certify to that status on the Form W-8IMY it provided to the QI.

The Proposed QI Agreement did not allow QIs that are QDDs to enter into a private arrangement intermediary (PAI) agreement or to apply the joint account or agency options with respect to accounts or transactions in their QDD capacities. Comments requested that QIs acting as QDDs be allowed to use the joint account option. This request was adopted, and accordingly the 2017 QI Agreement allows QIs to use the joint account option when making payments in its capacity as a QDD. The 2017 QI Agreement does not allow a QDD to apply the agency option with respect to an account or transaction in its QDD capacity due to concerns about the administration of the QDD rules and the calculation of the QDD tax liability.

.07 Limitation on Benefits for Treaty Claims. Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*, was revised in April 2016 to include checkboxes for a beneficial owner to provide information regarding the limitation on benefits provision of an applicable treaty that it satisfies, and Form 1042-S was revised in 2016 to include a line for a withholding agent to report the corresponding limitation on benefits provision code, when required. The Proposed QI Agreement previewed the standard of knowledge required by a withholding agent with respect to an applicable limitation on benefits claim associated with a claim for treaty benefits. Consistent with revisions to the chapter 3 regulations, the Proposed QI Agreement modified the requirements for a QI using documentary evidence to document an entity account holder claiming a reduced rate of withholding under an income tax treaty to require the collection of information regarding limitation on benefits

on the treaty statement provided by the account holder, and the 2017 QI Agreement includes this revision. A QI opening an account for an entity account holder on or after January 1, 2017, will be required to collect this limitation on benefits information. For QIs with pre-existing entity accounts (as described in section 5.10(A) of the 2017 QI Agreement) that were documented with documentary evidence, there will be a two-year transition period provided for the collection of the appropriate limitation on benefits information (unless there is a change in circumstances that requires the QI to obtain corrected information sooner than the two-year period). For QIs that documented entity accounts with Forms W-8, those forms may be relied up on until their normal expiration period (unless there is a change in circumstances that requires a QI to obtain corrected information sooner than the expiration period). Comments to the Proposed QI Agreement requested a three-year transition period for accounts documented with documentary evidence, consistent with the validity period for a Form W-8 with respect to a claim for reduced withholding under an income tax treaty. This request was not adopted because a QI that documents account holders making a treaty claim on a withholding certificate would not in all cases have a full three-year period starting in 2017 to obtain a new withholding certificate containing the limitation on benefits information. Additionally, the Treasury Department and the IRS believe that two years is a reasonable period for a QI to obtain the limitation on benefits information from these account holders, especially considering that the requirement is intended to enhance compliance of persons claiming treaty benefits.

The standard of knowledge for the limitation on benefits claims under the Proposed QI Agreement was actual knowledge. The chapter 3 regulations are also amended to

apply an actual knowledge standard for limitation on benefits claims. The 2017 QI Agreement removes the discussion of the actual knowledge standard from section 5.10(A) and replaces it with a citation to the chapter 3 regulations in §1.1441-6(b)(1) that include this standard.

.08 Validity Period for Documentary Evidence and Treaty Statements. In connection with the revisions to the chapter 3 regulations requiring limitation on benefits information, the chapter 3 regulations are also amended to provide that treaty statements associated with documentary evidence for establishing residence in a treaty country have a three-year validity period, consistent with the validity period for withholding certificates that contain a claim for treaty benefits. Section 5.11(A) of the 2017 QI Agreement provides that a treaty statement (including a statement provided in section 5.03 of the 2017 QI Agreement) will be subject to the same validity period as prescribed in the chapter 3 regulations. The 2017 QI Agreement does not, however, change the existing rule for the validity period of documentary evidence that was included in prior versions of the QI agreement, including documentary evidence supporting a claim for treaty benefits. The Treasury Department and the IRS are considering applying the same three-year validity period to documentary evidence obtained QIs supporting an account holder's claim for treaty benefits to align with the validity period of the treaty statement.

.09 Validation of Treaty Claims. In addition to the standard of knowledge for limitation on benefits claims, the Proposed QI Agreement provided that a QI will be considered to have reason to know that a claim for treaty benefits is unreliable or incorrect if, among other requirements, the account holder claims benefits under a

treaty that does not exist or is not in force. QIs may determine this, for example, by checking whether a jurisdiction is included on the list maintained at <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>. This reason to know rule will generally apply to pre-existing accounts for which the QI already holds valid documentation only upon a change in circumstances. For a pre-existing entity account, this reason to know rule will also apply when the QI obtains a written limitation on benefits statement. For purposes of applying this rule, a “pre-existing account” or “pre-existing entity account” is an account for which QI holds valid documentation prior to January 1, 2017, for a QI with a QI agreement in effect prior to that date. For a QI that did not have a QI agreement in effect prior to January 1, 2017, a pre-existing account means an account maintained (and for which QI has valid documentation) prior to the effective date of its QI agreement. For all new accounts, the reason-to-know rule will apply upon account opening. The chapter 3 regulations are also revised to include this reason to know rule for all withholding agents, and the 2017 QI Agreement removes the reference to this standard from section 5.10(A) of the Proposed QI Agreement and replaces it with a citation to this same general rule in the chapter 3 regulations.

.10 Term of Agreement. The Proposed QI Agreement specified a term of three full calendar years following the effective date of the QI agreement. Comments requested that the three year term be extended, with suggestions of a six year agreement or an agreement that was valid indefinitely. The 2017 QI Agreement has been revised to include a six-year term.

.11 Effective Date. Notice 2016-42 and the Proposed QI Agreement included

application procedures that provided that if a prospective QI applies prior to March 31 of a given calendar year and its application is approved, its QI agreement will have an effective date as of January 1 of that year. Similarly, if an existing QI renews its 2014 QI Agreement prior to March 31, 2017, it will be considered to have a January 1 effective date for its 2017 QI Agreement with no change in its QI status. If a prospective QI applies after March 31 of a calendar year but has not received any reportable payments prior to submitting its application and its application is approved, its QI agreement will have an effective date of January 1 of that year. However, if a prospective QI applies after March 31 of a calendar year and has received a reportable payment prior to submitting its application and its application is approved, its QI agreement will have an effective date of the first of the month in which both its application is approved and its QI-EIN is issued.

Comments to the Proposed QI Agreement requested that prospective QIs be allowed to apply for QI status at any point during the calendar year and, if their applications are approved, have effective dates retroactive to January 1 of that year. This suggestion was not adopted. Although comments noted potential inconvenience with having two types of reporting (QI and NQI) in a single year, this inconvenience is outweighed by the potential for underwithholding and misreporting for the period during which the entity was not yet approved for QI status. A prospective QI could wait until the next year to apply for QI status (similar to the process for withholding foreign partnerships and withholding foreign trusts).

#### .12 Documentation of Account Holders and Presumption Rules.

(1) Interaction with Intergovernmental Agreements (IGAs). Comments to the 2014



QI Agreement and the Proposed QI Agreement noted an inconsistency in the documentation requirements with an FFI's requirements under an applicable IGA. In response to these comments, section 5 of the 2017 QI Agreement has been modified to clarify that a QI that is an FFI may document account holders for chapter 4 purposes consistent with its applicable requirements under Annex I of the applicable IGA. In addition, section 5.10(B) was clarified and simplified by replacing the parts of the text of the Proposed QI Agreement that were identical to the provisions of the chapter 3 regulations with a cross-reference to the chapter 3 regulations.

In addition, a comment to the 2014 QI Agreement raised the question of whether the presumption rules under an applicable IGA apply rather than the presumption rules in the QI agreement or in the regulations. A QI that is also a reporting Model 1 or 2 FFI may apply the due diligence procedures described in Annex I to document the status of its account holders under the IGA as U.S. accounts, nonparticipating FFIs, in the case of a reporting Model 2 FFI, non-consenting U.S. accounts, or, in the case of a Model 1 FFI, U.S. reportable accounts, and if such procedures are applied, cases in which an entity account holder is undocumented should not arise. If a QI that is a reporting Model 1 FFI or reporting Model 2 FFI does not have information in its possession or that is publicly available based on which it can reasonably determine the chapter 4 status of an entity account holder, the FFI must obtain a self-certification to establish the status of such entity (or in some cases, a self-certification to establish the status of the controlling persons of a passive NFFE) consistent with Annex I of the applicable IGA. When the QI acts as an intermediary for a withholdable payment made to an entity account and is unable to document the account by obtaining information or a self-certification

consistent with the procedures described in Annex I of the applicable IGA, the chapter 4 regulations and the 2017 QI Agreement provide that the QI must apply the presumption rules in §1.1471-3(f) to treat such entity account as a nonparticipating FFI. Additionally, because there typically should not be undocumented accounts pursuant to the IGA, if an FFI has many such undocumented accounts, the U.S. Competent Authority may determine that there is significant non-compliance with respect to the FFI.

(2) FFIs not using documentary evidence. A comment to the Proposed QI Agreement requested that QIs that are FFIs and that document their account holders using withholding certificates rather than documentary evidence be allowed to operate as QIs in jurisdictions without KYC rules approved by the IRS. This request was not adopted because after a QI enters into the agreement, there is no further distinction between whether an FFI documents with withholding certificates or documentary evidence (that is, nothing in the agreement prevents an FFI from documenting with documentary evidence, notwithstanding an intent not to do so). Allowing this could also create administration and compliance issues for the IRS.

.13 Collective Refunds. Section 9.04 of the Proposed QI Agreement provided that if there has been overwithholding and a QI does not apply for a collective refund, it must provide a specific Form 1042-S for the payment subject to the overwithholding if requested by an account holder. Comments to the Proposed QI Agreement asked that this provision be removed because of potential administrative difficulties. This request was not adopted because an account holder can only get a refund for overwithholding through a QI's collective refund or by having a Form 1042-S to substantiate the withholding (see §301.6402-3(e)), and a QI should not prevent its account holders from

obtaining refunds by declining to apply the collective refund procedures or by refusing to issue a specific Form 1042-S if it declines to apply the collective refund procedures.

.14 Correction of Errors. In addition to the minor changes and corrections that were previewed in the Proposed QI Agreement, the 2017 QI Agreement includes additional minor changes and corrections. For example, references to the “KYC attachment” or other attachments were deleted because printed and signed agreements are no longer used. In addition, in response to comments regarding the length and complexity of the agreement, certain nonsubstantive clarifications and deletions were made to remove repetitive references and generally simplify the agreement (including with respect to the standard of knowledge for limitation on benefits claims and reason to know for treaty claims, as discussed previously in this section).

.15 Revised Chapter 3 and 61 Regulations and Revised Chapter 4 Regulations. The 2017 QI agreement also incorporates and references certain provisions in final and temporary regulations issued under chapters 3 and 61 of the Code (T.D. 9808) and under chapter 4 of the Code (T.D. 9809), both of which are to be published shortly after the publication date of the 2017 QI Agreement.

## SECTION 5. APPLICATION FOR QI STATUS

.01 Prospective QI (Including a QI Acting as a QDD). Prior to submitting the information specified in Form 14345, *Application for Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust Status*, a prospective QI (other than an NFFE that is acting as an intermediary on behalf of persons other than its shareholders and certain foreign central banks of issue) must have submitted the information specified in Form 8957, *Foreign Account Tax Compliance Act (FATCA)*

*Registration*, through the FATCA registration website available at [www.irs.gov/FATCA](http://www.irs.gov/FATCA), and obtained its chapter 4 status as a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant), registered deemed-compliant Model 1 IGA FFI, or sponsoring entity of a direct reporting NFFE, as applicable, along with a global intermediary identification number (GIIN) to be used to identify itself to withholding agents and to tax administrators for FATCA reporting (the GIIN is separate from the QI-EIN).

The IRS will not enter into a QI agreement with an FFI if the IRS has not approved the know-your-customer practices and procedures for opening accounts of the jurisdiction where the FFI is located because the QI agreement as applicable to an FFI allows for the use of documentary evidence obtained under a jurisdiction's know-your-customer practices. A list of jurisdictions for which the IRS has received know-your-customer information and for which the know-your-customer rules have been approved is available at:

<http://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules>.

To request approval of a jurisdiction's know-your-customer rules, contact the KYC coordinator in the Foreign Intermediaries Program at [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

A QI that is an NFFE generally is not required to be located in an approved KYC jurisdiction because an NFFE is required to collect Forms W-8 and W-9 and may not use KYC documentation. See section 5.01(B)(2) of the 2017 QI Agreement for the documentation requirements applicable to a QI that is an NFFE.

To become a QI, a prospective QI must submit the information specified in Form

14345 through the QI/WP/WT Application and Accounts Management System accessible through the QI landing page available at: <https://www.irs.gov/businesses/corporations/qualified-intermediary-system>. An application must also include any additional information and documentation requested by the IRS. The application must establish to the satisfaction of the IRS that the applicant has adequate resources and procedures to comply with the terms of the agreement. An entity that would like to become a QI to act as a QDD must apply to enter into a QI agreement and include the information on the application relating to QDDs.

If the IRS approves the QI application, it will notify the QI of its approval. The approval notice will include a QI-EIN for fulfilling the requirements of a QI (including a QI acting as a QDD if approved for such purpose) under the QI Agreement.

.02 Existing QI. An FFI that seeks to renew its QI agreement must do so through the QI/WP/WT Application and Accounts Management System. The QI will retain its QI-EIN to fulfill the requirements of a QI under chapters 3, 4, and 61 and sections 871, 881, and 3406, including making tax deposits and filing Forms 945, 1042, 1042-S, 1099, and 8966.

A QI that seeks to renew its QI agreement and also seeks to act as a QDD must supplement the renewal request by providing all of the information required by the application relating to a QDD.

.03 Effective Date. The QI agreement provided in section 6 of this Revenue Procedure is effective on or after January 1, 2017. The effective date of the QI agreement for a new QI applicant will depend on when the QI submits its application

and whether the QI has received any reportable payments prior to when it submits its application. Beginning on January 1, 2017, a prospective QI that applies for QI status on or before March 31 of a calendar year and is approved will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 of a calendar year and has not received a reportable payment prior to the date it applies for QI status and is approved, it will have a QI agreement with an effective date of January 1 of that year. If a prospective QI applies for QI status after March 31 and has received a reportable payment prior to the date it applies and is approved, it will have a QI agreement with an effective date of the first of the month in which its QI application is approved and the prospective QI is issued a QI-EIN. A QI that seeks to renew its QI agreement must renew prior to March 31, 2017 for its renewed QI agreement to have an effective date of January 1, 2017.

.04 Contact Information. For questions regarding the QI application process, contact the Foreign Intermediaries Program at [lbi.fi.qiwpissues@irs.gov](mailto:lbi.fi.qiwpissues@irs.gov).

## SECTION 6. QUALIFIED INTERMEDIARY AGREEMENT

The text of the QI agreement is set forth below. The IRS will not provide signed copies of the QI agreement. A reporting Model 2 FFI should apply this Agreement by substituting the term “reporting Model 2 FFI” for “participating FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 2 FFI. A reporting Model 1 FFI and nonreporting Model 2 FFI treated as a registered deemed-compliant FFI should apply this Agreement by substituting the term “reporting Model 1 FFI” or “nonreporting Model 2 FFI” (as applicable) for “registered deemed-

compliant FFI” throughout this Agreement, except in cases where this Agreement explicitly refers to a reporting Model 1 FFI or nonreporting Model 2 FFI treated as a registered deemed-compliant FFI.

THIS AGREEMENT is made under and in pursuance of sections 1441, 1442, 1471, and 1472 and §§1.1441-1(e)(5) and 1.1441-1(e)(6):

**WHEREAS**, QI has submitted an application in accordance with Revenue Procedure 2017-15 to be a qualified intermediary;

**WHEREAS**, QI and the IRS desire to enter into an agreement to establish QI's rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposit, and refund procedures under sections 1441, 1442, 1443, 1461, 1471, 1472, 1474, 3406, 6041, 6042, 6045, 6049, 6050N, 6302, 6402, and 6414, and tax liability under sections 871(a) and 881 for a QI that is acting as a qualified derivatives dealer (QDD), with respect to certain types of payments;

**WHEREAS**, QI represents that there are no legal restrictions that prohibit it from complying with the requirements of this Agreement; and

**WHEREAS**, if QI is a foreign financial institution (FFI), QI represents that, as of the effective date of this Agreement, it has agreed to comply with the requirements of the FFI agreement, in the case of a participating FFI (including a reporting Model 2 FFI); §1.1471-5(f)(1) or the applicable Model 2 IGA, in the case of a registered deemed-compliant FFI (other than a reporting Model 1 FFI); or the applicable Model 1 IGA, in the case of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI;

**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.** When the IRS enters into a QI Agreement with a foreign person or a foreign branch of a U.S. person, that foreign person (or foreign branch) becomes a QI. QI is a withholding agent under chapters 3 and 4, and a payor under chapter 61 and section 3406, for amounts that it pays to its account holders.

If QI is an FFI, the requirements QI has agreed to as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI apply in addition to the requirements under this Agreement. If QI acts as a QI with respect to an account, this Agreement will reference QI's chapter 4 obligations when necessary to facilitate coordination with the QI's obligations under chapters 3, 4, and 61 and section

3406 with respect to such account holders. A participating FFI's (including a reporting Model 2 FFI) obligations are provided in the FFI agreement, a registered deemed-compliant FFI's (other than a reporting Model 1 FFI) obligations are provided in §1.1471-5(f)(1) or the applicable Model 2 IGA, and the obligations of a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI are provided in the applicable Model 1 IGA. For purposes of chapter 4, QI must comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (as applicable) in order to maintain its required chapter 4 status, as well as the requirements of a withholding agent for any payee that is a nonparticipating FFI or NFFE that is not an account holder. If QI is an FFI, QI must also, pursuant to this Agreement, assume primary reporting responsibility for purposes of section 1472, for certain indirect account holders for which it acts as a QI. If QI is an NFFE acting on behalf of persons other than its shareholders, QI must assume primary reporting responsibility for purposes of section 1472 for any person for which it acts as a QI.

If QI acts as a sponsoring entity on behalf of a sponsored FFI (as defined in §1.1471-1(b)(121)) or sponsored direct reporting NFFE (as defined in §1.1471-1(b)(123)), it must comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity in addition to its requirements under this Agreement.

For purposes of chapters 3 and 61 and section 3406, QI must act in its capacity as a QI pursuant to this Agreement for those accounts that QI holds with a withholding agent and that QI has identified as accounts for which it acts as a QI. QI is not required to act as a QI for all accounts that it holds with a withholding agent. However, QI must, as part of its QI Agreement, materially comply with the requirements of a withholding agent or payor, as applicable to a nonqualified intermediary (NQI) under chapters 3 and 61 and section 3406, for any account for which it does not (or cannot) act as a QI and for any payee that is not an account holder. If QI identifies an account as one for which it will act as a QI, it must act as a QI for all payments made to that account and obtain the documentation required under section 5 of this Agreement for such account.

When QI acts as a QI for an account and assumes primary chapter 3 withholding responsibility for payments to the account, QI must also assume primary withholding responsibility for withholdable payments made to such account for chapter 4 purposes.

If QI acts as a QI with respect to payments of substitute interest, as described in section 3.03(A) of this Agreement, it must act as a QI and assume primary withholding responsibility for all such payments of substitute interest.

If QI acts as a qualified securities lender (QSL) with respect to substitute dividend payments (as defined in §1.861-3(a)(6)), QI is required to act as a QSL and assume primary withholding responsibility for all substitute dividends received and paid by QI when acting as an intermediary or dealer with respect to securities lending and similar transactions. A QI that acts as a QDD may not act as a QSL, except with respect to a



payment on a securities lending or sale-repurchase transaction for which the QI has determined that it is acting as an intermediary for the payment.

The home office (as defined in section 2.43 of this Agreement) and each branch of a foreign person that intends to act as a QDD must each separately qualify and be approved for QDD status, as provided in section 1.02 of this Agreement. A foreign branch of a U.S. financial institution may also apply for QI and QDD status provided it separately qualifies as an eligible entity. If QI acts as a QDD with respect to the home office or branch, the home office or branch, as applicable, must act as a QDD for all payments made as a principal with respect to potential section 871(m) transactions and all payments received as a principal with respect to potential section 871(m) transactions and underlying securities, excluding any payments made or received by the QDD to the extent the payment is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864. For purposes of this Agreement, any securities lending or sale-repurchase transaction (as defined in §1.871-15(a)(13)) QI enters into that is a section 871(m) transaction is treated as entered into by QI as a principal unless QI determines that it is acting as an intermediary with respect to that transaction. A QI may not act as a QDD when it receives or makes payments as an intermediary and must act as either a QI or NQI for the payment. A QI acting as a QDD must assume primary chapter 3 and chapter 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility under section 3406 for payments made as a QDD with respect to any potential section 871(m) transaction provided the amount paid is an amount subject to chapter 3 or 4 withholding or a reportable payment under chapter 61. A QI acting as a QDD (other than a QDD that is a foreign branch of a U.S. financial institution) also must satisfy its QDD tax liability as determined under section 3.09 of this Agreement. The QDD (other than a QDD that is a foreign branch of a U.S. financial institution) must report its withholding tax liability under chapters 3 and 4 on Form 1042 and must report its QDD tax liability on the appropriate U.S. tax return (as prescribed by the IRS). A U.S. financial institution with a foreign branch that acts as a QDD must file the appropriate U.S. income tax return (e.g., Form 1120, *U.S. Corporation Income Tax Return*) for the tax year covered by this Agreement to report and pay its tax liability under chapter 1 and would not have a separate QDD tax liability.

A dividend or dividend equivalent is treated as received by a QDD acting in its non-equity derivatives dealer capacity if the dividend or dividend equivalent is received by a QDD acting as a proprietary trader. Transactions properly reflected in a QDD's equity derivatives dealer book are presumed to be held by a dealer in its equity derivatives dealer capacity for purposes of determining the QDD tax liability. In addition, for purposes of determining whether a dealer is acting in its equity derivatives dealer capacity, only the dealer's activities as an equity derivatives dealer are taken into account.

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

(A) QI; and

(B) The Internal Revenue Service.

If QI is an FFI, QI can only act as a QI for an account if the branch of QI that holds the account operates in a KYC jurisdiction identified on the IRS's Approved KYC List. QI may add any jurisdiction in which it operates a branch that is not initially included in its QI application without prior IRS approval if the jurisdiction is identified on the IRS's Approved KYC List and QI updates its information on the QI/WP/WT Application and Accounts Management System with respect to such branch prior to treating such branch as a QI. Notwithstanding the preceding sentence, a QI may not add a branch that will act as a QDD through the QI/WP/WT Application and Accounts Management System. Instead, the branch must separately qualify and be approved for QDD status in accordance with the procedures to be prescribed by the IRS. A branch of a QI that is not subject to the provisions of this Agreement remains subject to the rules of chapters 3, 4, and 61 and section 3406, as provided in section 1.01 of this Agreement.

## **SECTION 2. DEFINITIONS**

For purposes of this Agreement, except as otherwise provided in this Agreement, the terms listed below are defined as follows:

**Sec. 2.01. Account.** "Account" or "Financial Account" has the meaning given to that term in §1.1471-1(b) with respect to QI's obligations for chapter 4 purposes. For other purposes under this Agreement, "account" or "financial account" means any account for which QI acts as a QI. With respect to a QI acting as a QDD, "account" means any potential section 871(m) transaction or underlying security where QDD receives payments as a principal and any potential section 871(m) transaction where QDD makes payments as a principal.

**Sec. 2.02. Account Holder.** If QI is an FFI, an "account holder" means any person that is a direct account holder or an indirect account holder of an account that QI has identified to a withholding agent as an account for which it is acting as a QI and also includes any person that receives a U.S. source substitute dividend payment from a QI that is a QSL for the payment. "Account holder" also means any person that enters into or holds a potential section 871(m) transaction with a QI acting as a QDD. If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, an "account holder" means any person for whom QI is acting as an intermediary with respect to a reportable payment or withholdable payment. With respect to a QI that assumes primary withholding responsibility for a substitute interest payment as described in section 3.03(A) of this Agreement, an "account holder" includes any person that receives such a payment from the QI.

**(A) Direct Account Holder.** A direct account holder is any account holder who has a direct relationship with QI. In the case of an NFFE acting as a QI on behalf of persons other than its shareholders, a direct account holder is any person for whom QI is acting

with respect to a reportable payment regardless of whether such person is the beneficial owner.

**(B) Indirect Account Holder.** An indirect account holder is any account holder who does not have a direct relationship with QI. For example, a person that holds an account with a foreign intermediary or an interest in a foreign flow-through entity which, in turn, has a direct relationship with QI is an indirect account holder of QI. A person is an indirect account holder even if there are multiple tiers of intermediaries or flow-through entities between the person and QI.

**Sec. 2.03. Agreement.** “Agreement” means this Agreement, the Appendices to this Agreement, and QI's application to become a QI. The Appendices and QI's application are incorporated into this Agreement by reference.

**Sec. 2.04. Amount Subject to Chapter 3 Withholding.** An “amount subject to chapter 3 withholding” is an amount described in §1.1441-2(a) regardless of whether such amount is withheld upon.

**Sec. 2.05. Amount Subject to Chapter 4 Withholding.** An “amount subject to chapter 4 withholding” is a withholdable payment (as defined in §1.1473-1(a)) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4.

**Sec. 2.06. Assuming Primary Withholding Responsibility.** “Assuming primary withholding responsibility” refers to when a QI assumes primary chapters 3 and 4 withholding responsibility with respect to payments of U.S. source FDAP income or assumes primary Form 1099 reporting and backup withholding responsibility. A QI that assumes primary withholding responsibility assumes the primary responsibility for deducting, withholding, and depositing the appropriate amount from a payment. Generally, a QI assuming primary chapters 3 and 4 withholding responsibility or assuming primary backup withholding responsibility relieves the person who makes a payment to the QI from the responsibility to withhold. Notwithstanding the preceding sentence, a QI acting as a QDD (that assumes primary withholding responsibility as required by section 3 of this Agreement) remains liable for the tax under section 881 and therefore remains subject to withholding on all U.S. source FDAP payments with respect to underlying securities, other than dividend equivalents; however, with respect to dividends (including deemed dividends), a QDD will not be subject to withholding on those payments until January 1, 2018.

**Sec. 2.07. Backup Withholding.** “Backup withholding” means the withholding required under section 3406.

**Sec. 2.08. Beneficial Owner.** A “beneficial owner” has the meaning given to that term in §1.1441-1(c)(6).

**Sec. 2.09. Broker Proceeds.** “Broker proceeds” means gross proceeds (as defined in §1.6045-1(d)(5)) from a sale that is reportable under §1.6045-1(c).

**Sec. 2.10. Chapter 3.** Any reference to “chapter 3” means sections 1441, 1442, 1443, 1461, 1463, and 1464.

**Sec. 2.11. Chapter 3 Reporting Pool.** A “chapter 3 reporting pool” means a reporting pool described in section 8.03(B) of this Agreement.

**Sec. 2.12. Chapter 4.** Any reference to “chapter 4” means sections 1471, 1472, 1473, and 1474.

**Sec. 2.13. Chapter 4 Reporting Pool.** A “chapter 4 reporting pool” means a reporting pool described in section 8.03(A) of this Agreement.

**Sec. 2.14. Chapter 4 Status.** “Chapter 4 status” means the status of a person as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE, or a passive NFFE.

**Sec. 2.15. Chapter 61.** Any reference to “chapter 61” means sections 6041, 6042, 6045, 6049, and 6050N.

**Sec. 2.16. Dealer.** A “dealer” has the meaning given to the term dealer in §1.871-15(a)(2) (*i.e.*, a dealer in securities within the meaning of section 475(c)(1)).

**Sec. 2.17. Deemed-Compliant FFI.** “Deemed-compliant FFI” means an FFI that is treated, pursuant to section 1471(b)(2) and §1.1471-5(f), as meeting the requirements of section 1471(b).

**(A) Certified Deemed-Compliant FFI.** “Certified deemed-compliant FFI” means an FFI described in §1.1471-5(f)(2) and includes a nonreporting IGA FFI but excludes a nonreporting Model 2 FFI that is treated as a registered deemed-compliant FFI.

**(B) Registered Deemed-Compliant FFI.** “Registered deemed-compliant FFI” means an FFI described in §1.1471-5(f)(1) and includes a reporting Model 1 FFI and a nonreporting Model 2 FFI that is treated as registered deemed-compliant FFI. For purposes of this Agreement, a reference to a registered deemed-compliant FFI that is providing a chapter 4 withholding rate pool of U.S. payees includes a registered deemed-compliant Model 1 IGA FFI.

**(C) Registered Deemed-Compliant Model 1 IGA FFI.** “Registered deemed-compliant Model 1 IGA FFI” means an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with

respect to U.S. accounts as those applicable to a registered deemed-compliant FFI under §1.1471-5(f)(1), including the requirement to register with the IRS.

**Sec. 2.18. Deposit Interest.** “Deposit interest” means interest described in section 871(i)(2)(A).

**Sec. 2.19. Dividend Equivalent.** A “dividend equivalent” has the meaning given to that term in §1.871-15(c).

**Sec. 2.20. Documentary Evidence.** “Documentary evidence” means any documentation obtained under the appropriate know-your-customer rules, any documentary evidence described in §1.1441-6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty, or any documentary evidence described in §1.6049-5(c) sufficient to establish an account holder's status as a foreign person for purposes of chapter 61. Documentary evidence does not include a Form W-8 or Form W-9 (or an acceptable substitute Form W-8 or Form W-9).

**Sec. 2.21. Documentation.** “Documentation” means any valid Form W-8, Form W-9 (or an acceptable substitute Form W-8 or Form W-9), or documentary evidence as defined in section 2.20 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

**Sec. 2.22. Effective Date.** For a prospective QI that applies to be a QI on or before to March 31 of a given calendar year, the effective date of this Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has not received any reportable payments prior to the date the application is submitted, the effective date of this Agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given calendar year and that has received a reportable payment in the calendar year prior to the date the application is submitted, the effective date of this Agreement will be the first of the month in which the QI application is complete and the QI has received its QI-EIN.

**Sec. 2.23. Eligible Entity.** “Eligible entity” for QDD status means a home office or branch that is a QI and that is—

**(A)** An equity derivatives dealer subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;

**(B)** A bank or bank holding company subject to regulatory supervision as a bank or bank holding company, as applicable, by a governmental authority in the jurisdiction in which it was organized or operates and that, in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;

**(C)** An entity that is wholly-owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company, as applicable, by a governmental authority in the jurisdiction in which the bank or bank holding company was organized or operates and that, in its equity derivatives dealer capacity, (1) issues potential section 871(m) transactions to customers, and (2) receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued; or

**(D)** A foreign branch of a U.S. financial institution, if the foreign branch would meet the requirements of paragraph (A), (B), or (C), if it were a separate entity.

The home office or any branch that wants to be a QDD must separately meet the requirements of paragraph (A), (B), or (C) as if it were a separate entity.

**Sec. 2.24. Excepted NFFE.** “Excepted NFFE” means a person described in §1.1471-1(b)(41).

**Sec. 2.25. Exempt Beneficial Owner.** “Exempt beneficial owner” means a person described in §1.1471-1(b)(42) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 or Model 2 IGA.

**Sec. 2.26. Exempt Recipient.** For purposes of Form 1099 reporting and backup withholding, an “exempt recipient” means a person described in §1.6049-4(c)(1)(ii) (for interest, dividends, and royalties), a person described in §1.6045-2(b)(2)(i) (for broker proceeds), and a person described in §1.6041-3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income), for which no Form 1099 reporting is required. Exempt recipients are not exempt from reporting or withholding under chapter 3 or 4.

**Sec. 2.27. FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI.** “FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI” means—

**(A)** For a participating FFI or an FFI that agrees to be treated as a participating FFI, the requirements set forth in the FFI agreement;

**(B)** For a registered deemed-compliant FFI (other than a reporting Model 1 FFI) or an FFI that agrees to be treated as a registered deemed-compliant FFI, the requirements under §1.1471-5(f)(1) or an applicable Model 2 IGA; or

**(C)** For a registered deemed-compliant Model 1 IGA FFI, reporting Model 1 FFI, or an FFI that agrees to be treated as a registered deemed-compliant Model 1 IGA FFI or reporting Model 1 FFI, the requirements under an applicable Model 1 IGA.

**Sec. 2.28. Financial Institution (FI).** “Financial institution” or “FI” is defined in §1.1471-5(d) and includes a financial institution as defined under an applicable Model 1 or Model 2 IGA.

**Sec. 2.29. Foreign Financial Institution (FFI).** “Foreign Financial Institution” or “FFI” means a foreign entity (as defined in §1.1473-1(e)) that is a financial institution.

**Sec. 2.30. FFI Agreement.** “FFI Agreement” means an agreement described in §1.1471-4(a) and provided in Rev. Proc. 2014-3, 2014-3 I.R.B. 419, as revised by Rev. Proc. 2014-38, 2014-29 I.R.B. 131 (and any superseding revenue procedure).

**Sec. 2.31. Flow-Through Entity.** A flow-through entity is a foreign partnership described in §301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust (other than a withholding foreign trust) that is described in section 651(a), or a foreign trust if all or a portion of such trust is treated as owned by the grantor or other person under sections 671 through 679. For an item of income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

**Sec. 2.32. 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. For purposes of chapters 3 and 4, the term foreign person also means, with respect to a payment by a withholding agent, a foreign branch (including a foreign disregarded entity) of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a QI. A foreign branch of a U.S. person that is a QI is, however, a U.S. payor for purposes of chapter 61 and section 3406.

**Sec. 2.33. Foreign TIN.** A “foreign TIN” is a taxpayer identification number issued by a foreign person’s country of residence.

**Sec. 2.34. Form W-8.** “Form W-8” means IRS Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals)*; IRS Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*; IRS Form W-8ECI, *Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States*; IRS Form W-8EXP, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*; and IRS Form W-8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*, as appropriate. It also includes any acceptable substitute Form W-8.

**Sec. 2.35. Form W-9.** “Form W-9” means IRS Form W-9, *Request for Taxpayer Identification Number and Certification*, or any acceptable substitute Form W-9.

**Sec. 2.36. Form 945.** “Form 945” means IRS Form 945, *Annual Return of Withheld Federal Income Tax*.

**Sec. 2.37. Form 1042.** “Form 1042” means IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

**Sec. 2.38. Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.

**Sec. 2.39. 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. 2.40. Form 8966.** “Form 8966” means IRS Form 8966, *FATCA Report*.

**Sec. 2.41. Form 1099 Reporting.** “Form 1099 reporting” means the reporting required on Form 1099.

**Sec. 2.42. Global Intermediary Identification Number (GIIN).** “Global intermediary identification number” or “GIIN” means the identification number that is assigned to a participating FFI, registered deemed-compliant FFI, direct reporting NFFE, or sponsoring entity of a direct reporting NFFE. The term also includes the identification number assigned to a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that is a QI for the purpose of identifying itself to withholding agents.

**Sec. 2.43. Home Office.** “Home office” means a foreign person, excluding any branches of the foreign person, that applies for QDD status.

**Sec. 2.44. Intermediary.** An “intermediary” means any person that acts on behalf of another person such as a custodian, broker, nominee, or other agent or a person that acts as a QSL with respect to a substitute dividend payment.

**Sec. 2.45. Know-Your-Customer Rules.** “Know-your-customer rules” refers to the applicable laws, regulations, rules, and administrative practices and procedures governing the requirements of QI to obtain documentation confirming the identity of QI's account holders.

**Sec. 2.46. Marketable Securities.** For purposes of this Agreement, the term “marketable securities” means those securities described in §1.1441-6 for which a U.S. TIN (or foreign TIN) is not required to obtain treaty benefits.



**Sec. 2.47. Net Delta Exposure.** Net delta exposure to an underlying security is the amount (measured in number of shares) by which (A) the aggregate number of shares in an underlying security that the QDD has exposure to as a result of positions in the underlying security (including as a result of owning the underlying security) with values that move in the same direction as the underlying security (the “long positions”) exceeds (B) the aggregate number of shares of in an underlying security that the QDD has exposure to as a result of positions in the underlying security with values that move in the opposite direction from the underlying security (the “short positions”). The net delta exposure calculation only includes long positions and short positions that the QDD holds in its equity derivatives dealer business. Any long positions or short positions that are treated as effectively connected with the QDD’s conduct of a trade or business in the United States for U.S. federal income tax purposes are excluded from the net delta exposure computation. The net delta exposure to an underlying security is determined at the end of the day on the date provided in §1.871-15(j)(2) for the applicable dividend. For purposes of this calculation, net delta must be determined in a commercially reasonable manner. If a QDD calculates net delta for non-tax business purposes, the net delta ordinary will be the delta used for this purpose, subject to the modifications required by this definition. Each QDD must determine its net delta exposure separately only taking into account transactions that exist and are attributable to that QDD for U.S. federal income tax purposes.

**Sec. 2.48. Non-Consenting U.S. Account.** For purposes of a reporting Model 2 FFI, “non-consenting U.S. account” has the meaning that such term has under an applicable Model 2 IGA.

**Sec. 2.49. Non-Exempt Recipient.** A “non-exempt recipient” means a person that is not an exempt recipient under the definition in section 2.26 of this Agreement.

**Sec. 2.50. Non-Financial Foreign Entity (NFFE).** A “non-financial foreign entity” or “NFFE” means a foreign entity that is not a financial institution (including an entity that is incorporated or organized under the laws of any U.S. territory and that is not a financial institution). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 or Model 2 IGA.

**Sec. 2.51. Nonparticipating FFI.** A “nonparticipating FFI” means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

**Sec. 2.52. Nonqualified Intermediary (NQI).** A “nonqualified intermediary” or “NQI” is any intermediary that is not a qualified intermediary. An NQI includes any intermediary that is a foreign person unless such person enters an agreement to be a QI and acts in such capacity. An NQI also includes an intermediary that is a territory FI unless such institution agrees to be treated as a U.S. person.

**Sec. 2.53. Non-U.S. Payor.** A “non-U.S. payor” means a payor other than a U.S. payor as defined in this section 2.81 of this Agreement.

**Sec. 2.54. Nonwithholding Foreign Partnership.** A “nonwithholding foreign partnership” means a foreign partnership other than a withholding foreign partnership as defined in §1.1441-5(c)(2)(i).

**Sec. 2.55. Nonwithholding Foreign Trust.** A “nonwithholding foreign trust” means a foreign trust (as defined in section 7701(a)(31)(B)) that is a foreign simple trust or a foreign grantor trust and that is not a withholding foreign trust.

**Sec. 2.56. Overwithholding.** The term “overwithholding” means any amount actually withheld (determined before application of the adjustment procedures described in section 9 of this Agreement) from an item of income or other payment that is in excess of:

(A) The amount required to be withheld under chapter 4 with respect to such item of income or other payment, if applicable, and,

(B) In the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

For purposes of section 3406, the term “overwithholding” means the excess of the amount actually withheld under section 3406 over the amount required to be withheld.

**Sec. 2.57. Participating FFI.** A “participating FFI” means an FFI described in §1.1471-1(b)(91). The term participating FFI also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

**Sec. 2.58. Payee.** For chapter 4 purposes, a “payee” means a person described in §1.1471-3(a). For purposes of chapter 61, a “payee” means the person to whom a payment is made. For purposes of chapter 3, a “payee” means a person described in §1.1441-1(c)(12).

**Sec. 2.59. 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 §1.1441-2(e). For example, a payment includes crediting an amount to an account. For any payment of a dividend equivalent, a “payment” has the meaning provided in §1.871-15(i).

**Sec. 2.60. Payor.** A “payor” is defined in §31.3406(a)-2 and §1.6049-4(a)(2) and generally means any person required to make an information return under chapter 61. The term includes any person that makes a payment, directly or indirectly, to QI and to whom QI provides information, pursuant to this Agreement, so that such person can report a payment on Form 1099 and, if appropriate, backup withhold. See also sections

2.81 and 2.53 of this Agreement for the definition of U.S. payor and non-U.S. payor.

**Sec. 2.61. Potential Section 871(m) Transaction.** A “potential section 871(m) transaction” is any securities lending or sale-repurchase transaction, notional principal contract (NPC), or equity linked instrument (ELI) that references one or more underlying securities. For purposes of this definition, securities lending or sale-repurchase transaction, NPC, ELI, reference, and underlying security have the meaning given to the terms in §§1.871-15(a)(13), (7), (4), (11), and (15), respectively.

**Sec. 2.62. Private Arrangement Intermediary (PAI).** A “private arrangement intermediary” or “PAI” is an intermediary described in section 4 of this Agreement.

**Sec. 2.63. Qualified Derivatives Dealer (QDD).** A “qualified derivatives dealer” or “QDD” is an eligible entity that agrees to meet the requirements of §1.1441-1(e)(6)(i) and of this Agreement with respect to payments on potential section 871(m) transactions and underlying securities that it receives or makes as a principal. In order to act as a QDD, the home office or branch, as applicable, must qualify and be approved for QDD status and must represent itself as a QDD on its Form W-8IMY and separately identify the home office or branch as the recipient on a withholding statement (if necessary). Each home office or branch that obtains QDD status is treated as a separate QDD.

**Sec. 2.64. QDD Tax Liability.** A “QDD tax liability” is the amount described in section 3.09 of this Agreement.

**Sec. 2.65. Qualified Intermediary (QI).** A “qualified intermediary” or “QI” is a person (or branch) described in §1.1441-1(e)(5)(ii) that has in effect an agreement with the IRS to be treated as a QI and acts as a QI.

**Sec. 2.66. QI-EIN.** A “QI-EIN” means the employer identification number assigned by the IRS to a QI. QI's QI-EIN is only to be used when QI is acting as a QI. For example, QI must give a withholding agent its EIN (other than its QI-EIN), if any, if it is receiving income as a beneficial owner (excluding when it receives income as a principal when acting as a QDD or as a QI assuming primary withholding responsibility for a substitute interest payment). QI must also use its non-QI EIN, if any, when acting as an NQI. Each signatory to this Agreement must have its own QI-EIN.

**Sec. 2.67. Qualified Securities Lender (QSL).** A “qualified securities lender” or “QSL” is a person described as a qualified securities lender in Notice 2010-46, 2010-24 I.R.B. 757. A QI that acts as a QSL with respect to a substitute dividend payment (as defined in §1.861-3(a)(6)) is required to act as a QSL for all U.S. source substitute dividends received by the QI when acting as an intermediary or dealer with respect to securities lending and similar transactions. A QI is only permitted to act as a QSL until December 31, 2017.

**Sec. 2.68. Reportable Amount.** A “reportable amount” means U.S. source FDAP income that is an amount subject to chapter 3 withholding, U.S. source deposit interest, and U.S. source interest or original issue discount paid on the redemption of short-term obligations. 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 §1.6049-5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.69. Reportable Payment.** For purposes of this Agreement, a “reportable payment” means an amount described in section 2.69(A) of this Agreement, in the case of a U.S. payor, and an amount described in section 2.69(B) of this Agreement, in the case of a non-U.S. payor.

**(A) U.S. Payor.** If QI is a U.S. payor, a “reportable payment” means, unless an exception to reporting applies under chapter 61,--

- (1) Any reportable amount;
- (2) Any broker proceeds from a sale reportable under §1.6045-1(c); and
- (3) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income.

**(B) Non-U.S. Payor.** If QI is a non-U.S. payor, a “reportable payment” means, unless an exception to reporting applies under chapter 61, --

- (1) Any reportable amount;
- (2) Any broker proceeds from a sale effected at an office inside the United States, as defined in §1.6045-1(g)(3)(iii); and
- (3) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income if such income is not paid outside the United States as described under section 5.13(C)(1) of this Agreement.

**Sec. 2.70. Reporting Model 1 FFI.** A “reporting Model 1 FFI” means an FFI with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than an FFI that is treated as a nonreporting Model 1 FFI (including a registered deemed-compliant Model 1 IGA FFI) or a nonparticipating FFI under an applicable Model 1 IGA.

**Sec. 2.71. Reporting Pool.** A “reporting pool” is defined in section 8 of this Agreement.

**Sec. 2.72. Responsible Officer.** A “responsible officer” of a QI means an officer of the QI with sufficient authority to fulfill the duties of a responsible officer as described in section 10 of this Agreement, including the requirements to periodically certify and to respond to requests by the IRS for additional information to review the QI’s compliance.

**Sec. 2.73. Section 871(m) Amount.** For each dividend on each underlying security, the “section 871(m) amount” is (A) the QDD’s net delta exposure to the underlying security for the applicable dividend multiplied by (B) the applicable dividend amount per share.

**Sec. 2.74. Section 871(m) Transaction.** A “section 871(m) transaction” is any securities lending or sale-repurchase transaction, specified NPC, or specified ELI described in §1.871-15(a)(13), (d), and (e), respectively.

**Sec. 2.75. Short-Term Obligation.** A “short-term obligation” is any obligation described in section 871(g)(1)(B)(i).

**Sec. 2.76. Substitute Interest.** “Substitute interest” means a substitute interest payment described in §1.861-2(a)(7).

**Sec. 2.77. Underlying Security.** For purposes of a QI acting as a QDD or any determination relating to section 871(m), “underlying security” has the meaning provided in §1.871-15(a)(15).

**Sec. 2.78. Underwithholding.** “Underwithholding” means the excess of the amount required to be withheld under chapter 3 or 4 or section 3406 over the amount actually withheld.

**Sec. 2.79. Undocumented Account Holder.** An “undocumented account holder” is an account holder for whom QI does not hold valid documentation.

**Sec. 2.80. U.S. Account.** A “U.S. account” is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S.-owned foreign entities that such FFI reports or elects to report under the FFI Agreement or §1.1471-5(f), as applicable.

**Sec. 2.81. U.S. Payor.** The term “U.S. payor” has the same meaning as in §1.6049-5(c)(5).

**Sec. 2.82. U.S. Person.** A “U.S. person” (or “United States person”) is a person described in section 7701(a)(30), 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). An individual will not be treated as a U.S. person for purposes of this section for a taxable year or any portion of a taxable year that the individual is a

dual resident taxpayer (within the meaning of §301.7701(b)-7(a)(1)) who is treated as a nonresident alien pursuant to §301.7701(b)-7 for purposes of computing his or her U.S. tax liability. The term “U.S. person” or “United States person” also means a foreign insurance company that has made an election under section 953(d), provided that either the foreign insurance company is not a specified insurance company (as described in §1.1471-5(e)(1)(iv)), or the foreign insurance company is a specified insurance company and is licensed to do business in any State of the United States.

**Sec. 2.83. U.S. Reportable Account.** A “U.S. reportable account” means a financial account maintained by a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI that such FFI reports or elects to report under the applicable domestic law for compliance with and implementation of FATCA.

**Sec. 2.84. U.S. Source FDAP.** “U.S. source FDAP” means amounts from sources within the United States that constitute fixed or determinable annual or periodical income, as defined in §1.1441-2(b)(1).

**Sec. 2.85. U.S. TIN.** A “U.S. TIN” means a U.S. taxpayer identification number assigned under section 6109.

**Sec. 2.86. Withholding Agent.** A “withholding agent” has the same meaning as set forth in §1.1441-7(a) for purposes of chapter 3 and as set forth in §1.1473-1(d) for purposes of chapter 4, and includes a payor (as defined in section 2.60 of this Agreement).

**Sec. 2.87. Withholding Foreign Partnership (WP).** A “withholding foreign partnership” or “WP” means a partnership, described in §1.1441-5(c)(2), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign partnership.

**Sec. 2.88. Withholding Foreign Trust (WT).** A “withholding foreign trust” or “WT” means a trust, described in §1.1441-5(e)(5)(v), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign trust.

**Sec. 2.89. Withholdable Payment.** A “withholdable payment” means an amount described in §1.1473-1(a).

**Sec. 2.90. Withholding Rate Pool.** A “withholding rate pool” is defined in section 6.03 of this Agreement and includes a chapter 3 withholding rate pool and a chapter 4 withholding rate pool.

**Sec. 2.91. Other Terms.** Any term not defined in this section has the same meaning that it has under the Code, including the income tax regulations under the Code, any applicable income tax treaty, or any applicable Model 1 or Model 2 IGA with respect to a QI’s FATCA requirements as a participating FFI, registered deemed-compliant FFI, or

registered deemed-compliant Model 1 IGA FFI. Except as expressly provided in this Agreement, any term relating to a QDD or section 871(m) has the same meaning given to the term in §1.871-15.

### **SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY**

#### **Sec. 3.01. Chapters 3 and 4 Withholding Responsibilities.**

**(A) Chapter 4 Withholding.** QI is a withholding agent for purposes of chapter 4 and subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its accounts. QI is required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an FFI unless either QI can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under §1.1471-2(a)(4) or the payment is made under a grandfathered obligation described in §1.1471-2(b). See §1.1471-2(b)(2)(i)(A)(2) for the definition of grandfathered obligation with respect to an obligation giving rise to a dividend equivalent. QI is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an NFFE unless either QI can reliably associate the payment (or portion of the payment) with a certification described in §1.1472-1(b)(1)(ii) or an exception to withholding under §1.1472-1 otherwise applies.

If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), QI will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct account holders that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders to the extent required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI. See the FFI Agreement, §1.1471-5(f)(1), or the applicable Model 2 IGA for the withholding requirements that apply to withholdable payments made to account holders of the FFI that are individuals treated as recalcitrant account holders or non-consenting U.S. accounts. If QI is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, QI will satisfy its requirement to withhold under section 1471(a) with respect to direct account holders by withholding on withholdable payments made to nonparticipating FFIs to the extent required under its FATCA requirements as a registered deemed-compliant FFI or registered deemed-compliant Model 1 IGA FFI. QI must, however, withhold in the manner described in sections 3.02 and 3.03 of this Agreement for when QI assumes or does not assume primary withholding responsibility for purposes of chapters 3 and 4 regardless of its chapter 4 status.

**(B) Chapter 3 Withholding.** To the extent that QI makes a payment of an amount subject to chapter 3 withholding, QI is required to withhold 30 percent of the gross amount of any such payment made to an account holder that is (or is presumed) a foreign person unless QI can reliably associate the payment with documentation upon

which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 5 of this Agreement regarding documentation requirements. With respect to an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, QI may credit any tax withheld under chapter 4 against its liability for any tax due under chapter 3 with respect to the payment so that no additional withholding is required on the payment for purposes of chapter 3. Nothing in chapter 4 or the regulations thereunder (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to withhold under chapter 3 to the extent required in this Agreement.

**Sec. 3.02. Primary Chapters 3 and 4 Withholding Responsibility Not Assumed.**

Notwithstanding sections 1.01 and 3.01 of this Agreement, QI is not required to withhold with respect to a payment of U.S. source FDAP income if it (a) does not assume primary withholding responsibility under section 3.03 of this Agreement by electing to be withheld upon under §1.1471-2(a)(2)(iii) for purposes of chapter 4, (b) provides the withholding agent from which QI receives the payment with a valid withholding certificate that indicates that QI does not assume primary withholding responsibility for chapters 3 and 4 purposes, and (c) provides correct withholding statements (including information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI, other than a QI that assumes primary withholding responsibility, WP, or WT) as described in section 6.02 of this Agreement. Notwithstanding its election not to assume primary withholding responsibility under chapters 3 and 4, QI shall, however, withhold the difference between the amount of withholding required under chapter 3 or 4 and the amount actually withheld by another withholding agent if QI--

**(A)** Actually knows that the appropriate amount has not been withheld by another withholding agent; or

**(B)** Made an error which results in the withholding agent's failure to withhold the correct amount due (e.g., QI fails to provide an accurate withholding statement with respect to the payment, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement), and QI has not corrected the underwithholding under section 9.05 of this Agreement.

**Sec. 3.03. Primary Chapters 3 and 4 Withholding Responsibility Assumed.**

**(A) In General.** QI may assume primary withholding responsibility for purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility (if required). QI is not required to assume primary withholding responsibility for all



accounts it holds with a withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account.

If QI is acting as a QSL for a substitute dividend payment, QI must assume primary withholding responsibility for any such payment made to any account holder receiving a substitute dividend payment.

QI may assume primary withholding responsibility for U.S. source FDAP payments of substitute interest as described in §1.861-2(a)(7). If QI assumes primary withholding responsibility for payments of substitute interest (as described in this paragraph), it must assume primary withholding responsibility with respect to all such payments. QI assumes primary withholding responsibility for payments of substitute interest for purposes of this Agreement when it assumes such responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a dealer in securities. As a result, QI may represent its status as a QI on the withholding certificate described in section 6.01 of this Agreement with respect to payments it receives of interest and substitute interest described in the preceding sentence regardless of whether it acts as an intermediary or as a principal with respect to these payments.

To the extent that QI assumes primary withholding responsibility, QI shall withhold as described in section 3.01 of this Agreement. QI is not required to withhold on amounts it pays to another QI that has assumed primary withholding responsibility with respect to the payment (including a QI acting as a QDD except for all payments with respect to underlying securities, other than dividend equivalents, paid to a QDD for which withholding is required) or to a WP or a WT.

**(B) Assumption of Withholding Responsibility by a QDD.** If QI is acting as a QDD, it must assume primary chapters 3 and 4 withholding responsibility for any dividend equivalent payment that it makes and must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend (as determined in §1.1441-2(e)(4)). Notwithstanding the preceding sentence, a QDD remains liable for tax under section 881 and subject to withholding on all U.S. source FDAP payments with respect to underlying securities, other than dividend equivalents; however, with respect to dividends (including deemed dividends), a QDD will not be subject to withholding on those payments until January 1, 2018. A QDD must treat any dividend equivalent as a dividend from sources within the United States for purposes of section 881 and chapter 3 and chapter 4 consistent section 871(m) and the regulations thereunder. A QDD may reduce the rate of withholding under chapter 3 only based on a beneficial owner's claim of treaty-reduced withholding for portfolio dividends under the dividends article of an applicable income tax treaty. A QDD must also assume primary chapter 3 and chapter 4 withholding responsibility for payments made with respect to a

potential section 871(m) transaction even if the payment is not a dividend equivalent if the amount paid is an amount subject to chapter 3 or 4 withholding. A QDD is not required to withhold under chapter 3 or 4 on amounts it pays to another QI that has assumed primary withholding responsibility with respect to the payment or to a WP or a WT. In addition, the QDD must notify each payee in writing that it will withhold on the dividend payment date before the time for determining the payee's first dividend equivalent payment (as determined under §1.871-15(j)(2)).

### **Sec. 3.04. Backup Withholding Under Section 3406 and Form 1099 Reporting Responsibility.**

**(A) Backup Withholding.** QI is a payor under section 3406 with respect to reportable payments. Under section 3406, unless an exception to backup withholding applies, a payor is required to deduct and withhold 28<sup>2</sup> percent from a reportable payment to an account holder that is a U.S. non-exempt recipient if the U.S. non-exempt recipient has not provided its U.S. TIN in the manner required under that section; the IRS notifies the payor that the U.S. TIN furnished by the payee is incorrect; there has been a notified payee under-reporting described in section 3406(c); or there has been a payee certification failure described in section 3406(d).

**(B) Coordination of Chapter 4 Withholding and Backup Withholding.** With respect to a withholdable payment that is also a reportable payment subject to backup withholding under section 3406, QI is not required to withhold under section 3406 if QI withheld on such payment under chapter 4. See §31.3406(g)-1(e). Alternatively, if QI is a participating FFI or a registered deemed-compliant FFI (other than a reporting Model 1 FFI), it may elect to satisfy its obligation to withhold under chapter 4 (or the FFI Agreement) on a withholdable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient by satisfying its backup withholding obligation under section 3406 provided that the payment is also a reportable payment. See section 4 of the FFI Agreement. Nothing in chapter 4 (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to backup withhold under section 3406 to the extent required by this Agreement.

**(C) Form 1099 Reporting.** If QI applies backup withholding (as described in section 3.04(B) of this Agreement), it must report the amount subject to backup withholding on Form 1099 and not on Form 1042-S.

**Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts.** QI is responsible for Form 1099 reporting and backup withholding on reportable payments other than reportable amounts to the extent required under this section 3.05 and section 8.06 of

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<sup>2</sup> See section 3406(a) providing that the current applicable rate of backup withholding is the fourth lowest rate of tax applicable under section 1(c).

this Agreement, whether or not QI assumes primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts under section 3.07 of this Agreement. Further, no provision of this Agreement which requires QI to provide another withholding agent with information regarding reportable amounts shall be construed as relieving QI of its Form 1099 reporting and backup withholding obligations with respect to reportable payments that are not reportable amounts. See, however, §31.3406(g)-1(e) providing that a payor (irrespective of whether the payor is a U.S. or non-U.S. payor) is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States with respect to an offshore obligation or on gross proceeds from a sale effected outside the United States, unless the payor has actual knowledge that the payee is a U.S. person.

**(A) U.S. Payor.** Except as provided in section 3.05(C) of this Agreement, if QI is a U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for reportable payments other than reportable amounts. For example, if QI is a U.S. payor, it has primary Form 1099 reporting and backup withholding responsibility for payments of foreign source income as well as all broker proceeds paid to account holders that are, or are presumed to be, U.S. non-exempt recipients.

**(B) Non-U.S. Payor.** If QI is a non-U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for broker proceeds described in section 2.69(B)(2) of this Agreement and foreign source fixed and determinable income other than income paid and received outside United States as described in section 2.69(B)(3) of this Agreement, if such payments are made (or presumed made) to U.S. non-exempt recipients.

**(C) Special Procedure for Broker Proceeds.** If QI is a U.S. payor, QI may request another payor that is either a U.S. financial institution or another QI to report on Form 1099 and, if required, backup withhold with respect to broker proceeds from a sale that is effected at an office outside the United States (as defined in §1.6045-1(g)(3)(iii)) that QI is otherwise required to report under section 3.05(A) and section 8.05 of this Agreement, provided the other payor actually receives the broker proceeds. In such a case, QI will not be responsible for primary Form 1099 reporting and backup withholding with respect to broker proceeds, provided that the other payor agrees to do the reporting and backup withholding and QI provides all of the information necessary for the other payor to properly report and backup withhold. QI, however, remains responsible for primary Form 1099 reporting and backup withholding if the other payor does not agree to report and backup withhold, or if QI knows that the other payor failed to do so. If, however, QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI) that reports an account on Form 1099 in order to satisfy its U.S. account reporting requirement under chapter 4, as described in section 8.04 of this Agreement, QI is responsible for reporting on Form 1099 with respect to reportable payments made to such U.S. account and must report in the manner described in the FFI Agreement.

**Sec. 3.06. Primary Form 1099 Reporting and Backup Withholding Responsibility For Reportable Amounts Not Assumed.** Notwithstanding sections 1.01 and 3.04 of this Agreement, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides a payor from which it receives a reportable amount the Forms W-9 of its U.S. non-exempt recipient account holders (or, if a U.S. non-exempt recipient fails to provide a Form W-9 or information regarding the account holder's name, address, and U.S. TIN, if a U.S. TIN is available) together with the withholding rate pools attributable to U.S. non-exempt recipient account holders so that such payor may report on Form 1099 and, if required, backup withhold. If QI elects to backup withhold on withholdable payments that are also reportable amounts made to recalcitrant account holders that are also U.S. non-exempt recipients, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if it provides a payor from which it receives a reportable amount information regarding such recalcitrant account holders. See section 6.03 of this Agreement and section 4 of the FFI Agreement. If QI reports its U.S. accounts on Forms 1099 under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, see section 8.04(A) of this Agreement providing that QI cannot delegate to a withholding agent its requirement to report its U.S. accounts. If QI elects not to assume primary Form 1099 reporting and backup withholding responsibility, QI must provide the withholding agent with such information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI. Notwithstanding its election not to assume primary Form 1099 reporting and backup withholding responsibility, QI shall backup withhold and report a reportable amount to the extent required under sections 3.04 and 8.06 of this Agreement if--

**(A)** QI actually knows that a reportable amount is subject to backup withholding and that another payor failed to apply backup withholding, or

**(B)** Another payor has not applied backup withholding to a reportable amount because of an error made by QI (e.g., QI failed to provide the other payor with information regarding the name, address, U.S. TIN (if available), and withholding rate pool for a U.S. non-exempt recipient account holder subject to backup withholding, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement).

**Sec. 3.07. Primary Form 1099 Reporting and Backup Withholding Responsibility Assumed.** QI may assume primary Form 1099 reporting backup withholding responsibility with respect to reportable amounts without obtaining approval from the IRS. QI that assumes such responsibility is subject to all of the obligations imposed by chapter 61 and section 3406, as modified by this Agreement, and QI shall be subject to any applicable penalties for failure to meet those obligations. QI shall inform a payor from which it receives a reportable amount that it has assumed primary Form 1099 reporting and backup withholding responsibility by providing the payor with a valid

withholding certificate described in section 6 of this Agreement and by identifying on the withholding statement associated with such certificate the account(s) for which QI assumes primary Form 1099 reporting and backup withholding responsibility (if required).

QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it holds with a payor. However, if QI assumes primary Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable amounts made by a payor to that account.

If QI is acting as a QDD, it must assume primary Form 1099 reporting and backup withholding responsibility for any reportable payments that are made with respect to a potential section 871(m) transaction. Thus, for example, if QI acts as a QDD with respect to an NPC that is a potential section 871(m) transaction and makes a payment pursuant to the NPC to a U.S. person that is a U.S. non-exempt recipient, QI must backup withhold and report any amount paid to the U.S. person to the extent required under section 3406 and §1.6041-1(d)(5).

In addition, if QI is assuming primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of this Agreement), it must assume primary Form 1099 reporting and backup withholding responsibility with respect to all such payments.

QI is not required to backup withhold on a reportable amount it makes to a WP, WT, or another QI that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the reportable amount. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another QI that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders.

**Sec. 3.08. Deposit Requirements.** If QI assumes primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, it must deposit amounts withheld under chapter 3 or 4 or section 3406 at the time and in the manner provided under section 6302 (see §1.6302-2) by electronic funds transfer as provided under §31.6302-1(h). If QI is a non-U.S. payor that does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, QI must deposit amounts withheld by the 15th day following the month in which the withholding occurred.

**Sec. 3.09. QDD Tax Liability.** In addition to satisfying its withholding tax liability as described in this Agreement and its section 881 tax on dividends received as a QDD, a QDD must satisfy its QDD tax liability. The QDD's QDD tax liability is the sum of:

**(A)** its tax liability under section 881 for its section 871(m) amount (as defined in section 2.73 of this Agreement) for each dividend on each underlying security reduced (but not below zero) by the amount of tax paid by the QDD under section 881(a)(1) on dividends received with respect to that underlying security on that same dividend in its capacity as an equity derivatives dealer;

**(B)** its tax liability under section 881 for dividend equivalent payments received as a QDD in its non-equity derivatives dealer capacity; and

**(C)** its tax liability under section 881 for any payments, such as dividends or interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend equivalent payments, to the extent the full liability was not satisfied by withholding.

A QDD that is a foreign branch of a U.S. financial institution does not have a QDD tax liability. Instead, such a QDD must determine and report its tax liability in accordance with chapter 1 and the appropriate U.S. tax return for the U.S. corporation.

For calendar year 2017, the QDD will not be liable for tax under section 881(a)(1) on actual dividends on physical shares or deemed dividends or dividend equivalents that the QDD receives in its equity derivatives dealer capacity. The QDD is liable for tax on actual dividends on physical shares or deemed dividends or dividend equivalents received in its non-equity derivatives dealer capacity and on any other U.S. source FDAP payments received by the QDD.

**(D) Timing for Determining QDD Tax Liability.** A QDD must determine its QDD tax liability due under sections 3.09(A) and (B) on the date provided in §1.871-15(j)(2) for the applicable dividend. A QDD must determine its QDD tax liability due under section 3.09(C) at the time the payments are treated as received under the Code and the regulations promulgated thereunder.

See section 7.01(C) of this Agreement regarding a QI that is acting as a QDD's responsibility to report QDD tax liability on the appropriate U.S. tax return and to maintain a reconciliation schedule for its section 871(m) amount and other amounts related to its QDD tax liability.

## **SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES AND CERTAIN PARTNERSHIPS AND TRUSTS**

**Sec. 4.01. Private Arrangement Intermediaries—In General.** If QI is an FFI, 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 modified in section 4.02 of this Agreement. QI, however, may not enter into a private arrangement under this section 4.01 with any account holder for which it acts as a QDD. The agreement between QI and the other intermediary shall be between QI and all the offices of the other intermediary located in a particular jurisdiction, which must be one for which the IRS has approved the know-your-customer rules. 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 sanctions that may result from the failure of the PAI to meet any of the obligations imposed by its agreement with QI. QI agrees not to assert any defenses against the IRS for the failures of the PAI or any defenses 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 chapters 3 and 4 and a payor under chapter 61 and section 3406 and is itself separately liable for its failure to meet its obligations under the Code.

Notwithstanding the foregoing, QI shall not be liable for tax, interest, or penalties for failure to withhold and report under chapters 3, 4, and 61 and section 3406 unless the underwithholding or the failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to QI's or its PAI's failure to properly perform its obligations under this Agreement. The PAI is not required to enter into an agreement with the IRS but must respond (either directly or through QI) to IRS inquiries related to its compliance, as described in section 10.08 of this Agreement. The IRS may, however, in its sole discretion, refuse to permit an intermediary to operate as a PAI by providing notice to QI. QI may, however, appeal the IRS's determination by following the notice and cure provisions in section 11.06 of this Agreement. For purposes of this Agreement, an intermediary shall be considered a PAI only if the following conditions are met:

- (A)** The PAI is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) that acts as an intermediary with respect to reportable amounts and has provided QI with a certification that it has maintained such certified deemed-compliant FFI status during each certification period;
- (B)** The PAI does not act as an intermediary for a direct account holder that is a QI, WP, WT, participating FFI, registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI;
- (C)** The PAI is, pursuant to a written agreement between QI and the PAI (PAI agreement), subject to all the obligations of QI under this Agreement, except to the extent modified by sections 4.02 and 4.03 of this Agreement;
- (D)** For purposes of chapter 4, the PAI agrees to comply with the FATCA requirements applicable to its chapter 4 status as a certified deemed-compliant FFI, as modified by sections 4.02 and 4.03 of this Agreement, and is not required to fulfill QI's FATCA

requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

**(E)** QI identifies the PAI on the QI/WP/WT Application and Accounts Management System before the first payment for which the PAI is operating under the PAI agreement;

**(F)** The PAI agrees, to the extent necessary for QI to satisfy its compliance obligations (*i.e.*, if QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the procedures described in section 10.05 of this Agreement and provide QI with the same certification as is required for QI's responsible officer under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding PAI's compliance. The PAI agrees to respond (either directly or through QI) to IRS inquiries regarding its periodic review and agrees to provide QI (and the IRS, upon request) with a periodic review report (as described in section 10.06 of this Agreement);

**(G)** The PAI furnishes QI with a Form W-8IMY and withholding statement described in section 6 of this Agreement as modified by this section 4.01(G). The PAI is required to provide QI with Forms W-9 (or, in absence of the form, the name, address, and U.S. TIN (if available)) of the PAI's U.S. non-exempt recipient account holders and the withholding rate pool information for those account holders as required by section 6.03(D) of this Agreement so that the QI (or the payor) may report on Form 1099 and, if required, backup withhold. In addition, the PAI is required to disclose to QI any account holder of PAI that is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) as defined in §§1.1471-1(b)(74) and 1.1473-1(b), respectively (or in the applicable IGA), and the account holders or interest holders of any nonqualified intermediary or flow-through entity, respectively, which has an account with the PAI, and provide all of the documentation and other information relating to those account holders and interest holders that is required for the QI, or another withholding agent, to report the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement. Except to the extent the PAI provides its information to QI for purposes of performing the periodic review, the PAI is not required to disclose to QI, or another withholding agent, its direct account holders that are foreign persons other than a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person); and

**(H)** The PAI agrees to notify QI if the PAI no longer meets the requirements for certified deemed-compliant status, and upon such notification, the agreement between the PAI and QI will terminate.



## **Sec. 4.02. Modification of Obligations for PAI Agreements.**

**(A) Payments Reportable under Chapters 3 and 4.** The agreement between QI and a PAI must provide that QI shall report all payments of amounts subject to chapter 3 or 4 withholding made by the PAI on QI's Forms 1042 and 1042-S as if QI had made the payments directly to the PAI's account holders. Therefore, QI shall report payments made to each of the following types of a PAI's account holders as follows:

**(1)** A direct account holder of the PAI that is a nonparticipating FFI, QI shall report an amount subject to chapter 4 withholding using the chapter 4 reporting pool described in section 8.03 of this Agreement with the PAI reported as the recipient with respect to the pool.

**(2)** A direct foreign account holder of the PAI for which no withholding is required under chapter 4 (other than an intermediary, custodian, nominee, agent, or flow-through entity described below), QI shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools as described in section 8.03 of this Agreement with the PAI reported as the recipient.

**(3)** A direct foreign account holder of the PAI that is a nonqualified intermediary or flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding with respect to any indirect account holders of the PAI that the nonqualified intermediary or flow-through entity includes in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such account holders described in section 8.03 of this Agreement with the nonqualified intermediary or flow-through entity reported as the recipient and shall report payments of amounts subject to chapter 3 withholding made with respect to indirect foreign account holders of the PAI that are not subject to chapter 4 withholding by reporting the payments as made to specific recipients under the rules of section 8.02 of this Agreement.

**(B) Form 1099 Reporting and Backup Withholding.** The agreement between QI and a PAI must also provide that QI shall report all reportable payments made by the PAI on QI's Forms 945 and 1099 to the extent required under this section 4.02(B). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI (including by a PAI) to U.S. non-exempt recipients that are direct or indirect account holders of a PAI in accordance with the terms of this Agreement.

**(C) Form 8966 Reporting.** The agreement between QI and a PAI must also provide that QI shall report all withholdable payments made by the PAI on Form 8966 to the extent required under this section 4.02(C). QI shall file Forms 8966 to report withholdable payments made by QI (including by a PAI) to passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person) that are direct or indirect account holders of a PAI in accordance with section 8.05 of this Agreement.

**Sec. 4.03. Other Requirements of PAI Agreements.** QI shall require a PAI to provide QI with all the information necessary for QI to meet its obligations under this Agreement. 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, 4, and 61 and section 3406 to the extent that underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or Form 8966 are due to a PAI's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and a PAI shall be construed to limit the PAI's requirements under chapter 4 or an applicable IGA. Further, nothing in the agreement between QI and a PAI shall permit the PAI to assume primary chapters 3 and 4 withholding responsibility or assume primary Form 1099 reporting and backup withholding responsibility.

**Sec. 4.04. Termination of Arrangement.** Except as otherwise provided in section 4.01(H) of this Agreement, QI shall cease to treat an intermediary as a PAI within 90 days from the day QI knows 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 by removing the intermediary as a PAI on the QI/WP/WT Application and Accounts Management System.

**Sec. 4.05. Joint Account Treatment for Certain Partnerships and Trusts.**

**(A) In General.** If QI is an FFI, QI may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in this section 4.05(A) to apply the simplified joint account documentation, reporting, and withholding procedures provided in section 4.05(B) of this Agreement. QI and a partnership or trust that apply this section 4.05 to any calendar year must apply these rules to the calendar year in its entirety. QI and the partnership or trust may not apply this section 4.05 to any calendar year in which the partnership or trust has failed to make available to QI or QI's reviewer the records described in this section 4.05(A) within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to QI. If the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirements of this section 4.05, QI must apply the provisions of §§1.1441-1(c) and 1.1441-5(e) to the partnership or trust as a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period during which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply this section 4.05 to subsequent calendar years. QI and a partnership or trust that apply this section 4.05 to any calendar year are not required to apply this section 4.05 to subsequent calendar years.

A partnership or trust is described in this section 4.05(A) of this Agreement if the following conditions are met:

**(1)** The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under §1.1471-5(a) and has provided QI with a certification that it has maintained such chapter 4 status at all times during each certification period;

**(2)** The partnership or trust is a direct account holder of QI;

**(3)** None of the partnership's or trust's partners, beneficiaries, or owners is a flow-through entity or is acting as intermediary for a payment made by QI to the partnership or trust;

**(4)** None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person and none of its foreign partners, beneficiaries, or owners is subject to withholding or reporting under chapter 4 (e.g., a nonparticipating FFI and certain passive NFFEs); and

**(5)** The partnership or trust agrees to make available upon request to QI or QI's reviewer for purposes of QI's periodic review under section 10 of this Agreement (including to respond to IRS inquiries regarding its compliance review) records that establish that the partnership or trust has provided QI with documentation for purposes of chapters 3 and 4 for all of its partners, beneficiaries, or owners.

**(B) Modification of Obligations for QI.**

**(1)** QI may rely on a valid Form W-8IMY provided by the partnership or trust and may rely on a withholding statement that meets the requirements of §1.1441-5(c)(3)(iv) or (e)(5)(iv), and §1.1471-3(c)(3)(iii)(B) (if the payment is a withholdable payment) and that provides information for all partners, beneficiaries, or owners together with valid Forms W-8 or, in the case of a partnership or trust that is a certified deemed-compliant FFI, documentary evidence permitted under the applicable know-your-customer rules from each partner, beneficiary, or owner, and, for a withholdable payment, documentation that meets the requirements of §1.1471-3(d) to establish the partner's, beneficiary's, or owner's chapter 4 status. The withholding statement need not provide any allocation information.

**(2)** QI must treat payments to the partnership or trust as allocated solely to a partner, beneficiary, or owner that is subject to the highest rate of withholding under chapter 3 and must withhold at that rate.

**(3)** QI may pool report amounts distributed to, or included in the distributive share of, the partnership's or trust's direct partners, beneficiaries, or owners in chapter 3 reporting pools on Form 1042-S as described in section 8.03(B) of this Agreement.

(4) After QI has withheld in accordance with section 4.05(B)(2) of this Agreement, it may file a separate Form 1042-S for any partner, beneficiary, or owner who requests that it do so. If QI issues a separate Form 1042-S for any partner, beneficiary, or owner, it cannot include such partner, beneficiary, or owner in its chapter 3 reporting pool. If QI has already filed a Form 1042-S and included the partner, beneficiary, or owner in a chapter 3 reporting pool, it must file an amended return to reduce the amount of the payment reported to reflect the amount allocated to the recipient on the recipient's specific Form 1042-S. QI may file a separate Form 1042-S for a partner, beneficiary, or owner only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary, or owner and only if the partnership or trust has agreed in writing to make available to QI or QI's reviewer the records that substantiate the allocation information included in its withholding statement.

(5) QI may not include any payments made to a partnership or trust to which QI is applying the rules of this section 4.05 in any collective refund claim made under section 9.04 of this Agreement.

#### **Sec. 4.06. Agency Option for Certain Partnerships and Trusts.**

**(A) In General.** QI may enter an agreement with a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust described in section 4.06(A) of this Agreement under which the partnership or trust agrees to act as an agent of QI with respect to its partners, beneficiaries, or owners, and, as QI's agent, to apply the provisions of the QI Agreement to the partners, beneficiaries, or owners. QI, however, may not enter an agreement under this section 4.06 with any account holder for which it acts as a QDD. By entering into an agreement with a partnership or trust as described in this section 4.06, QI is not assigning its liability for the performance of any of its obligations under this Agreement. QI and the partnership or trust to which QI applies the rules of this section 4.06 are jointly and severally liable for any tax, penalties, and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with QI. QI and a partnership or trust that applies the agency option to any calendar year must apply these rules to the calendar year in its entirety. Generally, QI and a partnership or trust that applies the agency option to any calendar year are not required to apply the agency option to subsequent calendar years. If, however, QI withholds and reports any adjustments required by corrected information in a subsequent calendar year under section 4.06(B)(2) of this Agreement, QI must apply the agency option to that calendar year in its entirety. QI and a partnership or trust may not apply the agency option to any calendar year when the partnership or trust has failed to make available to QI or QI's reviewer the records described in section 4.06 of this Agreement within 90 days after these records are requested, and the partnership or trust must waive any legal prohibitions against providing such records to QI. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirement of this section 4.06, QI must apply §§1.1441-1(c) and 1.1441-5(e) to the partnership or trust as

a nonwithholding foreign partnership or nonwithholding foreign trust, must correct its withholding for the period in which the failure occurred in accordance with section 9.05 of this Agreement, and cannot apply the agency option to subsequent calendar years.

A partnership or trust is described in this section 4.06(A) of this Agreement if the following conditions are met:

**(1)** The partnership or trust is either a direct account holder of QI or an indirect account holder of QI that is a direct partner, beneficiary, or owner of a partnership or trust to which QI also applies the agency option.

**(2)** The partnership or trust has a chapter 4 status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI, an NFFE, an exempt beneficial owner, or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under §1.1471-5(a) and has provided QI with a certification that it has maintained such chapter 4 status during each certification period;

**(3)** None of the partnership's or trust's partners, beneficiaries, or owners is a WP, WT, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or another QI acting as an intermediary for a payment made by QI to the partnership or trust.

**(4)** The partnership or trust agrees to permit QI to treat its direct partners, beneficiaries, or owners as direct account holders of QI under this Agreement and to treat its indirect partners, beneficiaries, or owners as indirect account holders of QI under this Agreement.

**(5)** The partnership or trust agrees, to the extent necessary for QI to satisfy its compliance obligations (e.g., if the QI does not receive a waiver described in section 10.07 of this Agreement), either to provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement or to conduct an independent periodic review in accordance with the procedures described in section 10.05 of this Agreement, provide QI with the certification required under section 10.03 of this Agreement for each certification period in order to allow the responsible officer of QI to make a certification to the IRS regarding the partnership's or trust's compliance with this section 4.06, and respond (either directly or through QI) to IRS inquiries regarding its compliance review, as described in section 10.08 of this Agreement, including providing the QI and the IRS with the results of the reviewer's testing of transactions and accounts described in section 10.06 of this Agreement.

**(B) Modification of Obligations for QI.**

**(1)** QI may rely on a valid Form W-8IMY provided by the partnership or trust, together with a withholding statement described in §1.1441-5(c)(3)(iv) or (e)(5)(iv) and §1.1471-

3(c)(3)(iii)(B) (if the payment is a withholdable payment) that includes all information necessary for QI to fulfill its withholding, reporting, and filing obligations under this Agreement. The withholding statement may include chapter 3 withholding rate pools for partners, beneficiaries, or owners that are not intermediaries, flow-through entities (or persons holding interests in the partnership or trust through such entities), U.S. persons, or passive NFFEs with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person), and the partnership or trust need not provide to QI documentation for these partners, beneficiaries, or owners. The withholding statement may also include a chapter 4 withholding rate pool of nonparticipating FFIs described in section 6.03 of this Agreement for payments of amounts subject to chapter 4 withholding. Notwithstanding the preceding sentences of this section 4.06(B)(1), the partnership or trust is required to disclose to QI any interest holder that is a passive NFFE with substantial U.S. owners (or controlling persons that are specified U.S. persons) or that is a U.S. non-exempt recipient, as well as the account holders or interest holders of any nonqualified intermediary or flow-through entity, respectively, which has an interest in the partnership or trust, and to provide all of the documentation and other information relating to those account holders and interest holders that is required for the QI, or another withholding agent, to report the payments made to those account holders and interest holders to the extent required by sections 8.02(B) and 8.05 of this Agreement.

**(2) Timing of Withholding.** QI must withhold on the date it makes a payment to the partnership or trust based on a withholding statement provided by the partnership or trust on which QI is permitted to rely. The amount allocated to each partner, beneficiary, or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's, or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's, or owner's actual distributive share and must provide this corrected information to QI on the earlier of the date that the statement required under section 6031(b) (*i.e.*, Schedule K-1) or the Beneficiary Statement or Owner Statement is mailed or otherwise provided to the partner, beneficiary, or owner, or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date (without regard to extensions) for QI's Forms 1042 and 1042-S for the calendar year, QI may withhold and report any adjustments required by the corrected information in the following calendar year.

**(3) Payments Reportable Under Chapters 3 and 4.** QI shall report on Form 1042-S all amounts subject to chapters 3 and 4 withholding distributed to, or included in the distributive share of, the partnership or trust as follows:

(a) For a direct partner, beneficiary, or owner of the partnership or trust that is a nonparticipating FFI, QI shall report an amount subject to withholding using the chapter 4 reporting pool described in section 8.03(A) of this Agreement with the partnership or trust reported as a recipient.

(b) For a direct partner, beneficiary, or owner of the partnership or trust that is a foreign person for which no withholding is required under chapter 4 (other than an intermediary, agent, or flow-through entity described below), QI shall report an amount subject to chapter 3 withholding using the chapter 3 reporting pools described in section 8.03(B) of this Agreement with the partnership or trust reported as a recipient.

(c) For a direct or indirect partner, beneficiary, or owner of the partnership or trust that is a nonqualified intermediary or foreign flow-through entity, QI shall report payments of amounts subject to chapter 4 withholding in a chapter 4 withholding rate pool of nonparticipating FFIs using the chapter 4 reporting pool for such partner, beneficiary, or owner with the nonqualified intermediary or foreign flow-through entity reported as the recipient, and QI shall report payments of amounts subject to chapter 3 withholding for which no chapter 4 withholding is required by reporting the payments as made to specific recipients as described in section 8.02 of this Agreement.

**(4) Form 1099 Reporting and Backup Withholding.** The agreement between QI and the partnership or trust must also provide that QI shall include all reportable payments made by the partnership or trust in QI's Forms 945 and 1099 to the extent required under this section 4.06(B)(4). QI shall file Forms 1099 and backup withhold, if required, on reportable payments made by QI to U.S. non-exempt recipient that are direct or indirect partners, beneficiaries, or owners of the partnership or trust in accordance with the terms of this Agreement.

**(5) Form 8966 Reporting Requirements.** The agreement between QI and the partnership or trust must also provide that QI shall report all withholdable payments made by the partnership or trust on Form 8966 to the extent required under this section 4.06(B)(5). If the partnership or trust is itself a passive NFFE and if any of its partners, beneficiaries, or owners is a passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person), QI shall file Forms 8966 to report all withholdable payments made by QI to any such passive NFFE in accordance with sections 8.04 and 8.05 of this Agreement.

**(C) Other Requirements of Agency Agreement.** QI shall require the partnership or trust to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and the partnership or trust that preclude, and no provisions of this Agreement shall be construed to preclude, the partnership or trust's joint and several liability for tax, penalties, and interest under chapters 3, 4, and 61 and section 3406, to the extent that the underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S, 1099, or 8966 is due to the partnership's or trust's failure to properly perform its obligations under its agreement with QI. Nothing in the agreement between QI and the partnership or trust shall be construed to limit the partnership's or trust's requirements under chapter 4 as a certified deemed-compliant FFI, owner-documented FFI, NFFE, or

exempt beneficial owner. Further, nothing in the agreement between QI and the partnership or trust shall permit the partnership or trust to assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility.

## **SECTION 5. DOCUMENTATION REQUIREMENTS**

### **Sec. 5.01. Documentation Requirements.**

**(A) General Documentation Requirements.** QI agrees to use its best efforts to obtain documentation from account holders that receive a reportable payment to determine whether withholding applies or whether a payment is reportable under this Agreement. Under section 11.06 of this Agreement, failure to obtain documentation from a significant number of direct account holders constitutes an event of default. If QI is an FFI obtaining documentary evidence, QI also agrees to adhere to the know-your-customer rules that apply to QI with respect to the account holder from whom the documentary evidence is obtained. If QI cannot reliably associate a reportable payment with valid documentation from the account holder, it must apply the applicable presumption rules to determine if withholding is required under chapter 3 or 4 or if backup withholding is required under section 3406. QI agrees to review and maintain documentation in accordance with this section 5 and, in the case of documentary evidence obtained from direct account holders, in accordance with the applicable know-your-customer rules. QI also agrees, if the performance of an external review is requested by IRS (as described in section 10.08(D) of this Agreement), to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by QI's external reviewer. QI represents that none of the laws to which it is subject prohibits disclosure of the identity of any account holder or account information to QI's reviewer.

If QI is acting as a QDD, QI is required to apply the rules of this section 5 to each account holder of an account for which it is acting as a QDD and to which it makes a reportable payment in accordance with the applicable requirements in section 5.01(A) and (B) of this Agreement.

### **(B) Coordination of Chapter 3 and Chapter 4 Documentation Requirements.**

**(1) QI that is an FFI.** If QI is an FFI, for each account holder for whom QI is acting under this Agreement, QI is required to perform the due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to determine if the account is a U.S. account (or U.S. reportable account) and to determine each account holder that is a nonparticipating FFI and, if applicable, recalcitrant account holder (or non-consenting U.S. account). If an account holder receiving the payment is not the payee, QI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding applies under chapter 4. For purposes of this section 5, with respect to documenting an account holder for chapter 4 purposes, documentary evidence also



includes any documentary evidence allowed under an applicable IGA.

To the extent an account holder receives a payment with respect to which QI has determined that withholding is not required under chapter 4, QI shall obtain, unless already collected, documentation that meets the requirements of this section 5 to determine whether the account holder is a foreign person for which QI is required to withhold under chapter 3 or a U.S. payee for which QI is required to backup withhold under section 3406 or report on Form 1099 under chapter 61. See, however, section 8.06 of this Agreement providing the circumstances in which reporting of U.S. accounts (or U.S. reportable accounts) under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI satisfies QI's Form 1099 reporting responsibilities. See Notice 2014-33, 2014-21 I.R.B. 1033, modifying the time in which QI is required to implement the applicable due diligence procedures under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI with respect to an obligation held by an entity that is opened, issued, or executed on or after July 1, 2014, and before January 1, 2015.

**(2) QI that is an NFFE.** If QI is an NFFE, QI is required to document the chapter 4 status of each account holder for whom QI is acting to determine if withholding and reporting apply under section 1471 or 1472 on withholdable payments made to the account holder. QI is required to obtain, unless already collected, a valid Form W-8 or Form W-9 from each account holder to determine whether QI is required to withhold under chapter 3 or 4 or report on Form 1099 under chapter 61 and backup withhold under section 3406. The allowance in this section 5 for QI to obtain documentary evidence does not apply if QI is an NFFE. QI may, however, obtain appropriate documentary evidence as additional documentation to establish the foreign status of an account holder.

**Sec. 5.02. Documentation for Foreign Account Holders.** QI may treat an account holder as a foreign beneficial owner of an amount if the account holder provides a valid Form W-8 (other than Form W-8IMY unless provided by a QI that is acting as a QDD or assuming primary withholding responsibility for a substitute interest payment) or valid documentary evidence that supports the account holder's status as a foreign person. QI may not treat an account holder that provides documentation indicating that it is a bank, broker, intermediary, or agent (such as an attorney) as a beneficial owner unless QI receives a statement, in writing and signed by a person with authority to sign such a statement, stating that such account holder is the beneficial owner of the income. Further, QI may not reduce the rate of withholding with respect to an indirect account holder that is a foreign beneficial owner unless the certification provided by the direct account holder is a valid Form W-8IMY, and then only to the extent that QI can reliably associate the payment with valid documentation that establishes that withholding does not apply under chapter 4 in the case of a withholdable payment made to the account holder and establishes that the indirect account holder is entitled to a reduced rate of withholding under chapter 3.

**Sec. 5.03. Beneficial Owner's Claim of Treaty Benefits.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not reduce the rate of withholding under chapter 3 based on a beneficial owner's claim of treaty benefits unless QI obtains the documentation required by section 5.03(A) of this Agreement. In addition, QI agrees to establish procedures to inform account holders of the terms of limitation on benefits provisions of a treaty (whether or not those provisions are contained in a separate article entitled Limitation on Benefits) under which the account holder is claiming benefits. For accounts held by an entity opened or documented on or after January 1, 2017, QI is required to obtain a Form W-8BEN-E with the appropriate limitation on benefits certification or, if QI is allowed to and obtains documentary evidence, the written certification included in the treaty statement as described in section 5.03(B) of this Agreement. For accounts maintained by QI prior to January 1, 2017, that were documented with documentary evidence and for which treaty benefits are being claimed, QI is required to obtain the appropriate limitation on benefits statement prior to January 1, 2019.

**(A) Treaty Documentation.** The documentation required by this section 5.03(A) is as follows:

**(1)** The account holder has provided a properly completed Form W-8BEN or Form W-8BEN-E on which a claim of treaty benefits is made, including, for an entity, the appropriate limitation on benefits and section 894 certifications, as provided in §1.1441-6(b)(1). A U.S. TIN or foreign TIN shall not be required, however, if the beneficial owner is a direct account holder. An indirect account holder is required to have either a U.S. TIN or foreign TIN to claim treaty benefits unless it is claiming treaty benefits on income from marketable securities;

**(2)** The account holder has provided documentary evidence that has been obtained pursuant to the know-your-customer rules that apply to the account holder, and the account holder, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement; or

**(3)** The account holder provides the type of documentary evidence required under §1.1441-6 to establish entitlement to a reduced rate of withholding under a treaty, and the account holder, if it is an entity, has made the treaty statement (if applicable) required by section 5.03(B) of this Agreement.

**(B) Treaty Statement.** The treaty statement required by an entity account holder under this section 5.03(B) is as follows:

[Name of entity account holder] meets all provisions of the applicable treaty that are necessary to claim a reduced rate of withholding, including any limitation on benefits provisions, and derives the income within the meaning of section 894, and the regulations thereunder, as the beneficial owner.

QI is only required to obtain the treaty statement required by this section 5.03(B) from an account holder that is an entity. QI shall not be required to obtain a treaty statement required by this section 5.03(B) from an individual who is a resident of an applicable treaty country or from the government, or its political subdivisions, of a treaty country. QI is required to collect and report (as required on Form 1042-S) the specific category of limitation on benefits provision from all of its entity account holders, including a government (or its political subdivisions).

**Sec. 5.04. Documentation for International Organizations.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat the account holder as an international organization entitled to an exemption from withholding under section 892 unless the name provided on the documentation (including a Form W-8EXP) is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f) and the documentation is valid under section 5.10 of this Agreement. If an international organization is not claiming benefits under section 892 but under another Code exception, the provisions of section 5.02 of this Agreement shall apply rather than the provisions of this section 5.04.

**Sec. 5.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.**

**(A) Documentation From a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption From Withholding Under Section 892 or Section 895.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat an account holder as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 unless--

- (1) QI receives from the account holder a Form W-8EXP or documentary evidence establishing that the account holder is a foreign government or foreign central bank of issue;
- (2) The income paid to the account holder is the type of income that qualifies for an exemption from withholding under section 892 or 895; and
- (3) QI does not know, or have reason to know, that the account holder is a controlled commercial entity as described in section 892, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

**(B) Treaty Exemption.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may treat an account holder as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty for purposes of chapter 3 if it has valid documentation that is

sufficient to obtain a reduced rate of withholding under a treaty as described in section 5.03 of this Agreement.

**(C) Other Code Exception.** If a foreign government or foreign central bank of issue is not claiming benefits under section 892 or under an income tax treaty but under another Code exception (e.g., the portfolio interest exception under section 871(h) or 881(c)), the provisions of section 5.02 of this Agreement apply rather than the provisions of this section 5.05.

**Sec. 5.06. Documentation for Foreign Tax-Exempt Organizations.** To the extent an account holder receives a payment that is not subject to withholding under chapter 4, QI may not treat an account holder as a foreign tax-exempt organization and reduce the rate of or exempt the account holder from withholding for purposes of chapter 3 unless it satisfies the requirements provided in section 5.06(A), (B), or (C) of this Agreement.

**(A) Reduced Rate of Withholding Under Section 501.** QI may not treat an account holder as a foreign organization described under section 501(c), and therefore exempt from withholding under chapter 3 (or, if the account holder is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b)) unless QI obtains a valid Form W-8EXP on which Part IV of the form is completed.

**(B) Reduced Rate of Withholding Under Treaty.** QI may not treat an account holder as a foreign organization that is tax-exempt on an item of income pursuant to an income tax treaty unless QI obtains valid documentation as described under section 5.03 of this Agreement that is sufficient for obtaining a reduced rate of withholding under the treaty and the documentation establishes that the account holder is an organization exempt from tax under the treaty on that item of income.

**(C) Other Exceptions.** If a tax-exempt entity is not claiming a reduced rate of withholding because it is a foreign organization described under section 501(c) or under a treaty article that applies to exempt certain foreign organizations from tax, but is claiming a reduced rate of withholding under another Code or income tax treaty exception, the provisions of section 5.02 or 5.03 (as applicable) of this Agreement shall apply rather than the provisions of this section 5.06.

**Sec. 5.07. Documentation from Intermediaries or Flow-Through Entities.** QI must apply the presumption rules to a reportable payment made to a nonqualified intermediary or flow-through entity that is a direct account holder of QI to the extent QI fails to obtain the documentation set forth below. If QI receives documentation for the account holders or interest holders of an intermediary or flow-through entity, QI must apply the rules of this section 5 to determine the validity of such documentation.

**(A) Withholdable Payments Made to Nonqualified Intermediaries and Flow-Through Entities.** With respect to a withholdable payment made to a nonqualified intermediary or flow-through entity—

(1) QI receives a valid Form W-8IMY provided by the nonqualified intermediary or the flow-through entity receiving the payment that establishes the chapter 4 status of the intermediary or flow-through entity; and

(2) If the payment is not subject to withholding under chapter 4 based on such entity's chapter 4 status (or to the extent the payment is received on behalf of exempt beneficial owners), QI can reliably associate the payment with a withholding statement that meets the requirements of §1.1471-3(c)(iii)(B) that includes the account holders or interest holders of the intermediary or flow-through entity in chapter 4 withholding rate pools to the extent permitted or with valid documentation described in this section 5 provided by account holders or interest holders of the intermediary or flow-through entity that are not themselves nonqualified intermediaries or flow-through entities and that QI can treat as not subject to withholding under chapter 4.

**(B) Reportable Payments Other than Withholdable Payments Made to Nonqualified Intermediaries and Flow-Through Entities.** With respect to a reportable payment that is not a withholdable payment made to a nonqualified intermediary or flow-through entity—

(1) QI receives a valid Form W-8IMY provided by the nonqualified intermediary or the flow-through entity regardless of whether the form includes a chapter 4 status of the nonqualified intermediary or flow-through entity unless such entity provides a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees; and

(2) QI can reliably associate the payment with a chapter 4 withholding rate pool of U.S. payees or valid documentation described in this section 5 provided by account holders or interest holders of the nonqualified intermediary or flow-through entity that are not themselves nonqualified intermediaries or flow-through entities.

**(C) Reportable Payments Made to QIs, WPs, and WTs.** With respect to a reportable payment made to a QI, WP, or WT, QI receives a valid Form W-8IMY provided by the QI, WP, or WT that includes the entity's chapter 4 status for a payment that is a withholdable payment and, for those payments for which a QI has not assumed primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement.

**(D) Payments Made to QIs Acting as QDDs.** For payments with respect to potential section 871(m) transactions or underlying securities made to a QI acting as a QDD, if QI receives a valid Form W-8IMY provided by the QI acting as a QDD that includes the QI's chapter 4 status and the required certification that the QI is acting as a QDD and assumes primary withholding responsibility for payments it makes when the QI is acting as a QDD, then QI can reliably associate the payments as made to the QI acting as a

QDD.

**(E) Private Arrangement Intermediaries.** If QI has an agreement with a PAI, QI obtains from the PAI a Form W-8IMY completed as if the PAI were a QI that is an FFI (with the exception that the PAI must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.01(G) of this Agreement and the information described in this section 5.07 for any account holders of the PAI that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person if QI is a reporting Model 1 or reporting Model 2 FFI).

**(F) Partnerships or Trusts to which QI Applies the Agency Option.** If QI has an agreement with a partnership or trust under which the partnership or trust agrees to act as an agent of QI, QI obtains from the partnership or trust a Form W-8IMY completed as if the partnership or trust were a QI (with the exception that the partnership or trust must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with a withholding statement, as described in section 4.06(B)(1) of this Agreement, and the information described in this section 5.07 for any account holders that are intermediaries or flow-through entities and the documentation for any passive NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person if QI is a reporting Model 1 or reporting Model 2 FFI).

**Sec. 5.08. Documentation for U.S. Exempt Recipients.** QI shall not treat an account holder as a U.S. exempt recipient unless QI obtains from the account holder--

**(A)** A valid Form W-9 on which the account holder includes an exempt payee code to certify that the account holder is a U.S. exempt recipient for purposes of chapter 4 reporting;

**(B)** Documentary evidence that is sufficient to establish that the account holder is a U.S. exempt recipient; or

**(C)** Documentary evidence that is sufficient to establish the account holder's status as a U.S. person and QI can treat the person as an exempt recipient under the rules of §§1.6045-2(b)(2)(i) or 1.6049-4(c)(1)(ii), as appropriate, without obtaining documentation.

**Sec. 5.09. Documentation for U.S. Non-Exempt Recipients.** QI shall not treat an account holder as a U.S. non-exempt recipient unless QI obtains a valid Form W-9 or other similar agreed form under its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI from the account holder, QI knows an account holder is a U.S. non-exempt recipient, or QI must presume a person is a U.S. non-exempt recipient to the extent required under section 5.13(C)(3) or (4) of this Agreement.

## **Sec. 5.10. Documentation Validity.**

**(A) In General.** QI may not rely on documentation if QI has actual knowledge, or reason to know that the information or certifications contained in the documentation are unreliable or incorrect or that there is a change in circumstances with respect to the information or statements contained in the documentation or account information that affects the reliability of the account holder's claim. See §1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances and a withholding agent's obligation with respect to a change in circumstances. See §31.3406(h)-3(e) for rules regarding when QI may rely on a Form W-9, §1.1441-7(b)(4) through (6) for rules regarding when QI may rely on a Form W-8, and §1.1441-7(b)(7) through (9) for rules regarding documentary evidence (including §1.1441-7(b)(8)(i) for rules regarding documentary evidence received prior to January 1, 2001). A change in circumstances affecting withholding information, including allocation information or withholding rate pools contained in a withholding statement, will also cause the documentation provided with respect to that information to no longer be reliable. Once QI knows, or has reason to know, that documentation provided by an account holder is unreliable or incorrect to establish foreign status or residency for purposes of claiming benefits under an applicable income tax treaty, it can no longer reliably associate a payment with valid documentation unless QI obtains the additional documentation described in §1.1441-7(b)(5), (b)(6), (b)(8), or (b)(9) (as applicable). With respect to a withholding agent's reason to know that a claim for treaty benefits is unreliable or incorrect based on the existence of a tax treaty, the rule in §1.1441-6(b)(1)(ii) will apply to pre-existing accounts for which QI held valid documentation upon a change in circumstances or, with respect to a pre-existing entity account, when it provides a written limitation on benefits statement (as described in section 5.03(B) of this Agreement). For all new accounts, this rule will apply on account opening. For purposes of this section 5.10(A), a "pre-existing account" or "pre-existing entity account" is an account documented by QI prior to January 1, 2017, for a QI with a QI Agreement in effect prior to that date. For a QI that did not have a QI Agreement in effect prior to January 1, 2017, a "pre-existing account" or "pre-existing entity account" means an account maintained (and for which QI has valid documentation) prior to the effective date of its QI Agreement.

In addition, if QI becomes aware of information resulting in the documentation no longer being reliable or correct and QI has not assumed primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, QI agrees that it will promptly provide a withholding agent with corrected information (e.g., corrected withholding rate pools, corrected Forms W-9, or corrected U.S. TINs) within 30 days after QI knows or has reason to know that the documentation upon which it has relied is unreliable or incorrect. If QI receives notification from the IRS that documentation provided by an account holder is unreliable or incorrect (e.g., that the U.S. TIN provided by an account holder is incorrect), QI shall follow the procedures set forth in §31.3406(d)-5. See also QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant

Model 1 IGA FFI or an NFFE's requirements as a withholding agent under sections 1471 and 1472 following a change in circumstances.

**(B) Reason to Know-Direct Account Holders.** If QI is a financial institution as defined in §1.1471-5(e), an insurance company (without regard to whether such company is a specified insurance company), or a broker or dealer in securities, QI shall be considered to have reason to know that documentation provided by a direct account holder is unreliable or incorrect only as prescribed in §1.1441-7(b)(3). If QI is an NFFE (other than a NFFE described in the first sentence of this paragraph), see §1.1441-7(b)(2) for when QI shall be considered to have reason to know that a withholding certificate provided by a direct account holder is unreliable or incorrect.

**(C) Reason to Know-Indirect Account Holders.** QI shall be considered to have reason to know that relevant information or statements contained in documentation provided by an indirect account holder are unreliable or incorrect if a reasonably prudent person in the position of a QI would question the claims made. QI shall have reason to know that documentation provided by a nonqualified intermediary or a flow-through entity is unreliable or incorrect if the nonqualified intermediary or flow-through entity does not provide QI with, to the extent required, the names of the indirect account holders, their addresses, allocation information allocating payments to each indirect account holder, and sufficient information for QI to report payments on Forms 1042-S and 1099. In addition, QI shall have reason to know that an indirect account holder is not entitled to a reduced rate of withholding under an income tax treaty if the nonqualified intermediary or flow-through entity has not provided sufficient information so that QI can verify that the indirect account holder has provided a U.S. TIN or foreign TIN, if required, and made the necessary statements regarding limitations on benefits provisions and deriving the income under section 894 and the regulations thereunder. See §1.1441-7(b)(10) and section 5.03 of this Agreement.

#### **Sec. 5.11. Documentation Validity Period.**

**(A) Documentation Other than Form W-9.** QI may rely on valid documentary evidence obtained from account holders in accordance with applicable know-your-customer rules as long as the documentary evidence remains valid under those rules or until QI knows, or has reason to know, that the information contained in the documentary evidence is incorrect. However, QI may only rely on statements regarding entitlement to treaty benefits described in §1.1441-6(c)(5)(i) or the representations described in section 5.03 of this Agreement until the validity expires under §1.1441-1(e)(4)(ii)(A)(2). For establishing an account holder's chapter 3 status (as defined in §1.1441-1(c)(45)) or foreign status for chapter 61 purposes, QI may rely on a Form W-8 until its validity expires under §1.1441-1(e)(4)(ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer rules) until its validity expires under §1.6049-5(c).

**(B) Form W-9.** QI may rely on a valid Form W-9 as long as it has not been informed by



the IRS or another withholding agent that the form is unreliable or incorrect. If QI has primary Form 1099 reporting and backup withholding responsibility, it may rely on a Form W-9 unless one of the conditions of §31.3406(h)-3(e)(2)(i) through (v) applies.

#### **Sec. 5.12. Maintenance and Retention of Documentation.**

**(A) Maintaining Documentation.** QI shall maintain documentation by retaining the original documentation, a certified copy, a photocopy, a scanned copy, a microfiche, or other means that allow reproduction (provided that the QI has recorded receipt of the documentation and is able to produce a hard copy). For a direct account, if QI is not required to retain copies of documentary evidence under its know-your-customer rules, QI may instead retain a notation of the type of documentation reviewed, the date the documentation was reviewed, the document's identification number (if any, *e.g.*, a passport number), and whether such documentation contained any U.S. indicia. For direct accounts opened prior to January 1, 2001, if QI was not required under its know-your-customer rules to maintain originals or copies of documentation, QI may rely on its account information if it has complied with all other aspects of its know-your-customer rules regarding establishment of an account holder's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of QI in accordance with the know-your-customer rules, and it has no information in its possession that would require QI to treat the documentation as invalid.

**(B) Retention Period.** QI shall retain a record of the account holder's documentation obtained under this section 5 for as long as the documentation is relevant to the determination of QI's tax liability or reporting responsibilities under sections 871, 881, 1461, 1474(a), and 3406.

#### **Sec. 5.13. Application of Presumption Rules.**

**(A) In General.** QI shall apply the presumption rules of section 5.13(C) of this Agreement if QI cannot reliably associate a payment with valid documentation from an account holder. The presumption rules cannot be used to grant a reduced rate of withholding. For example, the portfolio interest exception of sections 871(h) and 881(c) shall not apply to a person that is presumed to be foreign. Further, QI must apply the presumption rules when required and may not rely on its actual knowledge regarding an account holder's chapter 4 status or status as a U.S. or foreign person to apply a reduced rate of withholding. Failure to follow the presumption rules may result in liability for underwithholding, penalties, and interest. Notwithstanding the preceding sentences, QI must rely on its actual knowledge regarding an account holder rather than what is presumed if, based on such knowledge, it should withhold an amount greater than the withholding rate under the presumption rules or it should report on Form 1042-S or Form 1099 an amount that would otherwise not be reported.

**(B) Reliably Associating a Payment with Documentation.** Generally, QI can reliably associate a payment with documentation if, for that payment, it holds valid

documentation from the account holder; it can reliably determine how much of the payment relates to the valid documentation provided by such account holder; and it has no actual knowledge or reason to know that any of the information, certifications, or statements in or associated with the documentation are incorrect. See §1.1441-1(b)(2)(vii) or, for a withholdable payment, §1.1471-3(c) for rules regarding when a payment can be reliably associated with documentation. See also §1.1471-3(e)(4)(vi)(B) for when a QI that is an FFI may rely on documentation and information permitted in an applicable IGA to document an account holder's chapter 4 status. Sections 5.13(B)(1) through (5) of this Agreement describe when a payment is reliably associated with documentation if the payment is made to an account holder that is an intermediary or flow-through entity (other than a nonparticipating FFI that is not acting on behalf of exempt beneficial owners).

**(1) Reliably Associating a Payment with Documentation Provided by a Nonqualified Intermediary or Flow-Through Entity.** Generally, QI can reliably associate a payment with documentation provided by a nonqualified intermediary or flow-through entity if it can reliably associate the payment with a valid Form W-8IMY provided by the nonqualified intermediary or flow-through entity, and it can determine the portion of the payment that relates to valid documentation associated with the Form W-8IMY for an account holder or interest holder of the nonqualified intermediary or flow-through entity that is not itself a nonqualified intermediary or flow-through entity; and the nonqualified intermediary or flow-through entity provides sufficient information for QI to report the payments on Form 1042-S, Form 1099, or Form 8966 if reporting is required.

If the payment is a withholdable payment, the Form W-8IMY must provide the nonqualified intermediary's or flow-through entity's chapter 4 status to the extent required for chapter 4 purposes. In lieu of the nonqualified intermediary or flow-through entity providing documentation for an account holder that is subject to chapter 4 withholding, QI can reliably associate a withholdable payment with valid documentation associated with the Form W-8IMY from the nonqualified intermediary or flow-through entity if it can determine the portion of the payment allocable to a chapter 4 withholding rate pool (to the extent permissible under §1.1471-3(c)(3)(iii)(B)).

If the payment is a reportable amount, QI can reliably associate such payment with valid documentation provided by a nonqualified intermediary or a flow-through entity that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for its account holders that are U.S. persons, such nonqualified intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and also certifies on a valid Form W-8IMY that it meets the requirements of §1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains within the meaning of §1.1471-5(d)(5) (*i.e.*, a direct account holder) that receives a payment included in this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders.

Notwithstanding the preceding sentences in this section 5.13(B)(1), to the extent a

payment is not subject to reporting on Form 1042-S, Form 1099, or Form 8966, QI can reliably associate the payment with valid documentation if it can determine the portion of the payment that is allocable to a group of account holders for whom QI holds valid documentation (other than nonqualified intermediaries or flow-through entities) for whom withholding and reporting is not required. For example, QI can treat a payment of short term OID allocable to a group of documented foreign account holders as reliably associated with valid documentation. Further, if the documentation attached to a nonqualified intermediary's or flow-through entity's Form W-8IMY is documentation from another nonqualified intermediary or flow-through entity, then QI must apply the rules of this paragraph to that other nonqualified intermediary or flow-through entity.

**(2) Reliably Associating a Payment with a Withholding Certificate Provided by Another QI that Does not Assume Primary Chapters 3 and 4 Withholding or Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with documentation provided by another QI that does not assume either primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility if it can reliably associate the payment with a valid Form W-8IMY and, if the form is associated with a withholdable payment, it includes the QI's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates the withholdable payment among the chapter 4 withholding rate pools (to the extent permissible under §1.1471-3(c)(3)(iii)(B)), and with respect to a payment of an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, that allocates such payment among chapter 3 withholding rate pools for foreign account holders as described in section 6.03(C) of this Agreement.

If the payment is a reportable amount, QI can reliably associate the payment with documentation provided by another QI if the withholding statement allocates the payment to withholding rate pools attributable to U.S. non-exempt recipients and the documentation includes a valid Form W-9 for each U.S. non-exempt recipient account holder for which the other QI is required to report on Form 1099 and, if required, backup withhold. QI can also reliably associate a reportable amount with valid documentation provided by another QI that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for each U.S. non-exempt recipient account holder, the QI allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certification(s) on a valid Form W-8IMY for allocating the payment to this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders. Notwithstanding the preceding sentences in this section 5.13(B)(2), the presumption rules shall not apply if a payment cannot be allocated to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees to the extent the alternative procedures of section 6.03(D) of this Agreement apply.

**(3) Reliably Associating a Payment with Documentation Provided by a QI that**

**Assumes Primary Chapters 3 and 4 Withholding Responsibility and Does not Assume Primary Form 1099 Reporting and Backup Withholding Responsibility.**

Generally, QI can reliably associate a payment with valid documentation provided by another QI that assumes primary chapters 3 and 4 withholding responsibility, but not primary Form 1099 reporting and backup withholding responsibility, if it can associate the payment with a valid Form W-8IMY from the QI and, if the form is associated with a withholdable payment, it includes the QI's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment or an amount subject to chapter 3 withholding that is not a withholdable payment among a single withholding rate pool for all account holders with respect to which the QI assumes primary chapters 3 and 4 withholding responsibility.

If the payment is a reportable amount, QI can reliably associate the payment with documentation provided by another QI if the withholding statement allocates the payment to withholding rate pools attributable to each U.S. non-exempt recipient, as described in section 6.03(D), and the documentation includes a valid Form W-9 for each U.S. non-exempt recipient account holder for which the other QI is required to report on Form 1099 and, if required, backup withhold. QI can also reliably associate such payment with valid documentation provided by another QI that is a participating FFI or registered deemed-compliant FFI if, in lieu of providing documentation for each U.S. non-exempt recipient account holder, the QI allocates the payment made to the U.S. non-exempt recipient to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certifications on a valid Form W-8IMY for allocating the payment to this pool or allocates a payment that is a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders. Notwithstanding the preceding sentences in this section 5.13(B)(3), the presumption rules shall not apply if a payment cannot be allocated to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees to the extent the alternative procedures of section 6.03(D) of this Agreement apply.

**(4) Reliably Associating a Payment With Documentation Provided by a QI that Assumes Primary Form 1099 Reporting and Backup Withholding Responsibility.**

Generally, QI can reliably associate a payment with valid documentation provided by another QI that assumes primary Form 1099 reporting and backup withholding responsibility, but not primary chapters 3 and 4 withholding responsibility, to the extent it can associate the payment with a valid Form W-8IMY from the QI that, if the payment is a withholdable payment, includes the QI's chapter 4 status to the extent required for chapter 4 purposes. Additionally, the Form W-8IMY must be associated with a withholding statement that allocates a payment that is a withholdable payment among chapter 4 withholding rate pools (other than a pool of U.S. payees and to the extent permissible under §1.1471-3(c)(3)(iii)(B)) and, with respect to a payment that is an amount subject to chapter 3 withholding but is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, allocates the payment among chapter 3 withholding rate pools for foreign account holders as

described in section 6.03(C) of this Agreement, and identifies the portion of the payment for which QI assumes primary Form 1099 reporting and backup withholding responsibility.

**(5) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Both Primary Chapters 3 and 4 Withholding Responsibility and Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another QI that assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility if QI can associate the payment with a valid Form W-8IMY from the QI that, if the payment is a withholdable payment, includes the QI's chapter 4 status. Additionally, the Form W-8IMY must also designate the accounts for which the other QI is acting as a QI and is assuming primary chapters 3 and 4 withholding and primary Form 1099 reporting and backup withholding responsibility. If the other QI is acting as a QDD, the Form W-8IMY (or withholding statement) must also designate those accounts (1) for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD, (2) for which the QDD is receiving payments with respect to potential section 871(m) transactions (and that are not also underlying securities) for which withholding is not required, and (3) for which the QDD is receiving payments with respect to underlying securities for which withholding is required. If the other QI is acting as a QDD, the Form W-8IMY (or withholding statement) must also identify the home office or branch acting as a QDD that is receiving the payment. If the QI receiving a payment assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for substitute interest payments as described in section 3.03(A), the Form W-8IMY must indicate that the QI is assuming primary withholding responsibility for all such payments.

**(C) Presumption Rules.** With respect to a withholdable payment made to a foreign entity, if QI is an NFFE, it must follow the presumption rules of §1.1471-3(f) when it cannot reliably associate a withholdable payment with valid documentation.

With respect to a payment that is an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required, the presumption rules are the rules under §1.1441-1(b)(3) that a withholding agent must follow to determine the status of a beneficial owner (*i.e.*, as a U.S. person or foreign person and as an individual or entity (and the entity's classification)) when it cannot reliably associate a payment with valid documentation. With respect to a reportable payment (including a withholdable payment made to an entity) that is not an amount subject to chapter 3 withholding, the presumption rules are the rules of §1.6049-5(d) that a payor must follow to determine the status of a payee (*e.g.*, as a non-exempt recipient) when it cannot reliably associate a payment with valid documentation. The presumption rules are as follows:

**(1) Certain Withholdable Payments Made with Respect to an Offshore Obligation.**

A withholdable payment paid outside of the United States as defined under §1.6049-5(e) with respect to an offshore obligation (as defined in §1.1471-1(b)(88)) that is made to an entity is presumed made to a nonparticipating FFI for purposes of chapter 4. A withholdable payment that is not an amount subject to chapter 3 withholding, that is paid outside the U.S. with respect to an offshore obligation, and that is treated as made to a payee that is an individual is presumed made to a U.S. person when the payee has any of the indicia of U.S. status that are described in §1.1441-7(b)(5). If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), see the rules under its FATCA requirements as a participating FFI or registered deemed-compliant FFI for classifying account holders as recalcitrant account holders. If QI is an FFI, see also section 8.06 of this Agreement for whether QI is required to report such payments on Form 1099.

**(2) Amounts Subject to Withholding under Chapter 3 that are Paid with Respect to an Offshore Obligation.** An amount that is subject to chapter 3 withholding that is not a withholdable payment is presumed made to an undocumented foreign account holder if the payment is made outside of the United States with respect to an offshore obligation. If QI is an NFFE or an FFI that is not required to withhold on recalcitrant account holders pursuant to the terms of an applicable Model 1 or Model 2 IGA, an amount subject to chapter 3 withholding that is a withholdable payment and that is treated as made to a payee that is an individual is also presumed made to an undocumented foreign account holder if the payment is made outside of the United States with respect to an offshore obligation. QI must treat an amount described in this section 5.13(C)(2) as subject to withholding under chapter 3 at a rate of 30 percent on the gross amount of the payment and must report the payment as made to an unknown recipient on Form 1042-S.

**(3) Payments on Certain Short-Term Obligations and Bank Deposit Interest.** An amount of U.S. source original issue discount on the redemption of a short-term obligation or U.S. source bank deposit interest not subject to chapter 4 withholding is presumed made to an undocumented U.S. non-exempt recipient account holder regardless of whether paid to an individual or entity. QI must report an amount described in this section 5.13(C)(3) on Form 1099. QI must backup withhold and report such amounts on Form 1099 unless it provides sufficient information to another payor from which it receives such amounts to backup withhold and report the payments and QI does not know that the other payor has failed to backup withhold or report.

**(4) Foreign Source Income, Broker Proceeds, and Certain Other Amounts Made with Respect to an Offshore Obligation.** A payment of an amount that is not a withholdable payment and is not an amount subject to chapter 3 withholding (other than payments of short-term OID and bank deposit interest described in section 5.13(C) of this Agreement) that is paid outside the United States with respect to an offshore obligation and that is made to a payee that is an individual is presumed made to a U.S. non-exempt recipient when the payee has any of the indicia of U.S. status that are described in section 5.10(B) of this Agreement. If the payment is made to a payee that

is an entity, QI must apply the principles of §1.1441-1(b)(3)(ii), §1.1441-5(d)(2), or §1.1441-5(e)(6) (as applicable) without regard to §1.1441-1(b)(3)(ii)(D) for purposes of this paragraph 5.13(C)(4). For a payment of gross proceeds for which QI is a broker under §1.6045-1, similar rules apply to a payment made with respect to a sale that is effected at an office outside the United States under §1.6045-1(g)(1)(ii). QI must report an amount described in this section 5.13(C)(3) as paid to a presumed U.S. non-exempt recipient on Form 1099 to the extent required under section 8.06 of this Agreement. Backup withholding shall not be required, however, if the exception provided in §31.3406(g)-1(e) applies.

**(5) Other Payments.** For any payment not covered in sections 5.13(C)(1), (2), (3), or (4) of this Agreement, see the presumption rules provided in §1.1441-1(b)(3) or §1.6049-5(d)(2) (as applicable).

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

**Sec. 6.01. Qualified Intermediary Withholding Certificate.** QI agrees to furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a QI. The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a QI, contains QI's QI-EIN, and provides all other information required by the form. If QI receives a withholdable payment, QI must certify to its chapter 4 status and provide its GIIN (if applicable). QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI when QI provides a Form W-8IMY that certifies that it meets the requirements of §1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains that is included in a chapter 4 withholding rate pool of U.S. payees on QI's withholding statement.

If QI is acting as a QSL for a substitute dividend payment, QI must also certify that it is acting as a qualified securities lender and provide all other information required by Form W-8IMY.

If QI is acting as a QDD for payments with respect to potential section 871(m) transactions or underlying securities, it must certify that it is acting as a QDD for those payments and assumes primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for any payments with respect to potential section 871(m) transactions that it makes as required by this Agreement, and it must provide all other information required by Form W-8IMY with respect to the certification.

If QI is acting with respect to payments of substitute interest as described in section 3.03(A) of this Agreement, it must certify that it is assuming primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all such payments, in addition to the other certifications it makes and

information it provides as a QI as required by this Agreement.

Except as otherwise provided in section 6.02 of this Agreement, QI also agrees to furnish each withholding agent to whom it provides a Form W-8IMY with the withholding statement described in section 6.02 of this Agreement. QI is not required to disclose, as part of its Form W-8IMY or its withholding statement, any information regarding the identity of a direct or indirect account holder that is a foreign person or a U.S. exempt recipient or a holder of a U.S. account. To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility under section 3.04 of this Agreement or is not excepted from reporting under section 8.06 of this Agreement, for each U.S. non-exempt recipient account holder on whose behalf QI receives a reportable amount, QI must provide to a withholding agent the Form W-9, or if any such account holder has not provided a Form W-9, the name, address, and U.S. TIN (if available).

**Sec. 6.02. Withholding Statement.**

**(A) In General.** QI agrees to provide to each withholding agent from which QI receives reportable amounts as a QI a withholding statement described in this section 6.02 and §1.1441-1(e)(3)(iv). A withholding statement shall not be provided to a withholding agent if QI assumes both primary chapters 3 and 4 withholding responsibility and primary Form 1099 reporting and backup withholding responsibility for all of its accounts, unless QI is acting as a QDD. The withholding statement forms an integral part of the Form W-8IMY. The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3, 4, and 61 and section 3406.

**(B) Content of Withholding Statement.** The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments allocable to the accounts identified on the statement and to properly report such payments on Forms 1042-S and Forms 1099, as applicable. The withholding statement must--

- (1)** Designate those accounts for which QI acts as a QI;
- (2)** Designate those accounts for which QI assumes primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility (including accounts for which QI is acting with respect to payments of U.S. source substitute interest (as described in section 3.03(A) of this Agreement));
- (3)** If QI is acting as a QDD, designate the accounts (1) for which the QDD is receiving payments with respect to potential section 871(m) transactions or underlying securities as a QDD, (2) for which the QDD is receiving payments with respect to potential section 871(m) transactions (and that are not underlying securities) for which withholding is not required, and (3) for which QDD is receiving payments with respect to underlying securities for which withholding is required, and, if applicable, identifying the home office



or branch that is treated as the owner for U.S. income tax purposes;

(4) If applicable, designate the accounts for which QI is acting as a QSL with respect to any U.S. source substitute dividend payments received from the withholding agent; and

(5) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement.

**Sec. 6.03. Chapters 3 and 4 Withholding Rate Pools.**

**(A) In General.** QI shall provide as part of its withholding statement withholding rate pool information in a manner sufficient for the withholding agent to meet its chapters 3 and 4 and backup withholding responsibilities and its Form 1042-S and Form 1099 reporting responsibilities.

**(B) Chapter 4 Withholding Rate Pools.** If QI receives a withholdable payment on behalf of its account holders, QI may allocate the payment to a chapter 4 withholding rate pool. A chapter 4 withholding rate pool is a payment of a single type of income (e.g., interest or dividends) that is allocated to payees that are nonparticipating FFIs. If QI is a participating FFI or registered deemed-compliant FFI (other than reporting Model 1 FFI), it may also allocate a withholdable payment to a chapter 4 withholding rate pool of recalcitrant account holders (if applicable). If QI is a participating FFI or registered deemed-compliant FFI receiving a reportable amount that is excepted from reporting under section 8.06(A) of this Agreement (excluding sections 8.06(A)(2) and (A)(3) of this Agreement when the payment is subject to chapter 4 withholding and section 8.06(A)(4) of this Agreement), QI may allocate the payment to a chapter 4 withholding rate pool of U.S. payees. See section 6.03(D) of this Agreement for the alternative procedures that may be used in this case. Except as otherwise provided in this section 6.03(B), if QI receives a withholdable payment, QI must provide the information required under §1.1471-3(c)(3)(iii)(B)(2).

Further, if QI elects under its FATCA requirements as a participating FFI or registered deemed-compliant FFI to backup withhold instead of withholding under chapter 4 with respect to certain recalcitrant account holders, QI's withholding statement must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to such account holders and must provide all other information relating to such account holders that is required under chapter 61 for the withholding agent to report with respect to the payment.

If QI has an account holder that is another intermediary (whether a QI, NQI, or PAI) or a flow-through entity, QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 4 withholding rate pools described in this section 6.03(B). If QI is an NFFE that has an account holder that is another intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI, QI may provide the account holder's chapter 4 withholding rate

pools of recalcitrant account holders and U.S. payees to the extent applicable.

**(C) Chapter 3 Withholding Rate Pools.** With respect to any portion of the payment that is attributable to payees for which no chapter 4 withholding is required but is an amount subject to chapter 3 withholding, a chapter 3 withholding rate pool is a payment of a single type of income that is subject to a single rate of withholding (e.g., 0%, 10%, 15%, or 30%) and that is reported under a single chapter 4 exemption code on Form 1042-S. QI shall determine chapter 3 withholding rate pools based on valid documentation obtained under section 5 of this Agreement or, if a payment cannot be reliably associated with valid documentation, on the presumption rules of section 5.13(C) of this Agreement. If QI has an account holder that is another intermediary (whether a QI, NQI, or PAI) or a flow-through entity (other than a nonparticipating FFI that is not acting on behalf of any exempt beneficial owners), QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine the amounts allocable to each of QI's chapter 3 withholding rate pools with respect to the portion of the payment allocable to an account holder to which chapter 4 withholding does not apply.

**(D) U.S. Non-Exempt Recipients Subject to Backup Withholding or Form 1099 Reporting and Alternative Procedures for Allocating Payments on Withholding Statements.** To the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility and is not excepted from reporting on Form 1099 under section 8.04 of this Agreement, QI's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that QI is required to report on Form 1099 and has disclosed to the withholding agent. QI may, by mutual agreement with the withholding agent, establish a single withholding rate pool (not subject to backup withholding) for all U.S. non-exempt recipient account holders for whom QI is required to report on Form 1099 and has provided Forms W-9 prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds to which backup withholding does not apply. QI must establish a separate withholding rate pool for all U.S. non-exempt recipient account holders subject to backup withholding prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds.

Alternatively, QI may include U.S. non-exempt recipients in a zero rate withholding pool that includes U.S. exempt recipients and foreign persons for which no withholding is required under chapters 3 and 4 and section 3406 and may include payments allocated to a chapter 4 withholding rate pool of U.S. payees in this pool to the extent permitted to be provided by QI under section 6.03(B) of this Agreement. If QI chooses the alternative procedure of this paragraph, QI must provide sufficient information to the withholding agent no later than January 15 of the year following the year in which the reportable amounts and designated broker proceeds, if applicable, are paid in order to allocate to each U.S. non-exempt recipient account holder or to a chapter 4 withholding rate pool of U.S. payees (when applicable). Failure to provide such information will result in the application of penalties to QI under sections 6721 and 6722 and shall

constitute an event of default under section 11.06 of this Agreement.

## **SECTION 7. TAX RETURN OBLIGATIONS**

### **Sec. 7.01. Form 1042 (or Other Tax Return) Filing Requirement.**

**(A) In general.** QI shall file a return on Form 1042, whether or not QI withheld any amounts under chapter 3 or 4, on or before March 15 of the year following any calendar year in which QI acts as a QI and makes a payment of an amount subject to chapter 3 or 4 withholding. A separate Form 1042 must be filed by each legal entity that is a QI covered by this Agreement. Form 1042 shall be filed at the address indicated on the form, at the address at which the IRS notifies QI to file the return, or in accordance with the instructions to file Form 1042 electronically. In addition to the information specifically requested on Form 1042 and the accompanying instructions, if QI made any overwithholding or underwithholding adjustments under §§1.1461-2 and 1.1474-2 and sections 9.02 and 9.05 of this Agreement, QI must attach a statement setting forth the amounts of any overwithholding or underwithholding adjustments and an explanation of the circumstances that resulted in the over- or underwithholding.

**(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 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on or before the due date of the return.

**(C) QDD Tax Liability Requirements for QDDs.** In addition to its requirements under section 7.01(A) of this Agreement, a QI that is acting as a QDD (other than a foreign branch of a U.S. financial institution) also must report its QDD tax liability on the appropriate U.S. tax return (to be prescribed by the IRS), including separately identifying each part of the QDD tax liability described in section 3.09(A) through (C) of this Agreement separately for the home office and each branch that is acting as a QDD (if applicable). A QDD must also report any other information required by the appropriate return with respect to its QDD tax liability (including any part thereof).

A QDD must also maintain, and make available to the IRS upon request, a reconciliation schedule that tracks across calendar years the section 871(m) amount for each dividend with respect to each underlying security referenced by a potential section 871(m) transaction separately for the home office and each branch that is a QDD (if applicable). The reconciliation schedule must separately state total amounts received as a QDD, as well as the dividends received in its equity derivatives dealer capacity and the section 881 tax paid on those amounts, the amount of dividends that were effectively connected with the conduct of a trade or business in the United States, the amount of stock owned in its equity derivatives dealer capacity that was not effectively connected with the conduct of a trade or business in the United States, the amount of dividend equivalent payments it received in its equity derivatives dealer capacity, its long positions, its short positions, its net delta for business purposes (if any), its adjustments to the net delta used for business purposes (if any, such as adjustments to

exclude transactions that, for federal income tax purposes, are not treated as transactions of a QDD, do not exist, or that are effectively connected with the conduct of a trade or business in the United States), the dividend amount per share, its tax liability under section 881 for its section 871(m) amount, its net delta exposure, and the section 871(m) amount for each dividend with respect to each underlying security referenced by a potential section 871(m) transaction it received as a QDD, and any adjustments thereto, for transactions in its equity derivatives dealer capacity. The reconciliation schedule may be maintained in any manner or format that permits the IRS to reconcile the amount reported by the QDD for the calendar year.

**Sec. 7.02. Form 945 Filing Requirement.** QI shall file a return on Form 945 on or before January 31 following the calendar year in which QI backup withheld an amount under section 3406. Separate Forms 945 must be filed by each legal entity that is a QI covered by this Agreement. The form must be filed at the address specified in the instructions for Form 945, at the address at which the IRS notifies QI to file the return under the provisions of section 12.06 of this Agreement, or in accordance with the instructions to file Form 945 electronically.

**Sec. 7.03. Retention of Returns.** QI shall retain Forms 945 and 1042 (including, with respect to a QI acting as a QDD, its reconciliation schedule) for the applicable statute of limitations on assessment under section 6501.

## **SECTION 8. INFORMATION REPORTING OBLIGATIONS**

**Sec. 8.01. Form 1042-S Reporting.** Except as otherwise provided in section 8.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, QI shall file a Form 1042-S reporting the pools of income (reporting pools) as determined in section 8.03 of this Agreement. QI must file its Forms 1042-S in the manner required by the regulations under chapters 3 and 4 (or in the case of a participating FFI, in the manner required under the FFI Agreement) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Separate Forms 1042-S must be filed by each legal entity that is a QI covered by this Agreement. A QI acting as a QDD that also has QI activities must file separate Forms 1042-S in its QDD capacity and its QI capacity (*i.e.*, other than when acting as a QDD). Each QI covered by this Agreement may also allow its individual branches not acting as QDDs to file Forms 1042-S provided that all Forms 1042-S contain the QI-EIN of the legal entity of which the branch forms a part and, to the extent required for chapter 4 purposes, the GIIN of the branch. If QI is acting as a QDD, the home office and each branch acting as a QDD must file separate Forms 1042-S for payments made as a QDD. Any Form 1042-S required by this section 8 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, *Application for Extension of Time to File Information Returns*, by the due date of Forms 1042-S in the manner required by (and to the extent permitted on) Form 8809.

**Sec. 8.02. Recipient Specific Reporting.** QI (whether or not it assumes primary chapters 3 and 4 withholding responsibility) is required to file separate Forms 1042-S for amounts paid to each separate account holder as described in this section 8.02. QI must file separate Forms 1042-S by income code, exemption code, recipient code, chapter 3 or 4 withholding rate pool, and withholding rate. In the case of a payment to a QDD, separate Forms 1042-S must be filed for each QDD, even if a single legal entity.

**(A)** QI must file a separate Form 1042-S for each account holder that is a QI (to the extent such payment is required to be reported under §1.1461-1) WP, WT, or QSL that receives from QI an amount subject to withholding under chapter 3 or 4 (or, in the case of a QSL, that receives a U.S. source substitute dividend payment), regardless of whether such account holder is a direct or indirect account holder of QI.

**(B)** QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and that receives an amount subject to chapter 4 withholding from QI that is allocable to each of such FFI's chapter 4 withholding rate pools of recalcitrant account holders, nonparticipating FFIs, and pool of U.S. payees, if applicable, regardless of whether such FFI is a direct or indirect account holder of QI.

**(C)** QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is not described in section 8.02(B) of this Agreement (other than a nonparticipating FFI) that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless of whether such intermediary or flow-through entity is a direct or indirect account holder of QI.

**(D)** QI must file a separate Form 1042-S for each account holder of QI that is a PAI or a partnership or trust to which QI applies the agency option that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs or an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is allocable to such entity's chapter 3 withholding rate pools.

**(E)** QI must file a separate Form 1042-S for each unknown recipient with respect to an account holder that is a nonqualified intermediary, flow-through entity, or QI that does not assume primary chapters 3 and 4 withholding responsibility and that receives an amount subject to chapter 4 withholding from QI that QI must presume is allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs under the presumption rule of §1.1471-3(f)(5).

**(F)** QI must file a separate Form 1042-S for each foreign account holder (or interest

holder) of a nonqualified intermediary or flow-through entity that is a nonparticipating FFI that is receiving a payment on behalf of an exempt beneficial owner (regardless of whether the nonqualified intermediary or flow-through entity is a direct or indirect account holder of QI) to the extent QI can reliably associate such amounts with valid documentation from such nonqualified intermediary or flow-through entity as to the payment allocable to one or more exempt beneficial owners. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

**(G)** QI must file separate Forms 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is receiving an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required to the extent QI can reliably associate such amounts with valid documentation from an account holder that is not itself a nonqualified intermediary or flow-through entity. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

**(H)** QI must file a separate Form 1042-S for each direct account holder that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under §1.1471-3(d)(12)(iii) unless such information was reported by the withholding agent.

**(I)** If QI is acting as a QDD, QI must file a separate Form 1042-S for any amount subject to chapter 3 withholding with respect to a potential section 871(m) transaction made to another QDD.

### **Sec. 8.03. Reporting Pools for Form 1042-S Reporting.**

**(A) Chapter 4 Reporting Pools.** Except for amounts required to be reported under section 8.02 of this Agreement, if QI is an FFI, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 4 reporting pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S, that is allocable to a chapter 4 withholding rate pool consisting of either recalcitrant account holders or payees that are nonparticipating FFIs. QI must report recalcitrant account holders in pools based upon a recalcitrant account holder's particular status described in §1.1471-4(d)(6), with a separate Form 1042-S issued for each such pool.

If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an

account holder that is (or is presumed) a U.S. person and that QI reports as a U.S. account under its applicable FATCA requirements as a participating FFI or registered deemed-compliant FFI provided that QI is excepted from Form 1099 reporting with respect to the payment under section 8.06(A)(1) of this Agreement or section 8.06(A)(2) and (A)(3) of this Agreement if the payment is both excepted from Form 1099 reporting and not subject to withholding under chapter 4.

If QI is an NFFE, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs.

**(B) Chapter 3 Reporting Pools.** Except for amounts required to be reported under section 8.02 of this Agreement, QI shall report an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is paid to a foreign account holder by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI or to direct account holders of a PAI of QI or a partnership or trust described in section 4 of this Agreement. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 3 reporting pool is a payment of a single type of income that falls within a particular withholding rate, chapter 3 exemption code, and, if the payment is a withholdable payment, chapter 4 exemption code as determined on Form 1042-S. QI may use a single chapter 3 pool reporting code (e.g., QI- withholding rate pool-general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate chapter 3 pool reporting code (e.g., QI- withholding rate pool-exempt organization) must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to chapter 3 withholding and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government.

#### **Sec. 8.04. FATCA U.S. Account Reporting.**

**(A) QI that is an FFI.** If QI is an FFI, QI is required to report each U.S. account (or, in the case of an FFI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, each U.S. reportable account) that it maintains and for whom QI is acting consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI), QI must report its U.S. accounts on Form 8966 in the time and manner required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI except to the extent QI is reporting under §1.1471-4(d)(5) on Form 1099 with respect to its U.S. accounts. If QI is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, QI must report each U.S. reportable account on Form 8966 as required under the applicable Model 1 IGA. QI cannot delegate to its withholding agent its requirements to report U.S. accounts (or U.S. reportable accounts) regardless of whether QI does or does not

assume primary Form 1099 reporting and backup withholding responsibility under section 3 of this Agreement. See section 8.06 of this Agreement for when the reporting described in this section 8.04 satisfies QI's Form 1099 reporting responsibilities with respect to reportable payments under chapter 61.

**(B) QI that is an NFFE.** If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, QI shall file Form 8966 to report withholdable payments made to an account holder that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by QI. See §1.1471-1(b)(8) for the definition of beneficial owner. QI must report on Form 8966 in accordance with the form and its accompanying instructions. Such report must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year; and any other information as required by the form and its accompanying instructions. If QI is acting as a sponsoring entity on behalf of an NFFE for chapter 4 purposes, QI is not required to report as described in this paragraph if QI reports the NFFE as part of QI's requirements as a sponsoring entity. See §1.1472-1(c)(5)(ii) for the reporting requirements of a sponsoring entity.

**Sec. 8.05. Form 8966 Reporting for Payees that are NFFEs.** QI shall file Form 8966 to report withholdable payments made to an intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE other than an excepted NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA). QI must report on Form 8966 in the time and manner provided in §1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person); the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions. QI is not required to report, however, to the extent permitted under §1.1474-1(i)(2) on a payment made to a participating FFI or registered deemed-compliant FFI if such information is reported pursuant to section 8.04 of this Agreement or if the intermediary or flow-through entity certifies on its withholding statement that it is reporting the account holder (or interest holder) as a U.S. account pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**Sec. 8.06. Form 1099 Reporting Responsibility.** QI shall file Forms 1099 and, unless filing magnetically, Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*, for reportable payments made to persons described in this section 8.06. Forms 1099 shall be filed on or before the date prescribed for the particular Form 1099 under chapter 61 and in the manner required by regulations under chapter 61 and the instructions to the forms (including the requirements for filing the forms magnetically or electronically). Extensions of the time to file Forms 1099 may be requested by



submitting Form 8809 in the manner required by the form. If QI is required to file Forms 1099, it must file the appropriate form for the type of income paid (e.g., Form 1099-DIV for dividends, Form 1099-INT for interest, Form 1099-B for broker proceeds). QI must file Forms 1099 to report a reportable payment other than in the situations listed in sections 8.06(A) and (B) of this Agreement.

**(A) Reportable Amount.** QI must file a Form 1099 in accordance with the instructions to the form for the aggregate amount of a particular type of reportable amount paid to an account holder that is (or is presumed) a U.S. non-exempt recipient (whether a direct or indirect account holder). However, QI is not required to file a Form 1099 on a reportable amount if--

- (1)** QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and the other conditions of §1.6049-4(c)(4)(i) are satisfied;
- (2)** QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;
- (3)** QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;
- (4)** QI has not assumed primary Form 1099 reporting and backup withholding responsibility with respect to the account holder's account and has provided a Form W-9 to a withholding agent or has provided withholding rate pool information with respect to such account holder to a withholding agent to apply backup withholding and QI does not know that the withholding agent has failed to report or backup withhold as required;
- (5)** With respect to an account holder of an intermediary or flow-through entity (other than a QI) that is a direct or indirect account holder of QI, the intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides a Form W-8IMY containing a certification that the entity meets the requirements of §1.6049-4(c)(4)(iii); or
- (6)** With respect to an account holder of another QI that is a direct or indirect account holder of QI, the QI allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certification on a valid Form W-8IMY for allocating the payment to this pool.

**(B) Reportable Payments other than Reportable Amounts.** QI must file a Form 1099 for a reportable payment (other than a reportable amount) paid to each U.S. non-exempt recipient (whether a direct or indirect account holder), or to any account holder that is presumed to be a U.S. non-exempt recipient under section 5.13(C) of this Agreement. Notwithstanding the previous sentence, QI is not required to file a Form 1099 for a reportable payment (other than a reportable amount) paid to a direct account holder that is (or is presumed) a U.S. non-exempt recipient if—

**(1)** QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and the other conditions of §1.6049-4(c)(4)(i) are satisfied;

**(2)** QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

**(3)** QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of §1.6049-4(c)(4)(ii) are satisfied; or

**(4)** With respect to a reportable payment that is broker proceeds paid to a U.S. non-exempt recipient, QI has applied the procedures of section 3.05(C) of this Agreement and QI does not know that the other payor has failed to report or backup withhold on the payment as required.

## **SECTION 9. ADJUSTMENTS FOR OVER- AND UNDER- WITHHOLDING; REFUNDS**

**Sec. 9.01. Adjustments for Overwithholding by Withholding Agent When QI Does not Assume Primary Withholding Responsibility.** QI may request that a withholding agent make an adjustment for amounts paid to QI when the withholding agent has overwithheld under chapter 3 or 4 by applying either the reimbursement procedure described in section 9.01(A) of this Agreement or the set-off procedure described in section 9.01(B) of this Agreement within the time period prescribed for those procedures. Nothing in this section shall be interpreted to require a withholding agent to apply the reimbursement or set off procedures under sections 9.01(A) or (B) of this Agreement. See §1.1474-2(a)(2) for the definition of overwithholding that applies for purposes of this section 9 with respect to an amount withheld under chapter 4.

**(A) Reimbursement Procedure.** QI may request a withholding agent to repay QI for any amount overwithheld and for the withholding agent to reimburse itself under the

reimbursement procedures described in §§1.1461-2(a)(2)(i) and 1.1474-2(a)(3) by making the request before the earlier of the due date (without regard to extensions) for the withholding agent to file Form 1042 and Form 1042-S for the calendar year of overwithholding or the date the Form 1042-S is actually filed with the IRS.

**(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 to be withheld under chapter 3 or 4 from income paid by the withholding agent to QI under the set-off procedures of §§1.1461-2(a)(3) and 1.1474-2(a)(4). 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. 9.02. Adjustments for Overwithholding by QI Assuming Primary Withholding Responsibility.** QI may make an adjustment for amounts paid to its account holders when QI has overwithheld by applying either the reimbursement or set-off procedures described in this section 9.02 within the time period prescribed for those procedures.

**(A) Reimbursement Procedure.** QI may repay its account holders for an amount overwithheld under chapter 3 or 4 and reimburse itself by reducing, by the amount of tax actually repaid to the account holders, the amount of any subsequent deposit of tax required to be made by QI under section 3.08 of this Agreement. For purposes of this section 9.02(A), an amount that is overwithheld shall be applied in order of time (*i.e.*, sequentially) to each of the QI's subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if:

**(1)** The repayment occurs before the earlier of the due date (without regard to extensions) for filing Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed by QI with the IRS;

**(2)** QI states on a Form 1042-S (issued, if applicable, to the account holder or otherwise to a chapter 3 or 4 reporting pool), filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and

**(3)** QI states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with §1.6414-1.

**(B) Set-Off Procedure.** QI may repay its account holders by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 to be withheld from a payment made by QI to the account holders before the earlier of

March 15 of the calendar year following 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 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 or 4.

**Sec. 9.03. Repayment of Backup Withholding.** If QI erroneously withholds, as defined under §31.6413(a)-3, an amount under section 3406 from an account holder, QI may refund the amount erroneously withheld as provided in §31.6413(a)-3.

**Sec. 9.04. Collective Credit or Refund Procedures for Overwithholding.** If there has been overwithholding on amounts subject to chapter 3 or 4 withholding paid to QI's account holders during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures as described in section 9.01 or 9.02 of this Agreement, QI may request a credit or refund of the total amount overwithheld by following the procedures of this section 9.04. QI shall follow the procedures set forth under sections 6402 and 6414, 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. If there has been an overwithholding and QI does not apply for a collective refund, it must provide a Form 1042-S for the payment that was subject to the overwithholding if requested by the account holder receiving the payment.

**(A) Payments for which a Collective Refund is Permitted.** Except as otherwise provided in this section 9.04, QI may use the collective refund procedures with respect to all amounts subject to chapters 3 and 4 withholding. With respect to amounts withheld under chapter 3 or 4, QI shall not include in its collective refund claim tax withheld on payments made to an indirect account holder or a direct account holder of QI that is a nonqualified intermediary or flow-through entity, and with respect to amounts withheld under chapter 4, if QI is a participating FFI or registered deemed-compliant FFI, QI shall not include in its collective refund claim tax withheld on payments made to any account holder described in the FFI agreement or in §1.1471-4(h)(2).

**(B) Requirements for Collective Refund.** QI may use the collective refund procedures under this section 9.04 only if the following conditions are met:

**(1)** QI must not have issued (and will not issue) Forms 1042-S to the account holders that received the payment that was subject to overwithholding;

**(2)** QI must submit together with its amended Form 1042 on which it provides a reconciliation of amounts withheld and claims a credit or refund, a copy of the Form 1042-S furnished to QI by its withholding agent reporting the taxes withheld to which the claim relates (if applicable) and a statement that includes the following information and representations—

(i) The reason(s) for the overwithholding;

(ii) QI deposited the tax for which a refund is being sought under section 6302 or received a Form 1042-S from its withholding agent showing the amount of tax withheld, and neither QI nor its withholding agent has applied the reimbursement or set-off procedure of §§1.1461-2 and 1.1474-2 to adjust the tax withheld to which the claim relates;

(iii) QI has repaid or will repay the amount for which refund is sought to the appropriate account holders;

(iv) QI retains a record showing the total amount of tax withheld, credits from other withholding agents, tax assumed by QI, adjustments for underwithholding, and reimbursements for overwithholding as it relates to each account holder and also showing the repayment (if applicable) to such account holders for the amount of tax for which a refund is being sought;

(v) QI retains valid documentation that meets the requirements of chapter 3 or 4 (as applicable) to substantiate the amount of overwithholding with respect to each account holder for which the refund is being sought; and

(vi) QI has not issued and will not issue a Form 1042-S (or such other form as the IRS may prescribe) to any account holder with respect to the payments for which the refund is being sought.

**Sec. 9.05. Adjustments for Underwithholding.** If QI knows that an amount should have been withheld under chapter 3 or 4 from a previous payment made to an account holder but was not withheld, QI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property over which it has control. The additional withholding or satisfaction of the tax owed described in the previous sentence must be made before the due date (not including extensions) of the Form 1042 for the calendar year in which the underwithholding occurred. QI's responsibilities under this section 9.05 will be met if it informs a withholding agent from which it received the payment of the underwithholding and the withholding agent satisfies the underwithholding.

**Sec. 9.06. Underwithholding After Form 1042 Filed.** If, after a Form 1042 has been filed for a calendar year, QI, QI's reviewer, 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. 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 and assess such tax under the procedures set forth in the Code.

## **SECTION 10. COMPLIANCE PROCEDURES**

### **Sec. 10.01. Compliance Program**

**(A) In General.** QI is required to adopt a compliance program under the authority of a responsible officer or, if QI adopts a consolidated compliance program, under the authority of a responsible officer of a Compliance QI (as described in section 10.02(B) of this Agreement). QI's compliance program must include policies, procedures, and processes sufficient for QI to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for a responsible officer of QI (or a Compliance QI) to make the certifications required under section 10.03 of this Agreement. If QI is acting as a QDD, QI's compliance program must also include policies, procedures, and processes sufficient for it to satisfy and report its QDD tax liability and other reporting required as a condition of its status as a QDD. QI must also perform or arrange for the performance of a periodic review described in section 10.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, QI must provide to the IRS the factual information as required by and referenced in sections 10.04 and 10.05 and in Appendix I to this Agreement. QI must also satisfy the requirements of section 10.06 of this Agreement with respect to the report covering the periodic review and must comply with the IRS review described in section 10.08 of this Agreement. With respect to QI that, prior to January 1, 2017, was a limited FFI (as defined in §1.1471-1(b)(77) (or a limited branch, as defined in §1.1471-1(b)(76)), references in this section 10 (and in Appendix I to this Agreement) to QI's FATCA Requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI include its requirements under §1.1471-4(e)(4) for purposes of its initial certification period.

**(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI and, for a Direct Reporting NFFE, the Requirements of §1.1472-1(c)(3).** As a condition for maintaining QI status, QI must maintain its chapter 4 status with respect to each branch of QI operating under this Agreement. Therefore, QI must, as part of the compliance procedures described in this section 10 determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

**(C) Phase-in Year for QDD.** For purposes of the IRS's enforcement and administration of the QDD rules in the section 871(m) regulations and the relevant provisions of this Agreement for calendar year 2017, the IRS will take into account the extent to which the QDD made a good faith effort to comply with sections 871 and 881, chapters 3 and 4 with respect to section 871(m) transactions, and the relevant provisions of this Agreement. For calendar year 2017, a QDD is not required to perform a periodic review with respect to its QDD activities (as otherwise required by section 10.04 of this Agreement) or provide the factual information specified in Appendix I. In addition, the QDD is not required to make the certification of internal controls as applicable to its QDD activities for the certification period ending in calendar year 2017 but rather is

required to certify for this period that it has made a good faith effort to comply with the relevant provisions of this Agreement in accordance with Notice 2016-76. A QDD is not required to file the certification described in the preceding sentence with the IRS; however, a QDD must retain a record of the certification (and information in support of the certification) until the end of the calendar year 2022. As a result, the certification of internal controls (and factual information and other certifications) applicable to a QI's QDD activities are not included in Appendix I and will be added to the QI agreement for purposes of certification periods ending after December 31, 2017. For 2017, a material failure relevant to a QDD has not occurred unless the QDD failed to make a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement.

The QDD will be considered to satisfy its obligations for purposes of section 10 that apply specifically to a QDD under this Agreement for calendar year 2017 provided that the QDD made a good faith effort to comply with the relevant terms of this Agreement. Any QDD that has not made a good faith effort to comply with its QDD obligations will not be given any relief from IRS administration or enforcement during calendar 2017, including penalties.

**10.02. Responsible Officer.** QI must appoint an individual as a responsible officer as defined in section 2.72 of this Agreement. The responsible officer must be identified on the QI/WP/WT Application and Accounts Management System as QI's responsible party, and such person may, but is not required to, be the same responsible officer for purposes of compliance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. The responsible officer must establish a compliance program that meets the requirements of this section 10.02 and must make the periodic certifications to the IRS described in section 10.03 of this Agreement. The responsible officer of QI must be an officer of QI with sufficient authority to fulfill the duties of a responsible officer described in this section 10. The responsible officer (or a delegate appointed by the responsible officer) must also serve as the point of contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional review procedures under section 10.07 of this Agreement. References in this section 10.02 to the responsible officer include a responsible officer's designee, where appropriate.

**(A) Compliance Program.** The responsible officer must establish a program for QI to comply with the requirements of this Agreement that includes the following--

**(1) Written Policies and Procedures.** The responsible officer must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for QI to satisfy the documentation, withholding, reporting, and other obligations of this Agreement, including, with respect to QI that is acting as a QDD, satisfying its QDD tax liability. Such written policies and procedures must include a process for employees of QI to raise issues to the responsible officer (or the responsible officer's designee) that concern QI's compliance with this Agreement.

**(2) Training.** The responsible officer must communicate such policies and procedures to any line of business of QI that is responsible for obtaining, reviewing, and retaining a record of documentation under the requirements of section 5 of this Agreement; making payments subject to withholding under section 3 of this Agreement; reporting payments and accounts as required under sections 7 and 8 of this Agreement; or entering into potential section 871(m) transactions, in the case of QI that is acting as a QDD.

**(3) Systems.** The responsible officer must ensure that systems and processes are in place that will allow QI to fulfill its obligations under this Agreement. For example, in order to fulfill QI's obligations to report on Forms 1042-S, 1099, and 8966 under section 8 of this Agreement, QI must establish systems for documenting account holders and for recording the information with respect to each such account that QI is required to report under that section.

**(4) Monitoring of Business Changes.** The responsible officer must monitor business practices and arrangements that affect QI's compliance with this Agreement, including, for example, QI's acquisition of lines of businesses or accounts that give rise to documentation, withholding, or reporting obligations under this Agreement.

**(5) QDD Tax Liability Determinations.** If QI is acting as a QDD, the responsible officer must ensure that the QDD has appropriate systems in place to make the necessary determinations and calculations to identify section 871(m) transactions, potential section 871(m) transactions, the amount of dividends received in its QDD equity derivatives dealer capacity and the section 881 taxes paid thereon, its net delta exposure, the dividend amount per share, the stock owned by the QDD included in its net delta exposure long position, its long position, its short position, its section 871(m) amount and the section 881 taxes paid thereon, its QDD tax liability amount, and the amount of dividend equivalent payments made by the QDD. In addition, the responsible officer must ensure that the QDD has appropriate systems in place to determine whether a transaction is as a principal or non-principal, whether a transaction is in an equity derivatives dealer or non-equity derivatives dealer capacity, whether the transaction exists for federal income tax purposes, whether transaction is owned by the QDD, and whether the transaction is effectively connected with the conduct of a trade or business in the United States. This includes appropriate systems to, where required, calculate the delta for a potential section 871(m) transaction, perform the substantial equivalence test described in §1.871-15(h), calculate the amount of a dividend equivalent, determine any QDD tax liability amount (and each part thereof) and its timing, and determine what payments are received or made with respect to potential section 871(m) transactions and underlying securities as a principal and whether in its equity derivatives dealer capacity or non-equity derivatives dealer capacity and by which home office or branch that is acting as a QDD. The systems must also take into account information received pursuant to §1.871-15(p).

**(6) Periodic Review.** Unless QI receives a waiver (the requirements of which are



described in section 10.07(B) of this Agreement), the responsible officer must designate a reviewer that meets the qualifications described in section 10.04(A) of this Agreement to perform the periodic review as described in section 10.05 of this Agreement, to the extent required.

**(7) Certification of Internal Controls.** The responsible officer must make the periodic certification as described in section 10.03 of this Agreement, including ensuring that corrective actions are taken in response to any material failures (as defined in section 10.03(B) of this Agreement) of QI's compliance with this Agreement.

**(B) Consolidated Compliance Program.** The IRS, in its discretion, may permit a consolidated compliance program that includes two or more QIs that are members of a group of entities under common ownership when the QIs: (i) operate under a uniform compliance program for purposes of this Agreement; (ii) share practices, procedures, and systems subject to uniform monitoring and control; and (iii) are subject to a consolidated periodic review that includes a review of internal controls and testing of transactions relevant to this Agreement with respect to each QI in the consolidated compliance program. Each QI that is a member of a consolidated compliance program must designate a Compliance QI to act on its behalf, and the responsible officer of the Compliance QI must identify itself as such when making its periodic certification and must comply with the identification, certification of internal controls, and periodic review requirements for the QI consolidated compliance program as the IRS may prescribe. The Compliance QI must also agree to be jointly and severally liable for the obligations and liabilities of any QI in its consolidated compliance program relating to the QI's obligations under this Agreement. QIs that want to operate a consolidated compliance program must contact the IRS Foreign Intermediaries Program for approval.

**10.03. Certification of Internal Controls by Responsible Officer.** A QI's responsible officer must make the certification described in either Part II.A (Certification of Effective Internal Controls) or Part II.B (Qualified Certification) of Appendix I to this Agreement and must disclose any material failures that occurred during the certification period or during any prior period if the material failure was not disclosed as part of a prior certification or written disclosure made by QI to the IRS. If the responsible officer has identified an event of default or a material failure that has not been corrected as of the date of the certification, the responsible officer cannot make the certification in Part II.A (Certification of Effective Internal Controls) and must make the certification in Part II.B (Qualified Certification).

For a QI that uses the third year of the certification period for its periodic review, the certification is due on or before December 31 of the year following the certification period. For a QI that uses the first or second year of the certification period for its periodic review or a QI that obtains a waiver of the periodic review requirement, the certification is due on or before July 1 of the year following the certification period. The initial certification period is the period ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification

periods will be every three calendar years following the initial certification period (including renewals of this Agreement).

The certification of internal controls required by this section 10.03 applies only to the internal controls related to QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), with respect to accounts for which it acts as a QI, and does not relate to any other obligations or requirements. The responsible officer may rely on any reasonable procedure, process, review, or certification that enables the responsible officer to make the certification described in this section 10.03. If the responsible officer relies on an internal or external review for this purpose (*i.e.*, for purposes of determining whether QI has effective internal controls), the internal or external reviewer must be independent, as described in section 10.04 of this Agreement. The responsible officer must document the procedures, processes, reviews, or certifications relied upon in making the certification. QI's responsible officer (or the responsible officer of its Compliance QI) must make the certifications of compliance in such manner as the IRS may prescribe.

**(A) PAIs and Partnership or Trust to which QI Applies the Agency Option.** Unless QI has received a waiver of the periodic review requirement, any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide its documentation and other information to QI for inclusion in QI's periodic review or conduct an independent periodic review and provide a written certification to QI regarding its compliance with the requirements of the PAI or agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 10.08 of this Agreement (with a certified translation into English if the certification is not in English).

**(B) Material Failures.**

**(1) Material Failures Defined.** A material failure is generally a failure of QI to fulfill the requirements of this Agreement or its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. For purposes of the certifications described in Parts II.A and B of Appendix I to this Agreement, a material failure is limited to the following:

**(i)** QI's establishing of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with this Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.

**(ii)** QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under this Agreement, or if QI is acting as a QDD, its obligations as a QDD under this Agreement or pursuant to section 871(m) and the regulations under that section.

**(iii)** A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.

**(iv)** A finding (including a finding noted in the periodic review report described in section 10.06 of this Agreement) for one or more years covered by this Agreement that QI failed to—

**(a)** Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of this Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;

**(b)** Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;

**(c)** Provide allocation information as described in section 6.03(D) of this Agreement (regarding U.S. non-exempt recipient account holders) by January 15 as required by that section when QI applies the alternative withholding rate pool procedures;

**(d)** Make deposits in the time and manner required by section 3.08 of this Agreement or make adequate deposits to satisfy its withholding obligations, or, if QI is acting as a QDD, timely satisfy its QDD tax liability, taking into account the procedures under section 9 of this Agreement;

**(e)** Report or report accurately on Forms 1099 as required under section 8.06 of this Agreement or provide information to the payor to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;

**(f)** Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of this Agreement;

**(g)** Report or report accurately on Form 8966 under sections 8.04 and 8.05 of this Agreement; or

**(h)** Withhold an amount required to be withheld or report accurately with respect to U.S. source substitute dividend payments or make timely and adequate deposits of tax due

with respect to such payments for which QI is a QSL and acts as a dealer or intermediary.

**(2) Limitations on Material Failures.** A failure described in section 10.03(B)(1)(iv) of this Agreement is a material failure only if the failure was the result of a deliberate action on the part of one or more employees of QI to avoid the requirements of this Agreement with respect to one or more account holders of QI, or was an error attributable to a failure of QI to establish or implement internal controls necessary for QI to meet the requirements of this Agreement. Regardless of these limitations for certification purposes, QI is required to correct a failure to withhold or deposit tax under section 3 of this Agreement, or to report under section 7 or 8 of this Agreement, or, for a QI that is acting as a QDD, to timely pay its QDD tax liability and timely file the appropriate return (or amended return).

**Sec. 10.04. Periodic Review Absent Waiver.** Unless the QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), at the time QI provides the certification described in section 10.03 of this Agreement, QI must also provide certain factual information regarding its accounts, withholdable payments, amounts subject to chapter 3 withholding, and, if QI is acting as a QDD, section 871(m) transactions, potential section 871(m) transactions, and its QDD tax liability based on the results of a periodic review. The factual information requested is included in Appendix I to this Agreement.

**(A) Independent Reviewer.** The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee of QI or an employee of an affiliate of QI (including an employee of a Compliance QI in the case of a consolidated compliance program) (“internal reviewer”), or a certified public accountant, attorney, or third-party consultant (“external reviewer”), or any combination thereof.

**(1) Internal Reviewer.** QI may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (e.g., the internal reviewer, in reviewing QI’s documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer’s reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the reviewer selected by QI was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

In the case of a consolidated compliance program, the Compliance QI may designate an internal reviewer to perform the consolidated periodic review (or a portion of the

consolidated periodic review). See section 10.02(B) of this Agreement. The internal reviewer of the Compliance QI must meet the requirements of this section with respect to both the Compliance QI and each QI that is a member of the consolidated compliance program.

If QI designates an internal reviewer that is an employee of an affiliate of QI but is not part of a consolidated compliance program, QI must ensure that the internal reviewer has access to all necessary information in order to complete the review. In addition, QI must permit the IRS to communicate directly with such internal reviewer.

**(2) External Reviewer.** QI may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients' policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including assisting clients in determining such compliance). The external reviewer cannot be reviewing systems, policies, or procedures or the results thereof that it (or the firm with which it is affiliated) was involved in designing, implementing, or maintaining. The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant that has similar professional standards or requirements). The external reviewer is not required to make an attestation or render an opinion regarding QI's compliance with this Agreement or QI's compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, but the reviewer must be able to perform the periodic review as specified in section 10.05 of this Agreement. QI must permit the external reviewer to have access to all relevant records of QI for purposes of performing the review, including information regarding specific account holders. Additionally, the engagement between the external reviewer and QI must impose no restrictions on QI's ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of QI's account holders to the IRS, except as otherwise provided under QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. QI must permit the IRS to communicate directly with the external reviewer, and any legal prohibitions that prevent the IRS from communicating directly with the reviewer must be waived.

**Sec. 10.05. Scope and Timing of Review.** The responsible officer of QI (or of the Compliance QI) must require the reviewer to test accounts related to QI's documentation, withholding, reporting, and other obligations under this Agreement, including its QDD tax liability with respect to QI that is acting as a QDD, and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for accounts for which it is acting as a QI, and to identify deficiencies in meeting these obligations. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide the information necessary for QI to test accounts and transactions of such entity as part of QI's periodic review unless such entity conducts an its own periodic review

and provides QI with the report documenting the results of such review as described in section 10.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in section 10.05(A) of this Agreement.

QI is required to arrange for the performance of one review for the certification period to evaluate QI's documentation, withholding, and reporting practices. If QI is acting as a QDD, this should also include a review of its determination as to whether transactions are section 871(m) transactions, its computations and determinations of dividend equivalent amounts, dividends and taxes paid thereon, whether transactions are in its equity derivatives dealer capacity, net delta exposure, its section 871(m) amount, and its calculation of its QDD tax liability, as well as any other amounts required to be included on the reconciliation schedule. The review may be conducted for any calendar year covered by the certification period. However, all results of the review must relate to one calendar year. QI may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of this Agreement), there are 15 or more months available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the QI's submits, upon request, a Form 872, *Consent to Extend the Time to Assess Tax*, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of this Agreement.

QI may use a sample to test accounts if there are more than 60 accounts to review. If QI has fewer than 60 accounts, it must review all accounts and cannot use a sample to test accounts. To the extent applicable, the reviewer must separately review its QI activities (when not acting in its QDD capacity) and QDD activities. The reviewer is required to record its sampling procedures and to maintain the ability to reconstruct the sample. Further, the review is not required to include statistical sampling procedures for testing transactions, but the reviewer must document its methodology for sampling determinations. A safe harbor methodology and additional information on the use of statistical sampling is provided in Appendix II to this Agreement.

If the reviewer determines that underwithholding has occurred, QI shall report and pay any amount due. QI must also notify the IRS Foreign Intermediaries Program at the address provided in section 12.06 of this Agreement of the underwithholding discovered as a result of the review. See Appendix II to this Agreement for information required to be provided when reporting underwithholding and information regarding any projection of underwithholding determined using a sampling method.

**(A) Documentation.** The reviewer must--

**(1)** Review QI's accounts, to ensure that QI obtained documentation that meets the requirements described in sections 5.01 through 5.09 of this Agreement;

**(2)** Review QI's accounts for which treaty benefits are claimed, to ensure that QI obtained the treaty statements and limitation on benefits information required by section

5.03(B) of this Agreement;

**(3)** Review information contained in account holder files to determine if the documentation validity standards of section 5.10 of this Agreement have been met. For example, the reviewer must verify that changes in account holder information (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S. or a change in chapter 4 status from participating FFI to non-participating FFI) are being conveyed to QI's withholding agents;

**(4)** Review the accounts for which QI is acting as a QI to ensure that QI is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

**(5)** Review accounts held by U.S. non-exempt recipient account holders, to determine if QI obtained Forms W-9, and, if QI does not assume primary Form 1099 reporting and backup withholding responsibility, that QI transmitted those forms to a withholding agent consistent with this Agreement;

**(6)** For a QI that is a QDD, review accounts for which QI is acting as a QDD and that received a reportable payment to determine whether QI has documented the status of account holders under the requirements described in sections 5.01 through 5.09 of this Agreement;

**(7)** For a QI that makes payments of U.S. source substitute interest and assumes primary chapters 3 and 4 withholding responsibility for such amounts, review accounts of persons to which QI pays U.S. source substitute interest to determine whether QI has documented the status of such persons under the requirements described in sections 5.01 through 5.09 of this Agreement; and

**(8)** For QI that is a QSL, review a sample of transactions for which QI acts as a QSL to determine whether QI has documented the status of persons to which QI pays U.S. source substitute dividends.

**(B) Withholding Rate Pools.** The reviewer must--

**(1)** Perform checks using account holders assigned to each withholding rate pool, and cross check that assignment against the documentation provided by, or the presumption rules applied to, the account holder, the type of income earned, and the withholding rate applied;

**(2)** Verify, if QI is using the procedure for U.S. non-exempt recipients described in section 6.03(D) of this Agreement, that QI is providing sufficient and timely information to withholding agents that allocates reportable payments to U.S. non-exempt recipients; and

**(3)** With respect to a partnership or trust described in section 4.05 of this Agreement, if applicable, perform test checks, using account holder documentation for the selected partners, beneficiaries, or owners and records of each type of reportable amount paid by QI to the entity, to determine whether the highest rate of withholding applicable to each type of reportable amount was applied.

**(C) Withholding Responsibilities.** The reviewer must--

**(1)** To the extent QI has assumed primary chapters 3 and 4 withholding responsibilities, perform test checks, using recalcitrant account holders and nonparticipating FFIs, to verify that QI withheld the proper amounts under chapter 4;

**(2)** To the extent QI has assumed primary chapters 3 and 4 withholding responsibility, perform test checks, using foreign account holders for which no withholding is required under chapter 4 based on the payees chapter 4 status, to verify that QI withheld the proper amounts under chapter 3 and properly applied the exemptions from chapter 4 withholding;

**(3)** To the extent QI has not assumed primary chapters 3 and 4 withholding responsibility, verify that QI has fulfilled its responsibilities under section 3.02 of this Agreement (including withholding if QI failed to provide the required information to a withholding agent to withhold on payments);

**(4)** To the extent QI has assumed primary Form 1099 reporting and backup withholding responsibility, perform checks using U.S. non-exempt recipient account holders to verify that QI backup withheld when required;

**(5)** To the extent QI has not assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using U.S. non-exempt account holders to verify that QI fulfilled its backup withholding responsibilities under sections 3.04 through 3.06 of this Agreement;

**(6)** Verify that amounts withheld by QI were timely deposited in accordance with section 3.08 of this Agreement;

**(7)** To the extent that QI is acting as a QDD, determine that QI withheld when required on payments that it made with respect to potential section 871(m) transactions;

**(8)** To the extent that QI makes payments of U.S. source substitute interest and assumes chapter 3 and 4 withholding responsibility for such amounts, determine that QI withheld when required on such payments; and

**(9)** To the extent QI acts as a QSL, determine that QI withheld when required on U.S. source payments of substitute dividends.



**(D) Return Filing and Information Reporting.** The reviewer must--

**(1)** Obtain copies of original and amended Forms 1042 and 945, and any schedules, statements, or attachments required to be filed with those forms, verify that the forms have been filed, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by--

**(i)** Reviewing copies of Forms 1042-S that withholding agents have provided QI to determine whether QI properly reported the amount of taxes withheld by other withholding agents on Form 1042;

**(ii)** Reviewing account statements and correspondence from withholding agents;

**(iii)** Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by QI for refund or credit) properly reflect the adjustments to withholding made by QI using the reimbursement or set off procedures under section 9.02 of this Agreement and are supported by sufficient documentation;

**(iv)** Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld);

**(v)** If QI is acting as a QDD, reviewing the reconciliation schedule described in section 7.01(c) of this Agreement and any information used to prepare such schedule or compute its QDD tax liability, including information received pursuant to §1.871-15(p), reviewing the amounts required to determine its section 871(m) amounts and its QDD tax liability over the applicable period, and reviewing such information to determine whether the section 871(m) amounts and QDD tax liability have been properly calculated;

**(vi)** If QI is acting as a QDD, reviewing amounts shown on Forms 1042 (including the reconciliation schedule) and Forms 1042-S, as well as any information received pursuant to §1.871-15(p), to determine whether the QDD properly took the information into account (*e.g.*, to calculate its QDD tax liability);

**(vii)** To the extent QI acts as a QSL, determine that QI properly reported the gross amount of the U.S. source payments of substitute dividends to which the recipient would have otherwise been entitled before consideration of any withholding tax obligations; the amount of tax withheld by the withholding agent; and the amount of tax withheld by other withholding agents in the series of securities lending or sale-repurchase transaction;

**(viii)** In the case of collective credits or refunds, reviewing the statements attached to amended Forms 1042 filed to claim a collective refund, determine whether those forms are accurate, and—

- (a)** Determine the causes of any overwithholding reported and ensure QI did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund;
  - (b)** Determine that QI repaid the appropriate account holders and that the amount of the claim is accurate and supported by adequate documentation; and
  - (c)** Determine that QI did not include payments made to a partnership or trust described in section 4.05 of this Agreement.
- (2)** Obtain copies of original and corrected Forms 1042-S and Forms 1099 filed by QI together with the work papers used to prepare those forms, and determine whether the amounts reported on those forms are accurate by--
- (i)** Reconciling payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by QI as withheld on Forms 1042-S and determining the reason(s) for any variance;
  - (ii)** Reviewing the Forms W-8IMY, and the associated withholding statements, that QI has provided withholding agents;
  - (iii)** Reviewing account statements issued by QI to account holders;
  - (iv)** Determining, in the case in which QI utilized the reimbursement or set-off procedure, that QI satisfied the requirements of section 9.02 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.
- (3)** Obtain copies of original and amended Forms 8966 (or, for QI that is a reporting Model 1 FFI, any analogous forms used for reporting account information pursuant to the applicable Model 1 IGA) of accounts for which QI is acting as a QI, and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—
- (i)** Reviewing U.S. accounts (or U.S. reportable accounts for which QI acts as a QI) to determine that such accounts were reported in accordance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;
  - (ii)** If QI is an NFFE acting as a QI on behalf of persons other than its shareholders, confirming that if QI is acting on behalf of a passive NFFE with substantial U.S. owners, withholdable payments made to the passive NFFE and the information regarding its substantial U.S. owners were reported;
  - (iii)** Confirming with respect to any nonqualified intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE

(other than an excepted NFFE) with one or more substantial U.S. owners that such substantial U.S. owners were reported to the extent required under section 8.04(B) of this Agreement;

(iv) Reviewing the documentation provided by a PAI or a partnership or trust to which QI applied the agency option to determine that QI reported on Form 8966 to the extent required under section 4 of this Agreement; and

(v) Reviewing work papers used to prepare these forms.

(4) If QI is acting as a QDD, the reviewer must also review accounts designated as accounts for which QI acted as a QDD to determine whether QI is acting as a QDD with respect to all potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and not any other transactions and whether the section 871(m) amount includes the amounts in its equity derivatives dealer capacity and not amounts in its non-equity derivatives dealer capacity.

**(E) Significant Change in Circumstances.** The reviewer must verify that in the course of the review it has not discovered any significant change in circumstances, as described in section 11.04(A), (D), (E), or (J) of this Agreement.

#### **Sec. 10.06 Periodic Review Report.**

**(A) In General.** The results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the actions performed to satisfy each requirement of section 10.05(A) through (E), including the methodology for sampling determinations. The report may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report. The periodic review report should form the basis for the factual information provided by QI that is set forth in Appendix I.

In addition to the findings of section 10.05 of this Agreement, the periodic review report should also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in Appendix I) should report the results of the review as it was performed and should not reflect the results after curing. Any curing process should not delay certification of internal controls or factual information required in Appendix I to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for accounts with respect to which the reviewer determined that underwithholding had occurred, the number of accounts for which curative documentation was obtained and a revised calculation of the underwithholding or

additional backup withholding.

**(B) Periodic Review Report for QDDs.** If QI is acting as a QDD, the periodic review report should also include the number of accounts that were not correctly treated as (i) principal accounts (except accounts that are effectively connected with the conduct of a trade or business within the United States within the meaning of section 864), (ii) non-principal accounts, (iii) principal accounts that are effectively connected with the conduct of a trade or business within the United States within the meaning of section 864, (iv) equity derivatives dealer accounts, and (v) non-equity derivatives dealer accounts. The report should also include any other issues related to the QDD tax liability (e.g., incorrect determination of whether an account is a potential section 871(m) transaction or a section 871(m) transaction, the dividends received in the QDD's equity derivatives dealer capacity and the taxes paid on those dividends, the net delta exposure, the section 871(m) amount and the taxes on the section 871(m) amount, the amount of dividend equivalent payments made, or any other amounts subject to tax (or required to compute the tax liability) under section 871(a) and 881 (including the QDD tax liability)) for each QDD.

**(C) PAI Certification and Partnership or Trust to which QI Applies the Agency Option.** Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option that does not provide its documentation and other information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement, must conduct an independent periodic review in accordance with the compliance procedures described in section 10.05 of this Agreement. The performance results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English).

**(D) Retention of Report and Certifications.** The report and certifications described in this section 10.06 must be retained by QI (or the Compliance QI) for as long as this Agreement is in effect.

#### **Sec. 10.07. Waiver of Periodic Review Requirement.**

**(A) In General.** A QI that is not acting as a QDD and that is an FFI that meets the requirements of section 10.07(B) may apply for a waiver of the periodic review requirement. QI must request a waiver of the periodic review requirement under this section 10.07 at the time the responsible officer makes the certification described in section 10.03 of this Agreement. QI's application for such a waiver must be approved by the IRS, and waiver applications are not approved automatically. QI must apply for a waiver for each certification period for which a waiver is requested. If QI's request for a waiver of the periodic review requirement is granted, such approval is only to waive QI's obligations under sections 10.04 and 10.05 of this Agreement, and QI is still required to make the certification described in section 10.03 of this Agreement. The waiver also does not preclude the IRS from requesting information or conducting a correspondence

review as described in section 10.07 of this Agreement. QI must include the information of any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option in its waiver application which is set forth in Part III of Appendix I to this Agreement.

**(B) Eligibility.** QI is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

- (1) QI must be an FFI that is not also acting as a QDD;
- (2) QI cannot be part of a consolidated compliance program;
- (3) For each calendar year covered by the certification period, the reportable amounts received by QI cannot exceed \$5 million;
- (4) QI must have timely filed its Forms 1042, 1042-S, 945, 1099, and 8966, as applicable, for all calendar years covered by the certification period;
- (5) QI must have made all periodic certifications and reviews required by sections 10.02 and 10.03 of this Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; and
- (6) QI must have made the certification of effective internal controls in section 10.02(A).

**(C) Documentation Required with Waiver Application.** When applying for a waiver under this section 10.07, QI must include the information described in Appendix I to this Agreement using the most recent calendar year covered by the certification period and reporting such results without any curing or remediation.

**(D) Approval.** If QI's request for a waiver of the periodic review requirement is approved, the IRS will notify QI. If QI requests a waiver but such request is not approved, QI will be granted a six month extension from the date of denial of the waiver to complete the periodic review. Such extension will not be granted if QI has made the request for waiver in bad faith.

#### **Sec. 10.08. Periodic Review.**

**(A) In General.** Based upon the certifications made by the responsible officer and the disclosure of material failures, the information reported on Forms 945, 1042, 1042-S, 1099, and 8966 filed with the IRS during the certification period, or otherwise at the IRS's discretion for compliance purposes, the IRS may initiate requests of QI under this section 10.08. The IRS may preemptively request remediation or the conduct of a limited periodic review earlier than the time period provided in this section 10 if, based on the information described above, the IRS identifies, in its discretion, a presence of

factors indicating systemic or significant compliance failures by QI. The IRS may also request that QI designate a replacement responsible officer if QI's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for additional information) or the IRS has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

**(B) Periodic Review Report.** The IRS may request, through written correspondence to the responsible officer of QI (or the Compliance QI), a copy of the results of QI's periodic review for any prior certification period or the periodic review report of any PAI or partnership or trust to which QI applied the agency option that QI has an agreement during the current certification period (with a certified translation into English if the report is not in English). QI is required to provide the results within 30 calendar days of such request.

**(C) Correspondence Review.** The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will contact the responsible officer of QI (or the Compliance QI) in writing and request information about QI's compliance with this Agreement or the compliance of a PAI or a partnership or trust to which QI applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with employees of QI (and the Compliance QI), a PAI, or a partnership or trust to which QI applied the agency option as part of the IRS's correspondence review. QI is required to respond in a reasonable time to any such requests.

**(D) Additional Review Procedures.** In limited circumstances, the IRS may direct QI (or the Compliance FFI) or any PAI or partnership or trust to which QI applies the agency option to perform additional, specified review procedures. The IRS reserves the right to require QI (or the Compliance QI) or a PAI, or a partnership or trust to which QI applied the agency option to engage an external reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of QI with a written plan describing the additional review procedures and will provide a due date of not more than 120 days for the QI to provide to the IRS a report covering the reviewer's findings.

## **SECTION 11. EXPIRATION, TERMINATION, MERGER AND DEFAULT**

**Sec. 11.01. Term of Agreement.** This Agreement begins on the effective date and expires at the end of the sixth full calendar year the Agreement is in effect, unless terminated under section 11.02 of this Agreement. This Agreement may be renewed as provided in section 11.08 of this Agreement.

**Sec. 11.02. Termination of Agreement.**

**(A) In General.** This Agreement may be terminated by either the IRS or QI prior to the end of its term by delivery of a notice, in accordance with section 12.06 of this Agreement, of termination to the other party. The IRS, however, shall not terminate this Agreement unless there has been a significant change in circumstances, as defined in section 11.04 of this Agreement, or an event of default has occurred, as defined in section 11.06 of this Agreement, and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this Agreement. The IRS shall not terminate this Agreement 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 that an event of default has occurred and that the IRS intends to terminate the Agreement unless QI cures the default or establishes that no event of default occurred. A notice of termination sent by either party shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated.

The termination of the Agreement shall not affect any of QI's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which this Agreement was in effect and portion of the calendar year in which termination is requested. The IRS shall revoke QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences.

**(B) Final Certification after a Termination of the Agreement.** Upon a termination of this Agreement, QI must provide to the IRS the certification described in section 10.03 of this Agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of this Agreement) to the date of termination within six months of the date of termination, regardless of whether a periodic review has been completed for such period.

**Sec. 11.03. Loss of QDD Status.** If QI is acting as a QDD and the home office or branch, as applicable, fails to qualify as an eligible entity during the term of this Agreement, the home office or branch shall lose its QDD status immediately upon the QDD failing to qualify as an eligible entity and as of that date can no longer act as a QDD. QI is required to notify its withholding agent of the date that the QDD failed to qualify as an eligible entity and no longer was permitted to act as a QDD. The QDD's loss of QDD status shall not affect any of QI's QDD reporting, tax filing, withholding, depositing, or payment responsibilities for the period QI was acting as a QDD as provided in this Agreement, including paying its QDD tax liability.

**Sec. 11.04. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to--

**(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, or applicable foreign law, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects QI's ability to perform its obligations under this Agreement;

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

**(D)** A material change in the applicable know-your-customer rules and procedures;

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

**(G)** If QI is an FFI, QI's failure to maintain its status as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

**(H)** If QI is acting as a sponsoring entity on behalf of a sponsored FFI or sponsored direct reporting NFFE, if it fails to comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity; or

**(I)** If QI is acting as a QDD, the home office or branch, as applicable, ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status (see section 11.03).

**Sec. 11.05. Merger.** If QI merges with or is acquired by another QI and the successor QI assumes all the rights, debts, and obligations of the predecessor QI as it relates to such QI's QI agreement, the predecessor or acquired QI must notify the IRS that it intends to terminate this Agreement prior to the end of its term by delivery of a notice of termination and merger, in accordance with section 12.06 of this Agreement. A notice of termination and merger shall take effect on the date specified in the notice, and QI is required to notify its withholding agent of the date that its status as a QI is terminated and designate the successor QI to receive payments in its capacity as a QI for any accounts previously covered by predecessor QI's QI Agreement.

The successor QI must ensure that all reporting and tax filing obligations are fulfilled and any withholding is deposited, in accordance with the procedures outlined in Rev. Proc. 99-50, 1999-2 C.B. 757, when applicable, that arose in the calendar years and portion of the calendar year in which termination is requested and for which this Agreement was in effect (including for Form 1042-S filed to report withholding under chapter 4). To the extent QI is acting as a QDD, it must use the standard procedure outlined in Rev. Proc. 99-50 and cannot use the alternative procedures. See QI's FATCA Requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI for the procedures, if any, for reporting on Form 8966 in the case of a merger or acquisition. In addition, the successor QI must



provide the certification required by section 10.03 for the predecessor QI's compliance period prior to the merger (and must include the predecessor QI in its review following the merger).

The IRS shall revoke the predecessor QI's QI-EIN within a reasonable time after the reporting, tax filing, and depositing requirements for such years are satisfied. The termination of this Agreement is not intended to affect any other federal income tax consequences

**Sec. 11.06. Event 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 the responsible officer had actual knowledge or should have known of the facts relevant to the failure to perform any material duty. An event of default 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 a material amount of tax that QI is required to withhold under chapter 3 or 4 or backup withhold under section 3406 and fails to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;
- (C)** QI makes excessive refund claims;
- (D)** Documentation described in section 5 of this Agreement is lacking, incorrect, or unreliable for a significant number of direct account holders;
- (E)** QI files Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent;
- (F)** If QI is an FFI, QI fails to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;
- (G)** If QI is a sponsoring entity, QI fails to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;
- (H)** QI fails to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and section 3406 with respect to any account for which QI does not act as a QI.
- (I)** QI fails to perform a periodic review when required or document the findings of such review in a written report;

- (J) QI fails to cooperate with the IRS on its compliance review described in section 10.08 of this Agreement;
- (K) QI fails to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective;
- (L) 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;
- (M) QI fails to inform the IRS of any PAI of QI, as described in section 4 of this Agreement;
- (N) QI fails to cure a material failure identified in the qualified certification described in Part II.B of Appendix I to this Agreement or identified by the IRS;
- (O) QI makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or QI's reviewer;
- (P) The IRS determines that QI's reviewer is not sufficiently independent, as described in this Agreement, to adequately perform its review function, and QI fails to arrange for a periodic review conducted by a reviewer approved by the IRS;
- (Q) An intermediary with which QI has a PAI agreement is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.04 of this Agreement;
- (R) A partnership or trust to which QI applies the agency option is in default with that agreement and QI fails to terminate that agreement within the time period specified in section 4.06 of this Agreement; and
- (S) If QI is acting as a QDD, after calendar year 2017, QI fails to timely pay a material amount of its QDD tax liability and fails to correct the underpayment and pay the appropriate tax amount.

**Sec. 11.07. Notice and Cure.** Upon the occurrence of an event of default, the IRS will deliver to QI a notice of default specifying each event of default. QI must respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which to cure or shall state why QI believes that no event of default occurred. If QI does not provide a 60-day response, the IRS will deliver a notice of termination as provided in section 11.02 of this Agreement. If QI provides a 60-day response, the IRS shall either accept or reject QI's statement that no default has occurred or QI's proposal to cure the event of default. If the IRS rejects QI's contention that no default has occurred or rejects QI's proposal to cure the event of default, the IRS may offer a counter-proposal to cure the event of default with which QI will be required to comply

within 30 days. If QI fails to provide a 30-day response, the IRS will send a notice of termination in accordance with section 11.02 of this Agreement to QI, which QI may appeal within 30 days of the date of the notice by sending a written appeal to the address specified in section 12.06 of this Agreement. If QI appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of a review, the QI may cure the default, without following the procedures of this section 11.07, if the external reviewer's report describes the default and the actions that QI took to cure the default and the IRS determines that the cure procedures followed by QI were sufficient. If the IRS determines that QI's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 11.07 shall be followed.

**Sec. 11.08. Renewal.** If QI intends to renew this Agreement, it must submit an application for renewal to the IRS on the QI/WP/WT Application and Accounts Management System. This Agreement will be renewed only upon the agreement of both QI and the IRS. A QI that seeks to renew its QI agreement and also seeks to become a QDD (that was not previously acting as a QDD) must supplement the renewal request by providing a statement containing all information required by Form 14345 relating to a QDD.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

**Sec. 12.01.** QI's application to become a QI, all Appendices to this Agreement, and, if QI is an FFI, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, are hereby incorporated into and made an integral part of this Agreement. This Agreement, QI's application, and the Appendices to this Agreement constitute the complete agreement between the parties.

**Sec. 12.02.** This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. This Agreement will only be modified through published guidance issued by the IRS and U.S. Treasury Department. Any such modification imposing additional requirements will in no event become effective until the later of 90 days after the IRS provides notice of such modification or the beginning of the next calendar year following the publication of such guidance.

**Sec. 12.03.** 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. 12.04.** 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. For this purpose, QI agrees to submit to the jurisdiction of such United

States court.

**Sec. 12.05.** QI's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 12.06.** Except as otherwise provided in the QI/WP/WT Application and Accounts Management System, notices provided under this Agreement shall be mailed registered, first class airmail. All notices sent to the IRS must include the QI's name, QI-EIN, GIIN (if applicable), and the name of its responsible officer. Such notices shall be directed as follows:

To the IRS:  
Internal Revenue Service  
Foreign Payments Practice  
Foreign Intermediaries Program  
290 Broadway, 12th Floor NW  
New York, New York 10007-1867

To the QI:  
The QI's responsible officer. Such notices shall be sent to the address indicated in the QI's registration or application (as may be amended).

**Sec. 12.07.** QI, acting in its capacity as a QI or in 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.

## SECTION 7. EFFECTIVE DATE

The effective date of the QI agreement contained in section 6 of this revenue procedure (as modified and superseded by any future published guidance) is on or after January 1, 2017.

## SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Leni C. Perkins of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ms. Perkins at (202) 317-6942 (not a toll free call) or, with respect to QDDs, Peter Merkel or Karen Walny at (202) 317-6938 (not a toll free call).



## APPENDIX I

General Instructions: QIs must provide the information and certifications described in this Appendix as applicable to their QI status and activities. The following Parts must be completed by the specified QIs:

- Part I: All QIs.
- Part II: All QIs.
- Part III: QIs eligible pursuant to section 10.07(A) and (B) of the QI Agreement to apply for a waiver of the periodic review requirement (as described in section 10.07 of the QI Agreement) and who wish to apply for such a waiver. Under section 10.07(A) and (B) of the QI Agreement, the following QIs are not eligible for a waiver: (a) QIs that are NFFEs, (b) QIs that are acting as QDDs, and (c) QIs that are part of a consolidated compliance program.
- Part IV.A: All QIs that have not applied for or have not been approved for a waiver.
- Part IV.B-F: All QIs, excluding QIs that are only acting as QDDs and have no other QI activities, that have not applied for or have not been approved for a waiver.
- Part V: All QIs that are acting as QDDs.
- Part VI: All QIs that assume primary withholding responsibility for payments of substitute interest.

A Compliance QI may complete Parts I and II for the QI members of its consolidated compliance group. However, the factual information provided in Parts IV through VI must be completed separately for each QI member in the consolidated compliance group.

### **PART I. GENERAL INFORMATION**

- A. Did QI assume primary chapters 3 and 4 withholding responsibility for any calendar year covered by the certification period? Y/N
- B. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any calendar year covered by the certification period? Y/N
- C. Is QI the Compliance QI for a consolidated compliance program? Y/N
  - 1. If yes, provide the names and QI-EINs of the members of the consolidated compliance group.
- D. PAIs and partnerships and trusts to which QI applied the joint account or agency option during any time within the certification period:

1. The number of PAIs with whom QI has a PAI Agreement (if none enter 0).
  - a. Provide the names and addresses of those PAIs.
  - b. Each PAI has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI) for the certification period, as required under section 4.01 of the QI Agreement. Y/N
  - c. Each PAI has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.01(F) of the QI Agreement) or (2) a certification as described in section 10.03 of the QI Agreement and a periodic review report as described under section 10.06 of the QI Agreement for the certification period. Y/N
2. The number of partnerships or trusts to which QI applies the agency option (if none enter 0).
  - a. Each partnership or trust to which QI applies the agency option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an NFFE, or an exempt beneficial owner, or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471-5(a), as required under section 4.06(A)(2) of the QI Agreement. Y/N
  - b. Each partnership or trust to which QI applies the agency option pursuant to section 4.06 of the QI Agreement has provided QI with either (1) its information for inclusion in QI's periodic review (as described in section 4.06(A)(5) of the QI Agreement) or (2) a certification described in section 10.03 of the QI Agreement and a periodic review report as required under section 10.06 of the QI Agreement for the certification period. Y/N
3. The number of partnerships or trusts to which QI applies the joint account option (if none enter 0).
  - a. Each partnership or trust to which QI applies the joint account option has provided QI with a certification that it has maintained status as a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to QI, an exempt beneficial owner, or an NFFE or that it is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Treas. Reg. § 1.1471-5(a), as required under section 4.05(A)(1) of the QI Agreement. Y/N

**PART II: CERTIFICATION OF INTERNAL CONTROLS AND GENERAL INFORMATION —To be Completed by All QIs. Complete Either A (Certification of Effective Internal Controls) or B (Qualified Certification).**

**A. Certification of Effective Internal Controls**

If the responsible officer has identified an event of default or a material failure that QI has not corrected as of the date of this certification (or such an event of default or material failure has otherwise been identified), the responsible officer cannot make the certification of effective internal controls under this Part A and must make the qualified certification under Part B, below.

The responsible officer certifies to the following, check each statement to confirm:

1. QI has established a compliance program that meets the requirements described in section 10.02(A) or 10.02(B) (if applicable) of the QI Agreement that is in effect as of the date of the certification and during the certification period.
2. Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and according to its applicable FATCA requirements, with respect to accounts for which it acts as a QI.
3. Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, review, or certification undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 10.03(B) of the QI Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate them and to prevent their reoccurrence by the date of this certification. See Part II.D.3.A.
4. With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
5. All PAIs of QI and partnerships and trusts to which QI applies the agency option have either (a) provided (or will provide, to the extent QI does not obtain a waiver under section 10.07 of the QI Agreement) documentation and other necessary



information for inclusion in the QI's periodic review or (b) provided the responsible officer of QI with a certification of effective internal controls described in Part II.A of Appendix I to the QI Agreement and have represented to QI that there are no material failures, as defined in section 10.03(B) of the QI Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the PAIs, partnerships, or trusts have disclosed any such failures to QI together with the actions taken by the PAI, partnership, or trust to remediate such failures.

6. QI's policies, procedures, and processes are applied consistently to all branches covered by the QI Agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable).
7. If QI is acting as a QI and has assumed primary withholding responsibility with respect to payments of substitute interest (as described in section 3.03(A) of the QI Agreement), QI has assumed primary withholding responsibility for all such payments covered by the QI Agreement.
8. A periodic review was conducted for the certification period in accordance with section 10.04 of the QI Agreement, and the results of such review are reported to the extent required in sections 10.05 and 10.06 of the QI Agreement.

#### B. Qualified Certification

If the responsible officer has identified an event of default or a material failure that QI has not corrected as of the date of this certification, check the applicable statements to confirm:

1. The responsible officer (or designee) has identified an event of default, as defined in section 11.06 of the QI Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 10.03(B) of the QI Agreement with respect to QI's compliance, its PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option and that appropriate actions will be taken to prevent such failures from reoccurring.
2. With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).
3. The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide

(either directly or through QI) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure

### C. Amended Form 1042

1. QI filed an amended Form 1042 to report additional tax liability based on the results of the periodic review or the findings of any other procedure, process, or review undertaken by the responsible officer in preparation for his or her certification of internal controls. Y/N

### D. Material Failures or Event of Default

Check the applicable statements to confirm. If QI is a Compliance QI and identifies a material failure or event of default, it should also indicate which QI in the consolidated compliance group is associated with the material failure or event of default. For 2017, a material failure relevant to a QDD has not occurred unless the QDD failed to make a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement relating to its QDD obligations.

1. The responsible officer has determined that as of the date of the review, there are no material failures with respect to QI's compliance with the QI Agreement.
2. The responsible officer has determined that as of the date of the review, there are one or more material failures with respect to QI's compliance with the QI Agreement and that appropriate actions have been or will be taken to prevent such failures from reoccurring.
  - a. The following material failures were identified:
    - i. QI's establishment of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with the QI Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.
    - ii. QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under the QI Agreement, or if QI is acting as a QDD, its obligations as a QDD under the QI Agreement and pursuant to section 871(m) and the regulations under that section.

- iii. A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.
- iv. A finding (including a finding noted in the periodic review report described in section 10.06 of the QI Agreement) that, for one or more years covered by the QI Agreement, QI failed to:
  - 1. Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of the QI Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;
  - 2. Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;
  - 3. Provide allocation information as described in section 6.03(D) of the QI Agreement (regarding U.S. non-exempt recipient account holders) by January 15, as required by that section when QI applies the alternative withholding rate pool procedures;
  - 4. Make deposits in the time and manner required by section 3.08 of the QI Agreement or make adequate deposits to satisfy its withholding obligations or, if QI is acting as a QDD, timely satisfy its QDD tax liability, taking into account the procedures under section 9 of the QI Agreement
  - 5. Report or report accurately on Forms 1099 as required under section 8.06 of the QI Agreement or provide information to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;
  - 6. Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of the QI Agreement;
  - 7. Report or report accurately on Form 8966 under sections 8.04 and 8.05 of the QI Agreement; or

8. Withhold an amount required to be withheld or report accurately with respect to U.S. source substitute dividend payments or make timely and adequate deposits of tax due with respect to such payments for which QI is a QSL and acts as a dealer or intermediary.
      - v. Other (include a detailed explanation).
3. The material failure identified in the review has been corrected by the time of this certification. Y/N/NA
  - a. If yes, describe the steps taken to correct the material failure.
  - b. If no, describe the proposed steps to be taken to correct the material failure and the time frame for completing such steps.
4. Did any PAI of QI inform QI that it has had a material failure with respect to its agreement with QI? Y/N/NA
  - a. If yes, provide name of PAI and, based on the information provided by PAI, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
5. Did any partnerships or trusts to which QI applies the agency and/or joint account option inform QI that it has had a material failure with respect to its obligations as described in the QI Agreement? Y/N/NA
  - a. If yes, provide name of the partnership or trust and, based on the information provided by the partnership or trust, describe the steps taken to correct the material failure or the proposed steps to be taken to correct the material failure and the timeframe for completing such steps.
6. An event of default as defined in section 11.06 of the QI Agreement has been identified. Y/N
  - a. If yes, identify the event of default:
    - i. QI failed to implement adequate procedures, accounting systems, and internal controls to ensure compliance with the QI Agreement;
    - ii. QI underwithheld a material amount of tax that QI was required to withhold under chapter 3 or 4 or backup withhold under section 3406 and failed to correct the underwithholding or to file an

amended Form 1042 or 945 reporting, and paying, the appropriate tax;

- iii. QI made excessive refund claims;
- iv. Documentation described in section 5 of the QI Agreement was lacking, incorrect, or unreliable for a significant number of direct account holders;
- v. QI filed Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent;
- vi. If QI is an FFI, QI failed to materially comply with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;
- vii. If QI is a sponsoring entity, QI failed to materially comply with the due diligence, withholding, reporting, and compliance requirements of a sponsoring entity;
- viii. QI failed to materially comply with the requirements of a nonqualified intermediary under chapters 3 and 61, and section 3406 with respect to any account for which QI does not act as a QI;
- ix. QI failed to perform a periodic review when required or document the findings of such review in a written report;
- x. QI failed to cooperate with the IRS on its compliance review described in section 10.08 of the QI Agreement;
- xi. QI failed to inform the IRS of any change in the applicable know-your-customer rules within 90 days of the change becoming effective;
- xii. QI failed 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 the QI Agreement;
- xiii. QI failed to inform the IRS of any PAI of QI, as described in section 4 of the QI Agreement;
- xiv. QI failed to cure a material failure identified in the qualified certification described in Part II.B of Appendix I to the QI Agreement or identified by the IRS;

- xv. QI made any fraudulent statement or a misrepresentation of material fact with regard to the QI Agreement to the IRS, a withholding agent, or QI's reviewer;
- xvi. The IRS determined that QI's reviewer is not sufficiently independent, as described in the QI Agreement, to adequately perform its review function, and QI failed to arrange for a periodic review conducted by a reviewer approved by the IRS;
- xvii. An intermediary with which QI has a PAI agreement was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.04 of the QI Agreement;
- xviii. A partnership or trust to which QI applied the agency option was in default with that agreement and QI failed to terminate that agreement within the time period specified in section 4.06 of the QI Agreement;
- xix. If QI is acting as a QDD, after calendar year 2017, QI failed to timely pay a material amount of its QDD tax liability and failed to correct the underpayment and pay the appropriate tax amount; or
- xx. Other (please describe).

#### E. Significant Change in Circumstances

Check the applicable statements to confirm.

1. For the most recent certification period, the periodic review has not identified any significant change in circumstances, as described in section 11.04(A), (D), (E), or (J) of the QI Agreement.
2. For the most recent certification period, the periodic review has identified the following significant change(s) in circumstances:
  - 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 material change in the applicable know-your-customer rules and procedures.
  - c. A significant change in QI's business practices that affects QI's ability to meet its obligations under the QI Agreement.

- d. If QI is acting as a QDD, QI ceases to qualify as an eligible entity, including as a result of a change in its business or regulatory status.
  - e. Other.
3. Describe any significant changes in circumstances identified in Question 2 (and, if 2.d is selected, include the date on which the QI ceased to qualify as an eligible entity).

#### F. Chapter 4 Status

Complete the applicable section and check the applicable statement to confirm.

##### Participating FFIs

1. For the most recent certification period under the QI Agreement, QI (or a branch of QI) has obtained status as a participating FFI and made the following certification of compliance with respect to its FFI agreement for the most recent certification period under the FFI agreement (check one). Note: You may only check N/A if, during the certification period, your chapter 4 status changed from one of the other applicable chapter 4 statuses to participating FFI or if your certification under the FFI agreement is not due as of the date of this certification.
- a. Certification of Effective Internal Controls
  - b. Qualified Certification
  - c. N/A

##### Registered Deemed-Compliant FFIs

1. For the most recent certification period under the QI Agreement, QI certified as required under Treas. Reg. § 1.1471-5(f)(1)(ii)(B) or Annex II of an applicable Model 2 IGA that it has satisfied the requirements for the deemed-compliant FFI status claimed.

##### Registered Deemed-Compliant Model 1 IGA FFIs

1. For the most recent certification period under the QI Agreement, QI (or a branch of QI) has been resident in or organized under the laws of a jurisdiction that has in place a Model 1 IGA with the United States (or in the case of a branch of QI, the branch operates in the jurisdiction) and has met the requirements under the IGA to be treated as a deemed-compliant FFI.

### **PART III. WAIVER OF PERIODIC REVIEW**

***For Parts B.1 through 6, while the curing of inadequate documentation is permissible, the information reported in this section of the Appendix must not reflect any remediation or curing.***

***Note: In order to be eligible for a waiver, QI must be able to confirm all of the eligibility requirements in Part A are met.***

For purposes of this Part, “account” means, unless otherwise specified, any account for which QI acts as a QI.

#### A. Eligibility for Waiver (check each statement to confirm)

1. QI is an FFI that is not also acting as a QDD.
2. QI is not part of a consolidated compliance program.
3. For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed \$5 million.
4. QI timely filed its Forms 1042, 1042-S, 945, 1099, and 8966 (as required for chapter 4 purposes or the reporting required under an applicable IGA), as applicable, for all calendar years covered by the certification period.
5. QI made all periodic certifications and reviews required by sections 10.02 and 10.03 of the QI Agreement as well as all certifications required pursuant to QI’s FATCA requirements as a participating FFI or registered deemed-compliant FFI.
6. QI made the certification of internal controls in Part II.A.

#### B. Information required (provided for the most recent calendar year within the certification period)

1. The total number of accounts
  - a. Total number of direct account holders
    - i. Foreign persons
    - ii. U.S. exempt recipients
    - iii. U.S. non-exempt recipients



- iv. Intermediaries and flow-through entities
- b. Total number of indirect account holders
  - i. Foreign persons
  - ii. U.S. exempt recipients
  - iii. U.S. non-exempt recipients
  - iv. Intermediaries and flow-through entities
- 2. The total number of U.S. account holders that received reportable payments.
- 3. The total number of non-U.S. account holders that received reportable amounts.
- 4. The total number of such accounts that have valid documentation.
- 5. The total number of accounts that have no documentation or invalid documentation.
- 6. The total number of Forms 1042-S filed by QI.
- 7. Total of reportable amounts received for non-U.S. accounts.
- 8. Total of reportable payments received for U.S. accounts.
- 9. The aggregate amount of tax withheld under chapter 3 and chapter 4 (by QI or QI's withholding agent(s)).
- 10. The total number of Forms 1099 filed by QI.
- 11. The aggregate amount of backup withholding under section 3406 by QI or QI's payor(s).

**PART IV. PERIODIC REVIEW: QI FACTUAL INFORMATION—To be Completed by All QIs that have not Applied for or Obtained a Waiver. If QI acts solely as a QDD and has no other QI activities, QI is not required to complete Part IV.B through F.**

**A. General Information**

- 1. Did QI use an external reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide name(s) of reviewer(s).

2. Did QI use an internal reviewer to conduct any portion of its periodic review? Y/N
  - a. If yes, provide a brief description of the internal reviewer, such as their department and other roles and responsibilities with respect to the QI's QI activities.
3. Calendar year reviewed for periodic review.

*Caution: On the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of the QI Agreement), there must be 15 or more months available on the statutory period for assessment for taxes reportable on Form 1042 of the calendar year for which the review was conducted or the QI must submit, upon request by the IRS, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of the QI Agreement.*

#### B. General Information on Accounts and Review of Accounts

***For Parts B through F, while the curing of inadequate documentation is permissible, unless otherwise indicated, the information reported shall be based on the review and not results obtained after curing. For purposes of this Part, "account" means, unless otherwise specified, any account for which QI acts as a QI. However, do not include accounts for which QI is acting as a QDD or accounts receiving substitute interest payments for which QI has assumed primary withholding responsibility.***

1. Did QI assume primary chapters 3 and 4 withholding responsibility for any accounts for the calendar year provided in Question 3 in Part A, above? Y/N
2. Did QI assume primary Form 1099 reporting and backup withholding responsibility for any accounts for the calendar year provided in Question 3 in Part A, above? Y/N
3. Total accounts reviewed for periodic review.
4. Did QI use a statistical sampling method in conducting the review of its accounts? Y/N/NA
  - a. If yes, was it the safe harbor method under Appendix II to the QI Agreement?
  - b. If no, describe the method used.

5. Total accounts reviewed that received reportable amounts.
6. Total accounts reviewed that received withholdable payments that are not reportable amounts.

### C. Documentation

1. Total accounts reviewed held by direct account holders.
2. Total accounts reviewed held by indirect account holders.
3. Total accounts reviewed with valid documentation.
4. Total accounts reviewed with invalid documentation or no documentation.
5. Total accounts reviewed with invalid documentation or no documentation for which valid documentation or additional valid documentation was obtained after the review.
6. Total accounts reviewed for which treaty benefits were claimed.
7. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
8. Total accounts reviewed held by U.S. non-exempt recipient account holders.
9. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.
10. If QI has not assumed primary Form 1099 reporting and backup withholding responsibility, total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has transmitted Forms W-9 to a withholding agent.
11. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools.
12. Total accounts reviewed assigned to chapter 3 or chapter 4 withholding rate pools where QI did not correctly report withholding rate pool information to a withholding agent.
13. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable).

14. Total accounts reviewed that are U.S. accounts (or U.S. reportable accounts under an applicable IGA) (if applicable) for which QI has obtained a valid Form W-9 or, if applicable, self-certification.

#### D. Withholding

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S.
2. Number of accounts for which amounts were withheld under chapter 3.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S.
4. Number of accounts for which amounts were withheld under chapter 4.
5. The aggregate amount reported as withheld by QI on Forms 1099.
6. Number of accounts for which amounts were backup withheld under section 3406.
7. Additional withholding required under chapter 4 based on results of periodic review.
8. Additional withholding required under chapter 3 based on results of periodic review.
9. Additional backup withholding required under section 3406 based on results of periodic review.
10. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement.
11. Number of partnerships or trusts to which the joint account treatment of section 4.05 of the QI Agreement was applied (if applicable).
  - a. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was applied.
  - b. Total accounts to which joint account treatment applied for which appropriate documentation was obtained and the appropriate rate of withholding was not applied.

- c. Total accounts to which joint account treatment applied for which appropriate documentation was not obtained and the appropriate rate of withholding was not applied.
- d. Aggregate amount of underwithholding resulting from the appropriate rate of withholding not being applied with respect to an account to which the joint account treatment applied.

#### E. Reconciliation of Reporting on Payments of Reportable Amounts

1. The aggregate amount reported paid to QI on all Forms 1042-S issued to QI.
2. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pools (other than the U.S. payee pool) (including a chapter 4 reporting pool of a PAI or a partnership or trust to which QI applies the agency option).
3. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 4 reporting pool- U.S. payee pool.
4. The aggregate amount reported paid by QI on Forms 1042-S to QI's chapter 3 reporting pools (including chapter 3 reporting pools of a PAI or partnership or trust to which QI applies the joint account or agency option).
5. The aggregate amount reported paid by QI on Forms 1042-S to other QIs (excluding QIs that are acting as QDDs), QSLs, and WPs and WTs as a class.
6. The aggregate amount reported paid by QI on Forms 1042-S to QIs that are acting as QDDs.
7. The aggregate amount reported paid by QI on Forms 1042-S to participating FFIs, registered deemed-compliant FFIs, and registered deemed-compliant Model 1 IGA FFIs that are intermediaries or flow-through entities as a class and with respect to their chapter 4 reporting pools (excluding amounts referenced in Questions 5 and 6 directly above).
8. The aggregate amount reported paid by QI on Forms 1042-S to indirect account holders (not included in Question 2 or 7 above and including an account holder of an intermediary or flow through entity reported by QI as made to an unknown recipient on Form 1042-S).
9. The aggregate amount subject to reporting on Form 1042-S paid by QI to U.S. non-exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.

10. The aggregate amount subject to reporting on Form 1042-S paid by QI to U.S. exempt recipients as a class not includable in a chapter 4 withholding rate pool of QI.
11. The aggregate amount paid by QI to its direct account holders (including account holders of any PAI or partner, beneficiary, or owner of a partnership or trust to which QI applies the joint account or agency option) that requested individual Form(s) 1042-S.
12. Total of questions 2 through 11.
13. The amount of any unreconciled variances (if Question 1 minus Question 12 is other than 0).

F. Reconciliation of Withholding on Reportable Amounts

1. The aggregate amount reported as withheld by another withholding agent on Forms 1042-S issued to QI.
2. The aggregate amount reported by QI as amounts it withheld on Forms 1042-S.
3. The aggregate amount reported by QI as amounts it backup withheld on Forms 1099.
4. If QI did not assume primary withholding responsibility and amounts are entered for questions 2 or 3, explain any underwithholding that occurred by the withholding agent.
5. If QI assumed primary withholding responsibility and an amount is entered for question 1, explain the amount withheld by others.
6. The aggregate amount of any collective claims for refund or credit made by QI.

**Part V. Qualified Derivatives Dealers**

[RESERVED]

**Part VI. Substitute Interest**

Complete only if a QI that has assumed primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of the QI Agreement).

## A. General Information

1. Total number of accounts receiving substitute interest payments.
2. Total number of accounts receiving substitute interest reviewed as part of the periodic review.

## B. Documentation

1. Total accounts reviewed with valid documentation.
2. Total accounts reviewed with invalid documentation or no documentation for which documentation or additional documentation was obtained after the initial review.
3. Total accounts reviewed for which treaty benefits were claimed.
4. Total accounts reviewed for which treaty benefits were claimed where QI did not obtain sufficient documentation to establish the payee's entitlement to treaty benefits (including, where applicable, the treaty statement and limitation on benefits information required by section 5.03(B) of the QI Agreement).
5. Total accounts reviewed held by U.S. non-exempt recipient account holders.
6. Total accounts held by U.S. non-exempt recipient account holders reviewed for which QI has obtained a valid Form W-9.

## C. Withholding

1. The aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S with respect to substitute interest payments.
2. Number of accounts for which amounts were withheld under chapter 3 with respect to substitute interest payments.
3. The aggregate amount reported as withheld under chapter 4 by QI on Forms 1042-S with respect to substitute interest payments.
4. Number of accounts for which amounts were withheld under chapter 4 with respect to substitute interest payments.
5. Additional withholding required under chapter 4 based on results of periodic review.

6. Additional withholding required under chapter 3 based on results of periodic review.
7. Aggregate amount reported as withheld on Forms 1099 on reportable payments (including reportable amounts) subject to backup withholding.
8. Additional backup withholding required based on results of periodic review.
9. The aggregate amount of deposits made in accordance with section 3.08 of the QI Agreement with respect to substitute interest payments.

#### D. Reporting

1. Total amount of interest or substitute interest payments received for which QI represented itself as assuming primary withholding responsibility.
2. Aggregate amount of substitute interest payments made.
3. Total amount of payments in Question 2 that were reported on Forms 1099.
4. Total amount of payments in Question 2 that were amounts subject to chapter 4 reporting reported on Form 1042-S.
5. Total amount of payments in Question 2 that were amounts subject to chapter 3 reporting reported on Form 1042-S.
6. Aggregate amount of any claims for credit or refund made by QI with respect to payments of substitute interest.



## APPENDIX II

### **Section I. Background.**

To the extent provided in section 10.05 of the QI Agreement, the reviewer is permitted to use a sampling methodology to perform the periodic review. This Appendix includes safe harbor procedures covering basic sample design parameters and methodologies, including sample size, strata allocation, and projection. Generally, sampling should only be used whenever an examination of all accounts within a particular class of accounts would be prohibitive in terms of time and expense. If it is reasonable to examine all accounts in connection with a particular part of the periodic review, sampling techniques should not be used. Except as otherwise provided herein, the terms used in this Appendix are as defined in section 2 of the QI Agreement.

Sampling should only be used if there are more than 60 accounts to review. If any accounts of a QI held by PAIs (“PAI accounts”) or accounts of a QI held by partnerships or trusts utilizing the Agency Option (“Agency Accounts”) are also included in the QI’s review (because the PAI or the partnership or trust did not perform its own compliance review), the PAI or Agency Accounts should be included in the sample of accounts for which QI acts as a QI (“QI accounts”) by adding additional strata, replicating the strata prescribed in section II.A.3 of this Appendix, as applicable, that contain only PAI accounts or Agency Accounts. For purposes of the QI’s periodic review, a QI account is referred to as a “sample unit” (and collectively as the “sample”) with respect to each review. If a population contains 60 or fewer sample units, all sample units for that population must be reviewed.

The sampling methodology employed envisions a documentation review (as prescribed in section 10.05(A) of the QI Agreement) requiring review of all selected sample units, and a review of: (1) withholding rate pool classifications (as prescribed in section 10.05(B) of the QI Agreement), (2) withholding responsibilities (as prescribed in section 10.05(C) of the QI Agreement), and (3) information reporting (as prescribed in section 10.05(D) of the QI Agreement) that requires review of a subset (a “spot check” under section II.B.1 of this Appendix) of the sample units reviewed in the documentation review. See section 10.05 of the QI Agreement.

The statistical sampling methodologies used in this Appendix are not intended to be and cannot be used for any other tax purpose. A QI may use another sampling technique provided it documents its parameters and methodologies for the IRS to review, as described in section 10.05 of the QI Agreement. The standards and principles of Rev. Proc. 2011-42, 2011-37 I.R.B. 318, should be applied to any safe harbor sampling procedures. At the time it reviews the QI’s periodic certification, the IRS will determine if a projection of underwithholding identified utilizing a statistical sampling method is required based on that review, along with a review of the QI’s compliance report and other relevant information.

A reviewer may request approval to modify the safe harbor methodology or approval of another sampling methodology in order to select more than one sample or to use

multistage, cluster, or other sampling methodologies including additional stratifications. To obtain IRS approval, contact the Financial Intermediaries Program in accordance with section 12.06 of the QI Agreement.

The safe harbor in this Appendix applies to all QIs, irrespective of whether the QI also acts as a QDD or not, with a certification period ending December 31, 2017. For a QI that also acts as a QDD, the safe harbor excludes a sample of QDD accounts, which will be added in 2017 and applicable to certifications ending after December 31, 2017.

## **Section II. Safe Harbor Methodology.**

### **A. DOCUMENTATION REVIEW**

#### **1. Population.**

*Sample of QI Accounts.* The reviewer selects a random sample of accounts from a portion of the population of all QI accounts. The portion of the population will consist of: (1) all accounts held by U.S. persons (or account holders presumed to be U.S. persons) that received a reportable payment and (2) all accounts held by non-U.S. persons (or account holders presumed to be non-U.S. persons) that received a reportable amount.

#### **2. Sample Sizes for Documentation Review.**

(a) *Sample Size Calculations.* If PAI accounts or Agency Accounts have been added to the sample of QI accounts because the PAI or Agency Partnership or Trust did not perform its own periodic review, a separate sample size calculation should also be performed for the PAI accounts or the Agency Accounts as if they were part of a separate QI sample. If multiple samples are used, the sample size for the each sample (including for any additional PAI accounts or Agency Accounts) is calculated independently. The sample size for each sample is the lesser of (1) the number of sample units determined using the sample formula in section II.A.2(c) , or (2) 25 percent of the total number of sample units in the population. However, in determining the sample size, the reviewer must adhere to the guidelines for minimum stratum sample sizes in sections II.A.3 and II.A.4 of this Appendix. This may result in a sample size greater than the sample size resulting from using the formula in sections II.A.2(b) and II.A.2(c) of this section. The minimum sample size of any sample shall not be less than 60. A sample size larger than calculated under this section may be used without contacting the Financial Intermediaries Program.

(b) *Sample Size Adjustments.* The variable P “error rate” should be set equal to 5 percent for the sample of QI accounts.

(c) *Sample Formula.* The number of sample units to be reviewed is determined using the sample formula as follows:

$$\text{Sample Size} = \frac{\frac{t^2 PQ}{d^2}}{N \left( 1 + \frac{1}{d^2} \left( \frac{t^2 PQ}{d^2} - 1 \right) \right)}$$

where t= 1.645 (confidence coefficient at 95 percent one-sided)

P= 5 percent (error rate) for the QI account sample

Q= 1-P

d = 2 percent (precision level)

N= total population

### 3. Strata.

*Sample of QI Accounts.* The reviewer must segregate all of the QI accounts into the following strata. While segregating accounts, steps should be taken to ensure all partnerships and trusts for which the QI has utilized the joint account option are placed into the appropriate direct account stratum (stratum 1) while the underlying partners, beneficiaries, or owners of the partnerships or trusts are excluded from the indirect stratum (stratum 3). Such underlying accounts will be selected for review in accordance with section II.A.7 of this Appendix.

Further substratification by dollar amounts may be used in accordance with section II.A.6 of this Appendix.

(a) A stratum of all accounts held by direct account holders that are not U.S. non-exempt recipients.

(b) A stratum of all accounts that are held by direct account holders that are U.S. non-exempt recipients.

(c) A stratum of all accounts held by indirect account holders.

### 4. Allocation of Sample Size to Each Stratum.

The reviewer must allocate the number of sample units for each sample (including for any PAI accounts or Agency Accounts added to the sample of QI accounts) independently of the other samples. The reviewer must allocate the number of sample units in the sample determined under section II.A.2 of this Appendix to each stratum described in section II.A.3 by multiplying the number of sample units in the sample, as determined under section II.A.2, by a fraction, the numerator of which is the total number of sample units in the stratum and the denominator of which is the total number of sample units in the population. If the allocation of sample units to a stratum using the above method results in a sample size of a stratum that is less than 60 and less than the actual number of sample units in the stratum, the minimum allocation to that stratum is the lesser of (1) 60 sample units or (2) the total number of sample units in the

stratum. If there are fewer than 60 sample units in any stratum, all sample units in that stratum must be examined, and the difference between 60 and the number of sample units in the stratum must be reallocated to the remaining strata on a pro rata basis. If there are 60 or more sample units in the stratum, but the allocation, as determined under the fraction above, is less than 60 sample units, the number of sample units to be used in the sample from that stratum is 60.

#### 5. Random Number Generator.

The reviewer must select for the documentation review sample units from each stratum identified in section II.A.3 of this Appendix by using a random number generator. Random numbers should be drawn separately for each sample (including for any PAI or Agency Account added to the sample of QI accounts) including the use of separate seeds. Information regarding the random number generator used must be included in the records as required in section III.D of this Appendix. This information must be sufficient to allow the IRS to replicate the random numbers as well as to allow the reviewer to continue the sequences of randomly generated numbers if it is determined additional sample units need to be reviewed. This information must include the name and version of the random number generator, the seed numbers used or generated, specification of any options selected, and the computer equipment on which it was run.

#### 6. Optional Further Stratification by Dollar Amounts.

For each sample (including for any PAI or Agency Account added to the sample of QI accounts), the reviewer may further stratify by dollar amounts for that sample without submitting a request for approval when the reviewer is otherwise selecting the sample in accordance with this Appendix. Reportable amounts for foreign recipients and reportable payments for U.S. recipients are to be considered in the substratification. If the reviewer chooses to substratify under this section, the reviewer must comply with the following rules:

- (a) The strata consisting of sample units that have received payments of the highest dollar amounts during the audit year shall not consist of more than 30 accounts. All items in these strata shall be reviewed.
- (b) The remaining strata shall be randomly selected to contain approximately equal amounts in each substratum.
- (c) The minimum strata size shall not be less than 30 sample units.

#### 7. Determining Rate of Withholding for Partnerships and Trusts for Which the QI has Applied the Joint Account Option.

When reviewing documentation of partners, beneficiaries, or owners of a partnership or trust to which a QI has applied the joint account option to determine the rate of withholding the QI should have applied to the partnership or trust, the reviewer may limit the review to the number of partners, beneficiaries, or owners by referring to the table below.

Number of partners, beneficiaries, or owners / Number to be reviewed

0 – 10	All
11 – 14	10
15 – 19	13
20 – 24	16
25 – 29	18
30 – 34	20
35 – 39	21
40 – 49	22
50 – 74	24
75 – 99	26
100 – 199	27
200 – 499	29
500 – 4,999	31
> 4,999	32

**B. WITHHOLDING RATE POOL, WITHHOLDING RESPONSIBILITIES, AND RETURN FILING AND INFORMATION REPORTING REVIEWS (SPOT CHECK)**

**1. Selection of Accounts for Review.**

For purposes of further reviewing and testing accounts previously reviewed in the documentation review for compliance with the withholding rate pool, withholding responsibilities, and return filing and information reporting subsections of sections 10.05(B) through 10.05(D) of the QI Agreement, the reviewer must review accounts from every stratum in the sample that has failed the documentation review specified under section 10.05(A) of the QI Agreement, taking into account the applicable presumption rules where documentation is missing, invalid, or unreliable.

To the extent the number of sample units listed above from the sample (or in the population, if the reviewer has not used statistical sampling) in any stratum is less than 30, the reviewer must also select for review (in the order selected by the random number generator under section II.A.5 of this Appendix or, if the reviewer has not used

statistical sampling, in the order used by the QI for its record keeping) an additional number of sample units drawn from that stratum that equal the difference between 30 and the number of sample units from the sample in that stratum.

When performing portions of the spot check review, if the reviewer determines underwithholding occurred on a payment to an account, all payments to that account must be considered when calculating total underwithholding for that account.

### **Section III. Additional Requirements Regarding the Use of Sampling**

#### **A. DOCUMENTATION OF SAMPLE PLAN**

The reviewer should provide in its periodic report the information described in Rev. Proc. 2011-42, Appendix (A), Sampling Plan Standards, and Appendix (B), Sampling Documentation Standards, as applicable. Additionally, originally recorded payment and withholding amounts as well as the amount that should have been withheld and the amount actually withheld as determined by the compliance review should be retained for every sample unit, as well as any other additional information required by this Appendix.

#### **B. DETERMINATION OF UNDERWITHHOLDING**

If the reviewer determines that underwithholding has occurred with respect to the sampled accounts, QI shall report and pay, in accordance with the requirements of the QI Agreement, the actual underwithheld tax without regard to projection. The QI will also notify the Financial Intermediaries Program within 30 days of the completion of the review, at the address provided in section 12.06 of the QI Agreement, of any underwithholding identified as a result of the review. The QI must report to the IRS the amount of any underwithholding without regard to any curing of any documentation required to support reduced withholding applied by the QI as well as the amount of any underwithholding following any such curing. Curing for purposes of the preceding sentence is limited to curing performed after the selection of the sample.

#### **C. PROJECTION**

At the time it reviews the QI's periodic certification, the IRS will determine if a projection of underwithholding identified from the sample is required based on that review, along with a review of QI's compliance report and other relevant information. If projection is required, the QI or the QI's reviewers will be directed to perform the projection. The IRS will instruct the QI or the QI's reviewers on the use of the formulas in Rev. Proc. 2011-42 to perform the projection.

If the reviewer has determined that overwithholding has occurred with respect to a sample, and the IRS determines projection is appropriate, projection may not be used for the QI to claim a refund. A projection of overwithholding may offset any underwithholding in the sample, provided that QI enters into a closing agreement (Form 906) that QI will not file a claim for refund for any overwithholding that the reviewer has discovered.

The IRS reserves the right to review and adjust any projection. If after reviewing all relevant information, the IRS determines that further action is necessary with respect to determining the amount of underwithholding for the year of review or any other year, the IRS may request that QI have the reviewer review additional sample units or conduct a full review of the entire sample or may determine that it is not appropriate to project an amount of underwithholding.

#### D. REPORTING OF SAMPLE RESULTS IN THE PERIODIC REVIEW REPORT

At a minimum, the reviewer should describe in the report, the steps taken to construct the sample population and the steps taken to ensure all accounts subject to review were included in the population and subject to sampling under the procedures outlined in this Appendix.

The reviewer should also record the original population and sample statistics separately for each sample (including for any PAI or Agency Account added to the sample of QI accounts) by stratum as follows:

- (1) Total number of sample units in the population;
- (2) Total number of sample units in the sample;
- (3) Total reportable amounts for foreign recipients for the population;
- (4) Total reportable payments for U.S. recipients for the population;
- (5) Total reportable amounts for foreign recipients for the sample;
- (6) Total reportable payments for U.S. recipients for the sample;
- (7) Total chapter 3 withholding for the population;
- (8) Total backup withholding for the population;
- (9) Total chapter 4 withholding for the population;
- (10) Total chapter 3 withholding for the sample;
- (11) Total backup withholding for the sample; and
- (12) Total chapter 4 withholding for the sample.

Additionally, the reviewer should note a reconciliation of amounts included in the sample population to payments and withholding of reportable amounts as detailed in Part IV, sections E (Reconciliations of Reporting on Payments of Reportable Amounts) and F (Reconciliation of Withholding on Reportable Amounts) of Appendix I to the QI Agreement.

