

## THE ASSOCIATION OF GLOBAL CUSTODIANS

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January 11, 2005

Robert H. Green  
Director, International (SE:LM:IN)  
Internal Revenue Service  
1111 Constitution Avenue, NW, MA-3-322D  
Washington, DC 20224

Re: Request for Mutual Support

Dear Mr. Green:

As you know, the Association of Global Custodians ("Association") is an informal association of nine North American global custodian banks that hold funds and assets worldwide for institutional investors.<sup>1</sup> The Association members often work together to review and provide comment on issues affecting the business of global custody in various jurisdictions. Many of the Association's efforts have encouraged useful dialogue between the Association and relevant regulatory authorities in particular jurisdictions, often times resulting in resolution to the particular issue at hand. In many instances, however, it has been very difficult to obtain a response or an indication that a particular regulator understands the issue and is willing to consider outside commentary.

Over the past year, the Association has sought operational efficiencies related to claiming treaty benefits and improving service to investors by focusing on regulatory related items in a number of foreign jurisdictions. Our experience confirms that a united voice, speaking for reasoned enhancements is better received than working unilaterally. To this effect, we would like to discuss with you the feasibility of amplifying that voice by adding to it, when appropriate, the voice of the U.S. Competent Authority.

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<sup>1</sup> Association members are noted in the letterhead above.

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Examples of the Association's work over the past year and of issues that we believe would benefit from a collective approach include:<sup>2</sup>

**Germany - Implementation of Appeal Deadline.** In February 2004, the Association submitted a letter to the German authorities regarding the imposition of an appeal deadline by the Bundesamt fuer Finanzen on tax reclaim applications filed on behalf of non-resident investors.<sup>3</sup> In November 2004, the Association received a response from the authorities acknowledging the Association's understanding of the procedures and apologizing for not informing the custodians of the changes in advance of implementation, but rejecting the request for changes to the deadline. Members believe there may be a possibility of seeking a safe harbor for claims that were generated prior to the unannounced implementation of the change. In addition, members believe there is a legitimate issue to be addressed where the German general law overrides treaty terms. Members believe that with the support of the U.S. Competent Authority, further communications with relevant parties may assist in resolving these issues.

**Italy - Outstanding Tax Reclaims.** In May 2004, in a letter to the Direttore Centrale Gestione Tributi, the Association noted its concern over the repayment delays involved in receiving Italian withholding tax refunds and tax credit payments for non-resident investors. Members noted their concern regarding the fact that the Italian market offers a relief-at-source capability, yet there are numerous occasions where obtaining relief at source may not be possible at the time of the income payment. As a result, there are often substantial delays in obtaining tax treaty entitlements through the reclaim process offered in Italy. The Association has not received a response to its letter. Members believe that the involvement of the U.S. Competent Authority is essential to resolving this on-going issue.

**Japan - Treatment of U.S. Pension Funds under the New U.S./Japan Tax Treaty.** The treatment of U.S. pension funds under the new U.S./Japan Tax Treaty has resulted in particularly burdensome issues for custodians, among others, as they work to comply with the extensive administrative requirements. In September 2004, the Association undertook to provide comments to the Japanese National Tax Authority ("NTA")

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<sup>2</sup> Copies of referenced letters are attached.

<sup>3</sup> The Association sent a follow-up letter to the German authorities in September 2004. A copy of that letter is also attached.

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regarding the new U.S./Japan Tax Treaty and the resulting treatment of U.S. pension funds thereunder. The Association sent a letter noting its concern regarding the administrative and documentation requirements under the new Treaty. Specifically, the Association noted concern over the requirements for global custodians to provide beneficial owner breakdown details regarding income arising on assets held for U.S. pension funds in pooled securities accounts on the books of Japanese sub-custodians. The Association also noted concern over the requirement for U.S. pension funds to provide a separate Form 6166 for each income payment for each issue in order to benefit from the reduced Treaty rate.

The letter provided a suggested approach for realistically modifying the new administrative procedures. The Association later learned that the NTA was unable to make any changes to the procedures due to reliance on a Ministerial Order that stipulates these requirements. The Association believes that earlier involvement by its members, along with the support of the U.S. Competent Authority, might have prevented such a Ministerial Order from being issued. We now understand that the Ministerial Order may be modified in 2005 to provide for simplified procedures for the treatment of U.S. pension funds. The Association believes comments from the U.S. Competent Authority regarding the noted concerns may assist in moving this item forward.

**Portugal - New Tax Relief Arrangements.** New tax relief arrangements in Portugal require the tax reclaim form be signed and certified by the IRS. This effectively eliminates the ability of U.S. investors to take advantage of the at-source/simplified reclaim procedures offered by agent banks. In March 2004, the Association submitted a letter commenting on the changes to the Portuguese Ministry of Finance and the Secretary of State. No response has been received. Members believe that with the support of the U.S. Competent Authority, the Portuguese regulators will be more inclined to focus on the Association's comments and suggestions.

Association members would very much appreciate the opportunity to discuss with you the possibility of seeking the support of the U.S. Competent Authority with respect to these and other issues relevant to U.S. taxpayers and global custody customers. If

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you have questions or comments, please contact the undersigned. Otherwise, we will look forward to hearing from you to schedule a meeting to discuss the aforementioned issues in the near future.

Sincerely,



Margaret R. Blake  
Counsel to the Association

- Attachments – Letters, dated February 18 and September 14, 2004, respectively, to Oberregierungsrat Dieter Eimermann Bundesministerium der Finanzen, Regarding One-Month Appeal Deadline on Tax Reclaims;
- Letter, dated May 11, 2004, to Dott Gianni Giammarino, Direttore Centrale Gestione Tributi, Regarding Italian Tax Repayment Issues (English version only);
- Letter, dated September 15, 2004, to Mr. Keiji Aoyama, Deputy Commissioner (International Affairs), National Tax Agency, Regarding Requirements to Comply with the New U.S./Japan Tax Treaty;
- Letter, dated March 5, 2004, to Maria Manuela Dias Ferreira Leite, Ministra de Estado e das Finanças, Regarding Portuguese Tax Relief Issues (English version only) (with attachment).