

THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK  
BROWN BROTHERS HARRIMAN  
CITIBANK, N.A.  
INVESTORS BANK & TRUST COMPANY  
JPMORGAN CHASE BANK, N.A.  
MELLON FINANCIAL  
THE NORTHERN TRUST COMPANY  
RBC GLOBAL SERVICES  
STATE STREET BANK AND TRUST COMPANY

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May 27, 2005

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Re: Form 8802 (Application for U.S. Residency Certification) – Term of Validity

Dear Messrs. Wilson and Hicks:

I am writing to you as counsel for the Association of Global Custodians ("Association"), an informal association of nine North American banks that are major providers of custody services to U.S. institutional investors. We wish to raise an issue regarding the term of validity of Form 8802 (Application for United States Residency Certification) and accompanying documentation. As you know, the certifications are generally needed by U.S. investors to obtain withholding tax relief from U.S. treaty partners.

We originally raised this issue last year in a meeting and correspondence with Mr. Robert Green, Director, International (SE:LM:IN) (see attached copies of our letters of April 13, 2004 and July 30, 2004 to Mr. Green). In subsequent discussions with Mr. Green's staff and members of your staffs to whom we were referred (*i.e.*, including Mike Mara and Tiffany Smith of APJP and Elizabeth Karzon of ACC(I)), we learned that your

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offices have some jurisdiction over decisions affecting Form 8802 and its accompanying documentation.

The nine banks represented in the Association hold over \$40 trillion in securities on behalf of their custodial clients, and they play a very active role in managing the documentation necessary to obtain the proper application of treaty benefits to their clients' international investment income flows. The overwhelming majority of their U.S. clients (upwards of 90% on average) are institutional investors, such as pension funds, regulated investment companies, exempt organizations, and corporations.

Under currently mandated procedures, the Association members typically collect 3 documents from their U.S. clients for transmittal to the Philadelphia Service Center (the "PSC"):

1. Form 8802 itself.
2. In the frequent case where the application is for a residency certification for the current year, a statement signed by the client under penalties of perjury, indicating that the client intends to retain its U.S. resident status throughout the year.
3. Form 8821 (Tax Information Authorization), authorizing release of the U.S. residency certification to the custodian for transmittal to the foreign withholding agent.

Of these three documents, current procedures require that the first two be collected from the clients on an annual basis, whereas the Form 8821 may be collected only once every 3 years, because it allows the client to authorize such disclosure for up to 3 years at a time. Whenever an original Form 8821 is submitted to the PSC in connection with an application for a particular client, the PSC retains that authorization on file for the 3-year period, eliminating the need for the custodian bank to obtain a newly executed Form 8821 for subsequent applications filed during that period.

As we explained to Mr. Green last year, however, the need for the Association members to go back to their institutional investor clients every year to request newly executed Forms 8802 and statements of intention to retain U.S. residency creates a tremendous paperwork burden on both the custodian banks and their institutional investor clients. These categories of investors tend to need residency certifications every year, and their status as U.S. residents is extremely unlikely to change.

*Accordingly, we suggest that the application process could be greatly simplified if these institutional investors were allowed to execute Forms 8802 and statements of intention*

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*to retain U.S. resident status every 3 years, as they are allowed to do in the case of Forms 8821.* In other words, the Association members should be able to solicit all 3 forms of necessary documentation from their institutional investor clients only once every 3 years. This would allow the Association members to submit original, executed documentation to the PSC only once every 3 years, and to submit copies of the originally submitted documentation (or references to the same) in each of the two intervening years. This would still allow the PSC to verify on an annual basis that the institutional investors are still filing tax returns as U.S. residents, it would substantially reduce the need for repetitive solicitation of new documentation from those investors. Under this proposal, we believe the custodian should be allowed to provide an updated list of the countries for which residency certifications are needed, without having to obtain a newly executed Form 8802 exclusively for that purpose.

In discussing this with various members of your staffs, we were told that your respective offices had some reluctance to allow either the Form 8802 or the statement of intention to retain U.S. resident status to have a validity extending beyond one year. Specifically, we were told that APJP had a "preference" for newly executed Forms 8802 on an annual basis, and that ACC(I) had some concerns about accepting a statement of intention to retain U.S. resident status that would extend beyond a one-year period.

We would like to discuss our proposal with you. While we recognize that some of the concerns raised by your staffs may have some validity for other categories of investors (e.g., individuals, where the residency of the relevant taxpayer is more liable to change), we do not believe that those concerns have validity in the case of institutional investors. In particular, we suggest those concerns have no real validity when weighed against the tremendous stream-lining of the Form 8802 application process that could be achieved by adopting our suggestion for institutional investors.

In the case of flow-through entities such as partnerships and common trust funds, we believe the Form 8802 should similarly be required only once every three years, although we recognize that the statement of intention to retain U.S. resident status might have to be collected more frequently from those underlying partners or beneficiaries who are individuals, rather than institutional investors.

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We will contact each of you by telephone to pursue this matter, and we would certainly welcome the opportunity to meet with you, either separately or together, to discuss our recommendation. If you have any questions in the interim, please do not hesitate to contact the undersigned at (202) 452-7045.

Sincerely,



Mary C. Bennett  
Baker & McKenzie LLP  
Counsel to the Association

cc: Mr. Robert H. Green  
Director, International (SE:LM:IN)

Ms. Felecia Davenport  
Program Analyst, Philadelphia Service Center (TA:SBSE:PC)