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Transcript of May 18, 2011, IRS Hearing on Guidance(REG-146097–09) on Reporting Interest Paid to Nonresident Aliens

FRANCISCA MORDI: Good morning. My name is Francisca Mordi, and I am vice president and senior tax counsel at the American Bankers Association.

The ABA is pleased to have the opportunity to testify today regarding this very important issue. The ABA represents banks of all sizes and charters, and is the voice for the nation's 13- trillion (-dollar) banking industry and its 2 million employees.

We understand that governments need to increase transparency, and to eliminate cross-border tax evasion. However, we continue to believe that the proposed regulations are not advisable and would have a significant negative impact on U.S. banks.

We therefore urge the IRS to withdraw the proposed regulations in order to avoid the risk of flight of foreign capital at a time when such capital is very much needed. The inability to maintain or attract foreign deposits that will result from the implementation of the rule will undermine the competitiveness of many U.S. banks, and make it difficult for them to provide much-needed services to their communities.

Let me address some of the comments that were included in the March letter that the Treasury sent to Honorable Mario Diaz-Balart. In the letter, the Treasury stated that the capital base of U.S. banks would not be significantly affected because the total deposit base held by nonresident aliens is a small fraction of the total U.S. deposit base.

It should be noted that some of the community and regional bank members in certain states...for instance, Florida, as you have heard...have a disproportionately higher level of NRA deposit owners relative to the national figures. These banks stand to lose billions of dollars in foreign investments because their NRA customers would rather withdraw their funds, close their accounts, which would include deposit accounts and all other kinds of account relationships they have with the banks, rather than be subjected to U.S. bank disclosure of their U.S. deposit ownership to their home country.

The Treasury letter also notes that Canadian deposits in the U.S. did not decrease after the deposit interest payment reporting changes were finalized in 1996. And that is true. But we point out that Canadian residents do not share the same privacy and security concerns some of the residents of emerging-market countries currently do. So the risk of foreign flight of capital is greater under this proposed regulation than it was under the 1996 regulations.

While the Treasury letter indicates that some research has been conducted by the government on this issue, there is no indication that the IRS has conducted or taken into account any cost-benefit analysis with respect to the proposal. We strongly urge the IRS to conduct such an analysis and take into consideration the significant and overwhelming

burdens that banks will have to deal with, which we believe will be greater than any perceived benefit the government expects to obtain.

Further, the Treasury letter noted that the proposed regulations ensure that the United States is in a position to exchange information on bank depositors' trust reciprocally when it is appropriate to do so, and only with countries with which the U.S. has an information-exchange relationship through a treaty or TIEA.

In effect, banks will incur significant costs, undergo very complicated and burdensome system changes and procedures in order to implement a rule that provides information that may or may not be useful to the IRS. Banks would have to inform their NRA depositors that their interest income will be reported to the IRS, and that the information may then be reported to their home country without any further explanation of how such information will be used.

There's no doubt that a lack of clear understanding, or certainty, about how the information may be used could cause some NRA individuals to doubt the benefits of holding deposits in U.S. banks.

There is absolutely no evidence that finalizing these proposed regulations will help the government catch U.S. taxpayers that represent themselves as residents of other countries in order to avoid U.S. tax. We understand that the IRS has received comments in support of the proposed regulations, and the presenter before me just basically also outlined reasons why the regulations should be finalized.

And we have responded to some of the comments that support the proposed regulations: First, one comment says that the proposed rule helps the fraudulent claims of foreign status by providing additional information that will help the IRS detect U.S. accounts owned by individuals trying to hide such accounts. We should point out to the government that FATCA has been enacted to address the issue of U.S. persons that establish foreign entities to invest in the U.S.

As a matter of fact, the proposed regulations would not require reporting of the foreign-entity-owned accounts as cited in the supporting comment and letter received by the IRS, and will not include U.S. persons owning those foreign entities or any foreign-entity owners.

Since FATCA will address this issue in a way that the proposed regulations will not, we continue to recommend that the service abandon the rule.

The second comment is, the proposed rule should make it clear that if a financial institution knows that the beneficial owner of an account is a non-U.S. individual, the financial institution should disclose the account to the IRS, even if the account is nominally held in the name of a foreign entity. Now, this assertion, in effect, would expand the NRA reporting to foreign-entity accounts established by foreign individuals, and result in a variety of complex and substantial issues. So I won't even go into that

comment; it's just... this comment is just asking for more, which we totally oppose because now we're going into duplicating what FATCA is doing. And we're having enough problems with FATCA as it is.

Another comment says the proposed regulations do not create any new burdens. Now, we assert that this just reinforces a view that the government's perception continues to be that all banks have to do is flip a switch, and everything is ready for compliance. The government should not simply ignore the fact that there are always substantial costs involved in complying with new laws.

Many banks will need to engage in several burdensome steps in order to capture the required information for this proposed reporting. Please see our April 7 letter for an outline of some of these serious burdens that will be created by the proposed regulations.

And the last... the final comment is that there has been some misplaced concern regarding capital outflow. There is no evidence that most foreign account-holders at U.S. financial institutions are tax evaders in their home jurisdictions. We totally agree with this statement.

In fact, we believe that this is the main reason why the proposed rule should be abandoned. The proposed expansive reporting will require reporting on all NRA individuals, when in fact most foreign account-holders are not tax evaders. As we noted...as we noted several times, the benefit of expanded reporting will be small. Most foreign account-holders are not tax evaders. While the cost to comply are potential risks. For instance, flight of capital, deposits due to security concerns, and resulting impact on small U.S. community banks will be huge. The government should not continue to use sledgehammers to kill flies at the expense of banks through unfunded mandates of reporting.

In conclusion, we would like to restate that the implementation burdens associated with these proposed regulations will be significant and costly for many banks. We have outlined some of those significant burdens in our letter, and we hope that the IRS will take them seriously into consideration as it continues to make its determinations regarding these proposed regulations. Thank you.