The Honorable Richard E. Neal
Chairman
House Ways & Means Select Revenue
Measures Subcommittee
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Patrick J. Tiberi
Ranking Member
House Ways & Means Select Revenue
Measures Subcommittee
1102 Longworth House Office Building
Washington, D.C. 20515

November 25, 2009

Re: Foreign Account Tax Compliance Act of 2009 (H.R. 3933, S. 1934) (the "Bill")

Dear Chairman Neal and Ranking Member Tiberi:

The European Banking Federation ("EBF") and the Institute of International Bankers ("IIB") appreciate the opportunity to comment on the Bill's proposed new reporting and withholding tax system (Section 101 of the Bill, which would add new Chapter 4, containing Sections 1471 – 1474, to the Internal Revenue Code).[1]

The EBF is the voice of the European banking sector (EU and EFTA countries). The EBF represents the interests of some 5,000 European banks, and encompasses large and small, wholesale and retail, local and cross-border financial institutions. The IIB represents internationally headquartered financial institutions from over 30 countries, including Europe, the Americas and Asia, with banking and securities operations in the United States. Together, the EBF and IIB represent most of the non-U.S. banks and securities firms around the world that are affected by the Bill.

OVERVIEW

We understand and support the Bill's goal of tackling offshore tax evasion by U.S. persons. We offer the recommendations herein to further that goal in a manner that takes account of the structure and operations of financial intermediaries and the markets that they serve, as well as compliance costs and burdens.

We have worked closely with the Treasury Department and the Internal Revenue Service (the "IRS") for over a decade in seeking to improve the U.S. reporting and withholding tax rules, including the development and implementation of the qualified intermediary ("QI") system. Our member banks have expended enormous amounts of money to implement the QI system and other reporting rules, and believe that overall the system works well and achieves its objectives.

Nonetheless, it is evident that there are gaps in the existing rules that need to be addressed. The Bill builds on the Treasury's May 2009 Green Book proposal for closing the perceived gaps, and we are

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[1] Our membership's concerns and comments on other sections of the Bill have been expressed by other commenters.

grateful that the Bill takes into account a number of practical administrability and market impact concerns that we expressed regarding the Green Book proposal.

In our discussions with the Congressional tax-writing staffs and the Treasury Department and IRS this past summer regarding the Green Book proposal, we focused on two very difficult issues – (i) how, as a practical matter, can a financial institution identify its U.S. accountholders within its vast number of worldwide accounts and business lines if the scope of U.S. tax reporting is expanded beyond the discrete custodial business involving investments in U.S. securities that is the realm of the existing QI and other U.S. tax reporting rules and (ii) how to address the problem of getting information regarding U.S. persons that hold accounts or other investments through a foreign entity or through multiple tiers of foreign entities, including investment vehicles and non-QIs ("NQIs").

The Bill's approaches to resolving these issues raise serious concerns regarding the practicality, feasibility, costs and burdens of implementation as well as their potential impact on capital flows into the United States. We accordingly provide below eight key recommendations of changes in the statutory language and legislative history of the Bill that are intended to improve the likelihood that it will succeed in achieving its objectives. Recommendation 1 deals with the effective date; recommendations 2 and 3 deal with the problem of identifying U.S. accountholders; recommendations 4 and 5 deal with the issue of indirect U.S. ownership through foreign entities; and recommendations 6, 7 and 8 deal with certain administrability and refund concerns.

The Bill appropriately provides substantial flexibility to Treasury and the IRS to issue regulations to fill in the numerous details on how the new reporting and withholding tax rules will work. We stand ready to work closely with them to try to strike the delicate balance between the compliance goal of the Bill to combat U.S. tax evasion and the inevitable costs and burdens associated with that goal that could cause many non-U.S. institutions to opt out of the new system.

The challenges in achieving that balance should not be underestimated. Indeed, one might reasonably conclude that the goals of the Bill are unattainable absent a multilateral agreement regarding uniform, universal identification and reporting standards that reflect an appropriate balance between implementation costs, the associated risks of such a system, and the compliance goal of providing taxpayer specific information to a variety of countries.

In any event, the development and implementation of this new regime will require a substantial commitment of human resources and funding by both the financial and investment industries and the Government. We respectfully urge Congress to provide the IRS with sufficient funding to enable it to fulfill this challenging mandate in a timely and efficient manner.

RECOMMENDATIONS

1. Effective Date

***Recommendation*:**

We recommend that new Chapter 4 (Sections 1471 – 1474) should be effective only when and to the extent provided in Treasury regulations. We understand that Congress may wish to express in legislative history an appropriate timetable for the Treasury Department to issue any such implementing regulations. In addition, it would be helpful if the legislative history encourages the Treasury Department to adopt

regulatory effective dates that will allow for an orderly transition by the financial industry and the IRS to the new withholding tax regime envisioned by Chapter 4 after final regulations are issued.

In particular, the legislative history should clarify that Congress anticipates that Treasury will adopt effective dates that enable financial institutions to put in place, or adapt, automated systems to effectuate the new rules, and to train personnel in applying the new rules. Likewise, the legislative history should encourage the Treasury Department to consider the time necessary for the IRS to publish a form of agreement with foreign financial institutions ("FFIs") under Section 1471(b) (an "FFI agreement") and to finalize such agreement; to sign up those FFIs deciding to enter into such agreements and to publish a list of such qualifying FFIs; to revise Forms W-8 to better collect data related to the new rules; and to put in place streamlined refund and credit processes for any over-withholding that results from the new rules. (Based upon the financial industry's experience with the implementation of the QI regime, we believe it likely that three years from the time the implementing regulations are finalized will be required to accomplish the above tasks.)

***Rationale*:**

Proposed section 1474(d)(1) provides that new Chapter 4 will generally apply to payments made after December 31, 2010. Chapter 4, however, simply sets forth a framework that requires extensive guidance by the Treasury Department before it can be implemented, and grants to Treasury substantial flexibility in issuing regulations detailing how those rules will work in practice.

We support the approach of providing Treasury with the flexibility to work with the financial industry and the IRS to find an appropriate balance between the compliance goal of the Bill to combat U.S. tax evasion and the inevitable costs and burdens associated with that goal. Such a balancing effort is crucial in order to try to minimize the disruptions to the U.S. capital markets if a critical number of FFIs were not to "buy in" to the new regime because the costs and risks associated with FFI status were disproportionate to the compliance goal.

We believe that the sort of flexible approach envisioned by the Bill necessarily calls for an effective date that is tied to the issuance of regulations and a sufficient time period to permit their orderly implementation by the financial industry. No FFI will be in the position to determine if it should sign an FFI agreement without understanding what costs and risks are associated with that agreement as detailed in the implementing regulations. Furthermore, a failure to provide sufficient time for the financial industry to build the systems and processes to comply with any final regulations could lead to massive amounts of over-withholding, contrary to the intent of the Bill. Accordingly we strongly urge Congress to provide the Treasury Department with the authority to design an appropriate timetable for implementation and not tie its hands with a statutory effective date as of a date-certain.

2. Identifying U.S. Accounts Through Available Databases

***Recommendation*:**

The legislative history should clarify that in issuing guidance as to how an FFI or other withholding agent may determine whether an account is a "United States account," the Treasury Department should take into consideration the practical, political and commercial difficulties of obtaining certifications or other representations of non-U.S. tax status from a vast number of non-U.S. accountholders serviced by an FFI (and its affiliates) in order to identify a relatively small number of potential U.S. persons. Most of an FFI's non-U.S. customers will have no reason to provide such a certification or representation since they are not expecting to earn any material amounts of U.S. source FDAP income or gross proceeds from

investments that give rise to U.S. source dividends or interest. Accordingly, an FFI or other withholding agent generally should be allowed to rely on its existing procedures, systems and electronic database entries to reasonably identify potential U.S. persons (for example, by conducting automated searches of residence or address fields or any applicable residency or citizenship codes that might indicate U.S. status), without a requirement that it solicit additional information, such as a Form W-9 or W-8 or an explicit statement of non-U.S. status, from the accountholder in the absence of indicia of a U.S connection. To reflect this intention, proposed Section 1471(b)(1)(A) should be revised to say, "to obtain such information *regarding* each holder etc." instead of "to obtain such information *from* each holder etc." (emphasis added).

***Rationale*:**

Proposed Sections 1471 and 1472 will apply to virtually every customer relationship of an FFI, including a bank's entire depositor base, as well as to many transactional or investment relationships that give rise to non-public debt or equity interests in the financial institution. In the case of many non-U.S. financial institutions, this may cover tens of millions of non-U.S. owned accounts per institution. It is untenable for an FFI to request confirmation of non-U.S. status from such a huge number of existing non-U.S. accounts in order to prove the negative presumption of U.S. status contained in the Bill.

Moreover, even as to new accounts, it is commercially and politically impractical for a financial institution to request U.S. tax-specific information from an overwhelmingly non-U.S. client base that is not investing in U.S. securities. For example, a European bank wanting to comply with the FFI regime would likely find many of its accountholders refusing to provide a certification that they (and in the case of an entity, its owners) are not U.S. persons as a condition to opening a bank account at a local branch that has no connection with any U.S. investment or account.

Under existing regulations, a certification (e.g., on IRS Form W-8BEN) provides, in effect, a safe harbor for establishing that a person is not a U.S. person; in lieu of obtaining a certification, a withholding agent may rely on certain documentary evidence (see Treasury regulation section 1.6049-5(c)). However, the Bill would require an FFI to obtain information that typically is not available under applicable KYC and AML rules or account opening procedures, including as to any substantial U.S. ownership of each accountholder that is a foreign entity (applying a 0 percent threshold for U.S. owners of foreign investment entities described in Section 1471(d)(5)(C) and a 10 percent threshold for other entities).

While it is generally feasible to obtain a certification or other documentation as to U.S. tax status from accountholders and investors that expect to invest, directly or indirectly, in U.S. securities, as noted above it is not practicable to do so from an overwhelmingly non-U.S. client base that is not investing in U.S. securities. This problem will be greatly exacerbated under the new rules' requirement that the FFI identify substantial U.S. owners of foreign entities that are accountholders.

Accordingly, many FFIs will not be able to comply with the new requirements unless the Treasury Department issues guidance – targeted especially to accounts that are not expected to invest, directly or indirectly, in material amounts of U.S. securities – that allows an FFI to rely on its existing procedures to capture relevant accountholder information (for example, address information or applicable residency or citizenship information) in the absence of indicia of a U.S connection. For those accountholders that do have such indicia of a U.S. connection, the FFI would solicit Forms W-9 or W-8 from them to establish either their U.S. or non-U.S. status and provide the information on any U.S. persons so identified in their annual report to the IRS.

3. Due Diligence for Determining U.S. Accounts

***Recommendation*:**

In light of Comment 2 and the impracticality of collecting certifications from largely non-U.S. customer bases, we recommend that proposed Section 1471(c)(3) be removed from the Bill, and instead that Treasury issue appropriate identification rules under section 1471(b)(1)(A) as revised per our recommendation. However, if proposed Section 1471(c)(3) remains, the clause "if neither the financial institution nor any entity which is a member of the same expanded affiliated group as such financial institution knows, or has reason to know, that any information provided in such certification is incorrect" should be replaced with "if the financial institution does not know, or have reason to know, that any information provided in such certification is incorrect, applying the due diligence procedures required by the Secretary pursuant to paragraph (b)(1)B)." The legislative history should clarify that in the absence of reckless disregard of information or a pattern of recording (or omitting to record) information in a manner designed to make it difficult to identify United States accounts, a financial institution generally will not be deemed to know or have reason to know that information provided in a certification is incorrect where any information to the contrary is contained on a database that is not readily accessible to the business unit in which the account is held or is contained in paper files.

***Rationale*:**

We discuss in Comment 2 above our view that a certification requirement that applies to an FFI's entire non-U.S. customer base will be so commercially, and even politically, impractical that few if any FFIs could ever make use of it. However, Section 1471(c)(3) additionally envisions that a financial institution collecting such a certification from an account holder to satisfy Section 1471(b)(1)(A) could only rely on that certification by determining that none of its worldwide affiliates or branches has information contradicting the certification. We believe that Section 1471(c)(3) likewise implies strongly that it would be appropriate for Treasury to issue due diligence and verification procedures under Section 1471(b)(1)(B) to provide for such "worldwide due diligence" even if a financial institution did not collect a certification but used other means to reasonably identify its U.S. customers.

We do not believe that a "worldwide due diligence" standard is feasible. Few, if any, multinational financial institutions have integrated databases and automated systems that would allow a business unit servicing an account to determine if one of its related affiliates or branches – or even separate business units in the same location – had information contradicting its assessment that an account were non-U.S. Such a worldwide due diligence standard becomes even more impracticable if the business unit would also be charged with "knowing" the contents of paper files, especially (but not only) if they are held outside the business unit itself. Finally, in many jurisdictions, information on account holders simply may not be shared between entities or business lines due to relevant privacy, securities and other regulatory rules.

Accordingly, a worldwide due diligence standard would present FFIs with potentially unacceptable systems integration costs, unmanageable risks for a business unit failing to know what information held by a related entity or business line might contradict its assessment of the U.S. status of an account, and legal impediments preventing it from being able to comply. Given these substantial problems, we believe that a worldwide due diligence approach would cause most FFIs, including even some large QIs, to opt out of the system envisioned by Chapter 4. Such FFIs would have little option, not because they would not want to comply, but because they could not comply.

4. FFI Agreements with the IRS

***Recommendation*:**

The legislative history should clarify that Congress expects that the Treasury Department will issue guidance exempting categories or classes of FFIs from the requirement that they enter into FFI agreements with the IRS provided that such FFIs either comply with the requirements of proposed Section 1472 or present a sufficiently low risk of tax evasion that they should be totally exempted from the new Chapter 4 rules.

***Rationale*:**

Proposed Section 1471(b) would require the approximately 5,500 financial institutions that currently are QIs, as well as the several tens of thousands of financial institutions that are eligible to become QIs but have not done so (i.e., NQIs), to enter into agreements with the IRS. In addition, hundreds of thousands of foreign investment entities – including hedge funds, private equity funds, mutual funds, securitization vehicles and other investment funds (whether publicly held or privately owned, and even if they have only a handful or fewer investors) – would be required to enter into agreements with the IRS.

While the precise responsibilities of an FFI under an FFI agreement are unclear at this time, at a minimum an FFI would need to set up identification, reporting and withholding systems and procedures covering virtually every business line around the world, and may be subject to outside verification obligations. Even existing QIs (few of whom have today assumed primary withholding responsibility) would need to revise their systems to address potential withholding tax on gross sales proceeds from U.S. securities, which requires a transaction-based architecture that is completely different from the systems that have been developed to capture information regarding U.S. source interest, dividends and other FDAP income. The enormity of this task – both for individual FFIs and across the financial and investment industries – cannot be overstated, nor can the risk of a broad application of the new 30% withholding tax on withholdable amounts, with potentially disruptive effects on the U.S. capital market.

We would expect that most large international banks that are QIs and that have substantial U.S. operations, as well as large investment fund groups with significant U.S. investments, will enter into FFI agreements and make every effort to comply with these new requirements, despite the significant costs. We are very concerned, however, that many other QIs, NQIs and foreign investment entities will not be able and/or willing to enter into such agreements, either because of the costs and burdens of compliance, as well as the exposures from an inability to comply, or – especially in the case of smaller FFIs – because of a concern about entering into an agreement with a distant tax authority.

If, as we fear, more than an insubstantial number of FFIs do not enter into FFI agreements with the IRS, there is a risk of considerable shifts in capital flows, as many FFIs (including possibly some large institutions) move investments from the United States in order to avoid the withholding tax while investors that wish to continue to invest in the United States move their investments to qualifying FFIs.[2]

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[2] In practice, many investors may not take the affirmative steps to maintain their U.S. investments due to deference to the recommendations of their investment advisers, inertia or other reasons.

One of the unfortunate consequences of this new regime, which may contribute to such capital flow shifts, is that it will result in withholding tax on payments to a beneficial owner who fully complies with the U.S. tax rules (e.g., by providing a W-8BEN to a QI in which he/she holds an account) if any entity in the chain of FFIs through which it invests in U.S. securities fails to enter into an FFI agreement. Many investors may regard the prospect of eventually receiving a refund if the investor files, and is able to substantiate, a claim as more theoretical than real.

We are not in a position to quantify the potential extent of any disinvestment from the United States or other market disruptions, but we urge Congress and the Treasury Department to carefully evaluate these risks. In this regard, we note that these adverse results, were they to occur, would be very detrimental to the business of international financial institutions, and thus our memberships share a strong common interest with the U.S. Government in ensuring that the new rules do not produce material adverse consequences to financial markets and capital flows (in addition to our common commitment to combat tax evasion).

Moreover, we are concerned that if more than an insubstantial number of FFIs do not "buy into" the new regime, a two-tier financial system will emerge, in which some financial institutions that are non-qualifying FFIs may become a haven for U.S. tax evaders.

In our experience, a very high percentage of NQIs are fully compliant with the existing reporting rules. These institutions have not become QIs not because they wish to facilitate U.S. tax evasion but, rather, because their U.S. investment base is too small to justify the costs and burdens of being QIs. We would expect that these NQIs would be prepared to comply with expanded requirements that they identify their direct U.S. accountholders as well as the substantial U.S. owners of their accountholder entities, if these requirements are properly and reasonably designed.

As noted elsewhere in this letter, developing a workable system for identifying substantial U.S. owners is itself a very challenging task, particularly given that there are often multiple tiers of FFIs. However, we would expect that FFIs will more readily be able to obtain the necessary U.S. tax-specific information regarding substantial U.S. owners from accountholder entities that are investing in material amounts of U.S. securities, whereas in the case of accountholder entities that are invested in non-U.S. accounts and securities, the FFIs will necessarily need to rely on information that is already in their databases.[3]

We have no experiential basis to be able to determine whether foreign investment entities that are unable or unwilling to enter into FFI agreements would nonetheless be able and willing to comply with a Section 1472-type reporting regime. However, based on the fact that many NQIs and partnerships do comply with the requirements under existing law that they obtain and pass on certifications from their accountholders and beneficial owners, there is reason to believe that many such foreign investment entities would be prepared to comply with expanded requirements that they determine substantial U.S. owners of their accountholder entities, if these requirements are properly and reasonably designed (as discussed above). In any event, we believe that a significantly higher percentage of such foreign investment entities will be able to comply with the rules (and will therefore remain invested in U.S. securities) if they are given the choice of a Section 1471 or 1472 regime (which is similar to the choice that financial institutions have today to either become a QI or to report under the NQI rules) than if they are forced to enter into FFI agreements in order to avoid withholding tax.[4]

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[3] Depending on the country, the applicable KYC and AML rules and account opening procedures do require that an FFI obtain information concerning an entity accountholder's substantial owners that would be useful for U.S. tax compliance, although typically the thresholds are above the 0 percent threshold for U.S. owners of foreign investment entities and a 10 percent threshold for other entities, and these rules and procedures generally are focused on the identity of the owner rather than the person's tax status.

[4] We acknowledge that one potential challenge in successfully applying a Section 1472 regime to tiers of FFIs may be a reluctance of one FFI to disclose its customer (or investor) base to another; similar concerns contributed to the development of the QI system. Giving FFIs a choice between a Section 1471 or 1472 regime may mitigate this challenge.

We also stand ready to work with Treasury and the IRS to identify those foreign entities that should be exempted from both the section 1471 and 1472 requirements on the basis that they do not present the United States with a substantial risk of tax evasion activity.

5. Adjusting the Threshold for Determining Substantial United States Owners

***Recommendation*:**

The statute should give the Treasury Department the flexibility to set the appropriate threshold (or thresholds) for determining whether a foreign entity has a "substantial United States owner," which is now set at "more than 0%" in the case of foreign investment entities and "more than 10%" in the case of most other foreign entities.

***Rationale*:**

We understand the rationale behind the Bill's requirement that FFIs and other withholding agents obtain information regarding substantial U.S. owners of foreign entities, and we agree that the failure of the existing rules to look behind corporate entities and certain trusts present unacceptable opportunities for tax evasion by U.S. persons.

However, as indicated above, the requirements of the Bill relating to the identification of U.S. accounts and FFI agreements raise extraordinarily complicated implementation issues, which may dissuade FFIs from entering into FFI agreements. To a great extent, these issues are magnified by the requirement that FFIs and other withholding agents obtain information regarding substantial U.S. owners of foreign entities. We are very concerned that, in many cases, FFIs simply will not be able to apply the 0%/10% thresholds, because such information is not required to be gathered for AML/KYC purposes and is impractical to secure otherwise. Also, having separate thresholds for foreign investment entities and other foreign entities introduces an additional complication of having to distinguish between those two categories of entities.

Striking a balance between the important objective of combating tax avoidance and practical administrability considerations in this context is best done by Treasury after due evaluation of the relevant factors. In view of the reported cases of U.S. individuals setting up foreign shell companies to hold offshore accounts, we respectfully submit that perhaps a threshold that requires, say, at least 50% ownership would better target the tax compliance objective of the United States to identify U.S. persons controlling offshore entities for tax evasion purposes.

6. Add an Exclusion for U.S. Branches of Foreign Banks and Clarify Treasury Authority to Provide Other Exclusions

***Recommendation*:**

The definition of "withholdable payment" for purposes of Section 1471 should be amended to exclude payments to a U.S. branch (or agency) of a foreign bank. In addition, the statute and/or legislative history should clarify that the Treasury Department has the authority to exclude other payments.[5]

[5] More generally, in order to allay any concerns regarding the scope of Treasury's authority to provide guidance regarding Chapter 4, it may be advisable for Section 1474(d) (granting authority to Treasury to "prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes

***Rationale*:**

U.S. branches (and agencies) of foreign banks conduct extensive operations in the United States and engage in hundreds of millions of financial services and other transactions each year. Unless payments to such branches are excluded from the definition of "withholdable payments," each payor of a withholdable payment to such a branch would need to ensure that the bank has entered into an FFI agreement before making payments to the branch. Such a requirement would place U.S. branches of foreign banks at a competitive disadvantage compared to U.S. banks. Moreover, U.S. branches of foreign banks are treated as U.S. persons for most information reporting rules and thus, for example, file IRS Forms 1099 with respect to payments to non-exempt recipients. Consequently, they should be treated as U.S. withholding agents that are not FFIs for purposes of Sections 1471 and 1472.

7. Contents of an FFI's Annual Report

***Recommendation*:**

Section 1471(c)(1) requires that an FFI that has entered into an FFI agreement must provide the IRS with an annual report providing details about accounts owned by its direct and indirect U.S. customers and lists the items that must be provided in the report with respect to such U.S. accounts. We recommend either that section 1471(c)(1)(D) be removed from the Bill (our preferred approach), or that the phrase "To the extent required by the Secretary" be added as a modifier at the beginning of section 1471(c)(1)(D), which requires the FFI to provide the "gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide)."

***Rationale*:**

New chapter 4 presents many operational challenges and expenses for financial institutions. We believe that such expenses should be minimized in those instances where the compliance goal of the IRS would not be adversely affected and each data element that must be captured and reported necessarily increases the cost of compliance. With respect to the annual report, most of the account details required in the annual report are "static" in nature, such as name, address, TIN, account number and account balance at a specified time (presumably year-end). An FFI should be able to capture such data elements even if it must prepare an "exceptions" report to do so. However, tracking flows into and out of accounts is a much different matter and for some FFIs (or some business lines thereof) would require potentially far greater systems changes. We also question whether this information is necessary in all instances to provide the IRS with the necessary tools to identify potential U.S. tax evaders, given that the annual report will otherwise identify U.S. persons invested in non-U.S. accounts and securities and which of those U.S. persons have accounts large enough to merit closer IRS examination. Accordingly, we suggest either that section 1471(c)(1)(D) be removed from the Bill or, at a minimum, that the Treasury Department be granted flexibility to determine the circumstances in which this information must be provided.

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of this chapter") or its legislative history to explicitly state that the grant of authority includes the authority to provide such exclusions from the terms of Chapter 4 as Treasury deems appropriate.

8. Expand Availability of Credits and Refunds to FFIs

***Recommendation*:**

Proposed Section 1474(b)(2) denies a credit or refund to an FFI that is the beneficial owner of a payment except if and to the extent that the FFI is eligible to a reduced treaty rate of withholding. We recommend that the statute be amended to permit the Treasury to provide for credits and refunds in appropriate circumstances. The legislative history should indicate Congress' intention that such credits and refunds be available where the withholding was done inadvertently or as a result of a technical "footfault" on the part of the FFI or the withholding agent, where the FFI has acted in good faith, or where the Treasury concludes that permitting such credit or refund is in the best interest of fostering compliance with Chapter 4. The legislative history should also indicate Congress' intention that Treasury set up procedures permitting FFIs and other withholding agents to obtain refunds on behalf of their direct or indirect account holders.

***Rationale*:**

We understand that the intention of the new rules under Chapter 4 is to encourage FFIs to disclose their U.S. accounts, not to collect additional withholding tax. However, we are concerned that due to the complexity of the rules and the difficulty in achieving 100% compliance across the vast number of financial market participants, there inevitably will be a substantial amount of over-withholding. Moreover, by imposing withholding tax also on gross proceeds (which are exempt from substantive tax) and on payments to foreign financial institutions that have no material economic stake in those payments the withholding tax can be harsh and punitive in its impact, especially if the opportunity to obtain refunds or credits of such over-withheld amounts is restricted. Investors and FFIs will be evaluating their potential exposures under these rules in determining whether to invest in U.S. securities and to enter into FFI agreements. Accordingly, we recommend that every effort be made to have refund and credit procedures that maximize the ability to rectify over-withholding situations.

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We look forward to continuing to work with the Congressional tax-writing committees, the Treasury Department and the IRS to achieve an effective, balanced and workable approach to addressing the gaps in the existing reporting and withholding tax rules.

EUROPEAN BANKING FEDERATION

By ______________________

Guido Ravoet
Secretary General

INSTITUTE OF INTERNATIONAL BANKERS

By ______________________

Lawrence R. Uhlick
Chief Executive Officer