

# **FATCA**

## **Pre-Existing Accounts v. Onboarding: Clarifying the Differences**

**June 27, 2012**

**NAVIGANT**

# Agenda

- Introduction
- Presentation
- Questions and Answers — (anonymous)
- Slides — now available on front page of Securities Docket
  - [www.securitiesdocket.com](http://www.securitiesdocket.com)
- Wrap-up

## Webcast Series

- June 28: “The UK Bribery Act Turns One Year Old: Lessons Learned and Next Steps”

## Panelists



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Pre-Existing Accounts

v.

New Accounts

Operationalizing FATCA's  
Due Diligence Requirements

June 27, 2012

Presented by

Jeffrey Locke, Director  
Richard Kando, Director



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# I. FATCA Overview

## A. Ongoing criminal tax matters

After UBS entered into a deferred prosecution agreement with the DOJ, and thousands of individuals disclosed their previously secret offshore accounts to the IRS, the U.S. Government introduced the Foreign Account Tax Compliance Act (“FATCA”), likely the most far-reaching tax statute in our lifetime.

## B. FATCA’s effective date

FFI agreements generally go into effect on July 1, 2013 and US financial institutions will have to start complying as of January 1, 2013.

## C. FATCA’s affect on foreign and U.S. financial institutions

FATCA generally mandates that foreign financial institutions (“FFIs”) identify U.S. taxpayers with accounts or suffer a 30% withholding on withholdable or passthru payments. To avoid the withholding tax, FATCA requires FFIs to obtain and report information to the IRS or for FATCA Partner countries its home country tax authority on its accounts held by one or more specified U.S. persons or U.S. owned foreign entities.

FATCA also affects United States withholding agents by requiring them to identify whether their entity account holders are U.S. persons, FFIs, NFFEs or excepted from FATCA compliance. FATCA also requires US withholding agents to withhold when appropriate.

# I. FATCA Overview

## D. Financial institutions will have to know more about their customers

For both new accounts and pre-existing accounts (accounts maintained prior to July 1, 2013), FFIs will have to:

1. Search for U.S. indicia for individual account holders
  - a. The FFI will have generally have to obtain additional information including a W-8 BEN or W-9, if indicia exists.
  - b. FFIs likely don't have a current process to search or ask for indicia for another country's tax authority.
2. Obtain or determine the proper FATCA classification for entity account holders
  - a. This could result in collecting a W-8 BEN-E and beneficial ownership information to a greater extent that dictated by current AML policies for many entities.
  - b. There are 20+ potential FATCA entity classifications with many more sub categories.
  - c. The focus for United States financial institutions is only entity account holders and payees.



## II. New Customer Onboarding Updates

- A. Updates Need to be Completed by July 1, 2013 for FFIs
- B. May Need to Ask Potential New Customers More Questions and Collect More Documentation
  - 1. New individual accounts
    - a. Does U.S. indicia exist?
    - b. If there are indicia, what must the FFI request as curing documentation?
  - 2. New entity accounts
    - a. If an FFI, does the new account holder participate in FATCA?
    - b. If a non-financial foreign entity (“ NFFE”), does it meet an exception such as operating a non-financial active trade or business?
    - c. If the NFFE does not meet an exception, do you have greater than 10% beneficial ownership information?
  - 3. The FFI will need to track the expiry of documents.

# II. New Customer Onboarding Updates

## C. New Individual Accounts

### 1. U.S. Indicia

A participating FFI must keep an eye out for U.S. indicia. The Proposed FATCA Regulations list seven U.S. indicia, which are:

- a. U.S. resident or citizen;
- b. U.S. place of birth;
- c. U.S. resident address or U.S. mailing address;
- d. U.S. telephone number;
- e. Standing instructions to transfer funds to an account maintained in the U.S.;
- f. Power of attorney or signatory authority granted to a person with a U.S. address and
- g. An “in care of” address or “hold mail” address that is the sole address the FFI has for the account holder.

### 2. Obtaining Additional information

When U.S. indicia are present the FFI has to obtain additional information, possibly including a W-8 BEN or W-9. The curing documentation required depends on the indicia found.

# II. New Customer Onboarding Updates

## D. New Entity Accounts

### 1. Obtaining a W-8 BEN-E

Most participating FFIs and United States financial institutions will likely ask new entity account holders for a W-8 BEN-E, which certifies the account holder's FATCA classification.

### 2. Complexities of the FATCA classification

Obtaining an additional form from the entity account holder does not sound very complex, but FFI personnel may be put in a position to assist the account holder with FATCA specific questions such as definitions of:

- a. Financial institution;
- b. Substantial U.S. ownership;
- c. Annuity contract and
- d. Passive income.

## II. New Customer Onboarding Updates

- E. The goal of updating on-boarding procedures to be FATCA compliant is to make FATCA a business as usual (“BAU”) analysis by July 1, 2013.

The updating strategy depends on, among other things:

1. The number of account holders
2. Privacy laws in the FFI’s countries of operation
3. The number and variety of disparate onboarding systems in use by the FFI’s expanded affiliated group

- F. Type of Potential Solution

1. Change current systems
2. Add a FATCA specific module to supplement current onboarding approach

# II. New Customer Onboarding Updates

## G. What Financial Institutions Can Do Now

1. Determine FATCA business requirements for onboarding;
2. Assess the gap between current processes and necessary business requirements;
3. Determine necessary information technology (“IT”) updates;
4. Develop draft policies;
5. Conduct training for employees involved in onboarding and other client facing personnel and
6. Develop a communications plan for clients.

# III. Pre-existing Account Analysis

- A. The pre-existing account analysis is a one-time analysis of all accounts maintained at the FFI as of June 30, 2013.
  - 1. The pre-existing account analysis has two deadlines:
    - a. July 1, 2014 for high value and prima facie FFI accounts
    - b. July 1, 2015 for all remaining accounts
  - 2. In regards to the pre-existing account analysis, the FFI responsible officer must certify the following to the IRS:
    - a. High value account analysis completed within one year of the FFI Agreement
    - b. Remaining pre-existing accounts analysis is completed within two years of the FFI Agreement

# III. Pre-existing Account Analysis

## B. Pre-existing Individual Account Analysis

### 1. Accounts in scope

- a. All financial accounts with a balance or value in excess of \$50,000 must be reviewed.
- b. Cash value insurance or annuity contracts with a value of \$250,000 or more must be reviewed.

### 2. Aggregation

- a. When computerized systems link the accounts by reference to a specific data element.
- b. Relationship manager (“RM”) knowledge to the extent RMs know of other accounts

### 3. Accounts with a balance or value of \$1,000,000 or less

FFIs must conduct a search of electronically searchable information for U.S. indicia.

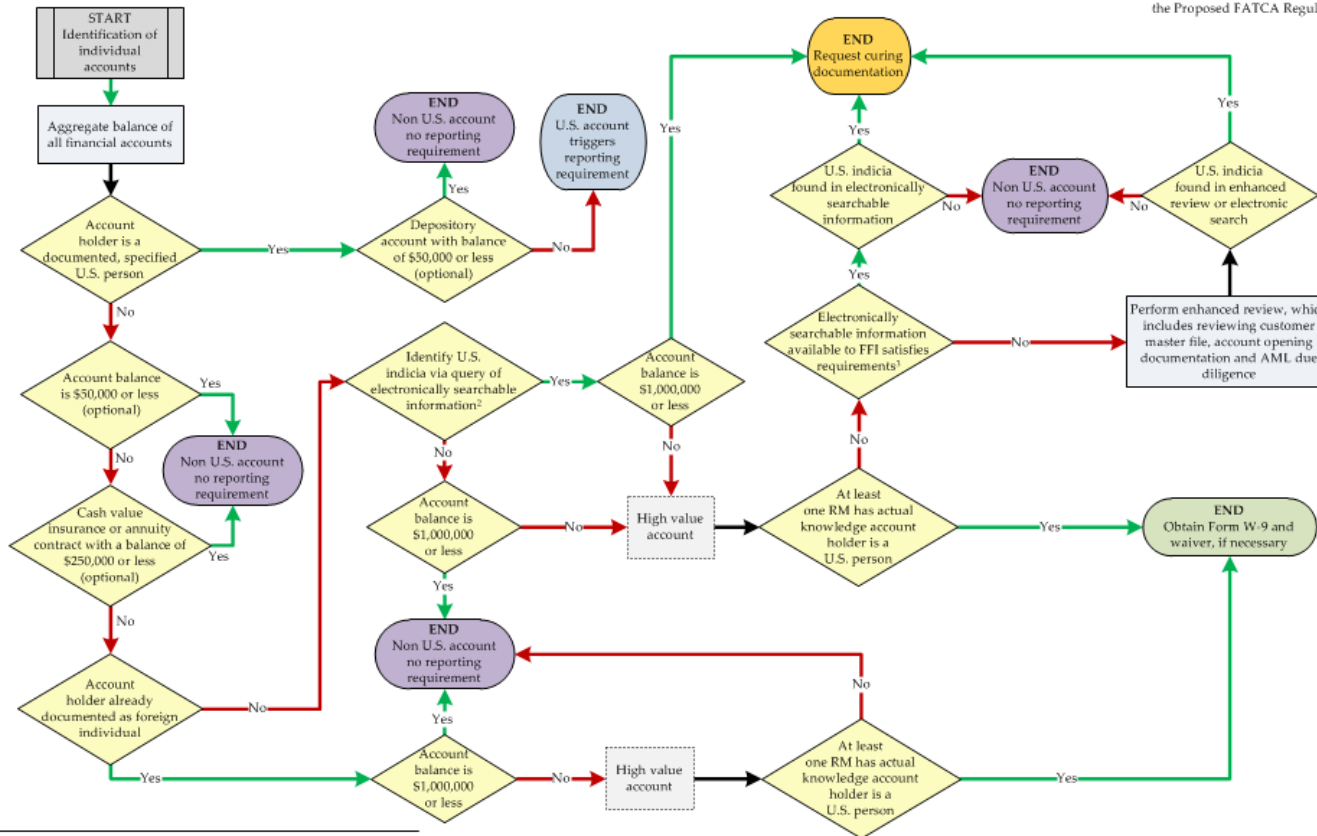
### 4. High Value Accounts

An enhanced review of certain paper (or imaged documents) for U.S. indicia may be necessary. The Proposed FATCA Regulations dictate the customer master file and certain other documentation received by the FFI in the past five years have to be reviewed.

# III. Pre-existing Account Analysis

FATCA: The FFI's Preliminary Workflow Concerning Pre-Existing Individual Accounts<sup>1</sup>

This summary document is based on Navigant's preliminary interpretation of the Proposed FATCA Regulations.



<sup>1</sup> Instead of conducting the above workflow, a participating FFI can review all information collected with respect to the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes to determine if the account holder has U.S. indicia. (§1.1471-4(c)(4))

<sup>2</sup> Indicia of U.S. accounts ("U.S. indicia") are identified as the following: (a) Identification of an account holder as a U.S. resident or citizen; (b) U.S. place of birth identified for the account holder; (c) U.S. resident address or U.S. mailing address (including a U.S. post office box); (d) U.S. telephone number; (e) Standing instructions to transfer funds to an account maintained in the United States; (f) Power of attorney or signatory authority granted to a person with a U.S. address; or (g) An "in-care-of" address or "hold mail" address that is the sole address the FFI has identified for the account holder. An "in care of" address outside the United States that is the sole address the FFI identified for the account holder is not considered indicia of U.S. person status if the indicia was identified through the query of electronically searchable information. (§1.1471-4(c)(4)(i)(A))

<sup>3</sup> The FFI is required to perform additional enhanced review of its files only to the extent the following is not available in the FFI's electronically searchable information: (a) The account holder's nationality and/or residence status; (b) The account holder's current residence address and mailing address; (c) The account holder's current telephone number(s); (d) Whether there are standing instructions to transfer funds in the account to an account at another branch of the participating FFI or another financial institution; (e) Whether there is a current "in care of" address or "hold mail" address for the account holder if no other residence or mailing address is found for the account; and (f) Whether there is any power of attorney or signatory authority for the account. (§1.1471-4(c)(8)(iii)(B))

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# III. Pre-existing Account Analysis

## C. Pre-Existing Entity Account Analysis

US financial institutions and FFIs generally have similar requirements when reviewing their pre-existing entity account holders.

### 1. FFI versus NFFE

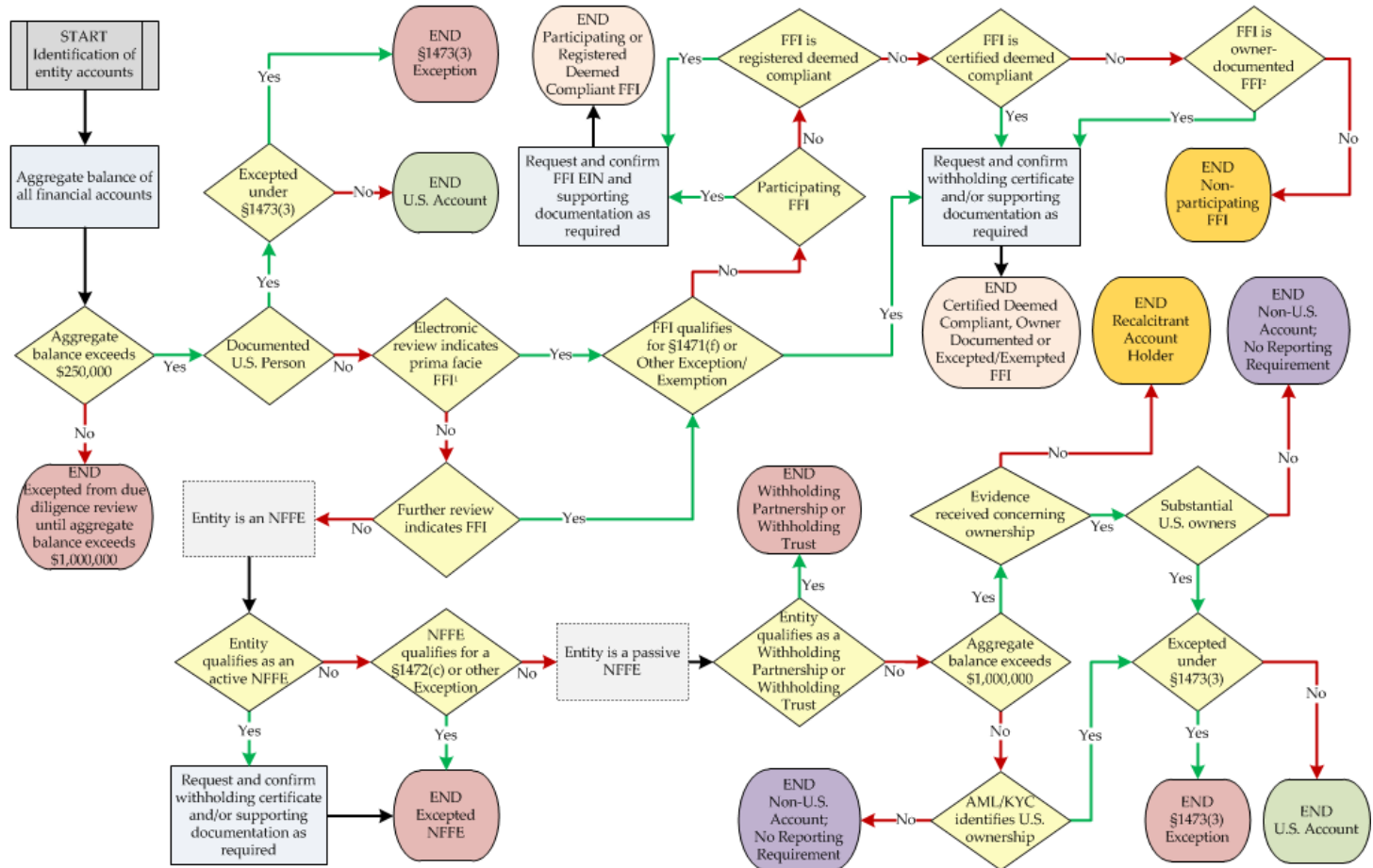
- a. Account holders will be initially categorized as FFIs or NFFEs.
- b. The goal is to categorize FFIs as either participating, non-participating or exempt.
- c. NFFEs will generally be categorized as active, passive or exempt.

### 2. Reliance on AML/KYC and identification of substantial U.S. owners

- a. For passive NFFEs with an aggregated balance or value of \$250,000 to \$1,000,000, the FFI is allowed to rely on its AML/KYC information to identify U.S. owners.
- b. For passive NFFEs with a balance or value of more than \$1,000,000, the FFI has to obtain substantial U.S. ownership information.

# III. Pre-existing Account Analysis

FATCA: The FFI's Preliminary Workflow Concerning Pre-Existing Entity Accounts



<sup>1</sup> Withholding for payments made to prima facie FFIs begins on January 1, 2014, one year earlier than the commencement of withholding for most other payees. (§1.1471-2(a)(4)(ii)(B))

<sup>2</sup> Each person with any equity interest in an owner-documented FFI must be identified. (§1.1471-3(d)(7))

This summary document is based on Navigant's preliminary interpretation of the Proposed FATCA Regulations.

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# III. Pre-existing Account Analysis

## Sample Project Plan The FFI's Pre-Existing Account Analysis

I. Create Workplan	II. Establish Cases and Obtain Information for Review	III. Begin High Value Accounts and Prima Facie FFIs Analyses	IV. Complete High Value Accounts and Prima Facie FFIs Analyses and Begin Analyses for Other Accounts	V. Continue Analysis of Remaining Accounts and Begin Reporting	VI. Complete Analysis of Remaining Accounts and Report
<p>A. Estimate necessary budget and resources based upon impact assessment results</p> <p>B. Assess whether accounts are held in FATF compliant jurisdictions</p> <p>C. Research privacy law restrictions in countries where the FFI operates</p> <p>D. Decide if analysis will be centralized or decentralized by country, business line, product or other proper division</p> <p>E. Catalog IT systems to search for indicia</p> <p>F. Determine if IT systems can aggregate accounts and to what extent in each legal entity and across the expanded affiliated group</p> <p>G. Determine if FFI will exclude (1) accounts of \$50,000 or less for individuals, (2) \$250,000 or less for entities and (3) \$250,000 or less for cash value insurance or annuity contracts</p> <p>H. Determine if electronically searchable information ("ESI") meets requirements to avoid enhanced review</p> <p>I. Prepare procedures for pre-existing account analysis</p> <p>J. Choose case management system</p>	<p>A. Establish cases by account holder using system aggregated account balance information</p> <p>B. Upload customer master file and other documentation for High Value Accounts and entities into case management system, if necessary</p> <p>C. Search ESI maintained for individual accounts for U.S. indicia</p> <p>D. Review ESI for Prima Facie FFIs</p> <p>E. Map accounts to RMs</p> <p>F. Conduct trainings for RMs and analysts on how to conduct analysis</p> <p>G. Obtain RM aggregation knowledge</p> <p>H. Obtain RM knowledge of U.S. person status of account holder for High Value Accounts</p> <p>I. Exclude cases based upon dollar threshold, if applicable</p> <p>J. Identify already documented specified U.S. person account holders</p>	<p>A. Review RM responses to determine if RM identified account holder as U.S. person</p> <p>B. Determine if account holders were previously documented as foreign persons</p> <p>C. Confirm RM knowledge of foreign status of account holders, if necessary</p> <p>D. Review Prima Facie FFI account holders to determine if exclusion is met</p> <p>E. Catalog non-exempt Prima Facie FFI accounts to request appropriate documentation, when necessary</p> <p>F. Review ESI hits of U.S. indicia to determine if true hit or false positive</p> <p>G. Conduct enhanced review of High Value Accounts for U.S. indicia, if necessary</p> <p>H. Confirm accounts with U.S. indicia with RM</p> <p>I. Catalog individual accounts with U.S. indicia to request appropriate curing documentation</p>	<p>A. Request curing documentation for accounts with U.S. indicia</p> <p>B. Request necessary documentation from Prima Facie FFIs</p> <p>C. Review non-Prima Facie FFI account holder cases to determine if exclusion is met</p> <p>D. Conduct electronic searches for evidence of an active NFFE (such as SIC or NAICS codes) and other potential FATCA identifications</p> <p>E. Review AML/KYC files to determine if a remediation is required to abide by FATCA for passive NFFEs</p> <p>F. Validate documentation provided by High Value Accounts and Prima Facie FFIs</p> <p>G. Responsible officer to certify analysis of High Value Accounts</p>	<p>A. Use AML/KYC information to determine U.S. ownership information for certain entity account holders</p> <p>B. Request necessary curing documentation for remaining accounts</p> <p>C. Add expiration dates of documentation of reviewed accounts to case management system</p> <p>D. Consolidate information for reporting purposes</p> <p>E. Report on U.S. accounts identified by June 30, 2014</p> <p>F. Map individual and entity account holder status to necessary IT systems</p>	<p>A. Complete remaining individual account analysis</p> <p>B. Complete remaining entity account analysis</p> <p>C. Validate documentation submitted on remaining accounts</p> <p>D. Send out reminders to clients for curing documentation</p> <p>E. Map individual and entity account holder status to necessary IT systems</p> <p>F. Responsible officer to certify analysis of remaining accounts</p>

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# IV. Pre-Existing Accounts v. New Accounts: Similarities and Differences

## A. High Level Overview

	On-boarding Updates	Pre-existing Account Review
1. Individual Accounts - Search for Indicia and Proper Classification	✓	✓
2. Entity Accounts - Proper Classification	✓	✓
3. Necessity to Become Business As Usual	✓	
4. Deadline of July 1, 2013	✓	
5. Deadline of July 1, 2014 and July 1, 2015		✓
6. Declaration of Completion by FFI Certifying Officer		✓
7. Relationship Manager Inquiries Regarding U.S. Person Status of Account Holder Maintained		✓
8. Necessity to Inquire - Aggregation of Accounts from Relationship Manager		✓
9. Analysis of Accounts Maintained for 6 Years		✓
10. Entity Accounts - Application of Pre-Existing Offshore Obligation Exceptions to Avoid Additional Client Contact		✓

# IV. Pre-Existing Accounts v. New Accounts: Similarities and Differences

- B. Items to Consider if Attempting to Use Your New FATCA Onboarding System for the Pre-Existing Account Review
1. Can the system query RM knowledge and retain the results for six years?
  2. Can the system aggregate accounts for a holistic analysis based upon representations by the relationship manager?
  3. Does the system allow for internal reporting for project management purposes so the FATCA team does not suffer “death by PowerPoint”?
  4. Does the system allow for a quality assurance review, if necessary?
  5. Does the system allow for a consistent approach given the same set of facts in different jurisdictions?
  6. Does the system allow for internal audit to test and review results to give the certifying officer comfort regarding his/her representation to the IRS?

# V. Centralization vs. Decentralization

## A. Overview

Each FFI will have to analyze its own situation and decide on a centralized, decentralized or hybrid approach to operationalize FATCA compliance as there is no “one-size-fits-all” approach.

There are four main differences that could drive a large FFI to decide to implement updates to their on-boarding procedures and conduct the pre-existing account review using different strategies:

1. The certification required for the pre-existing account review
2. The different deadlines for completion
3. The repeatable nature and consistent approach that can be taken for the pre-existing account review regardless of geography and business line
4. The necessity for updates to multiple on-boarding procedures and systems to become BAU

# V. Centralization vs. Decentralization

## B. On-boarding Updates

Updating on-boarding procedures lends itself to more decentralized approach for the following reasons:

1. Different systems, policies and procedures by geography and/or business line;
2. Different IT systems by geography and/or business line;
3. Tailored training to current and future onboarding procedures;
4. Different update of on-boarding procedures across regions or business lines and
5. Legal constraints are handled at the business line and/or geographic region level.

# V. Centralization vs. Decentralization

## C. Pre-existing Account Review

The pre-existing account review lends itself to more centralized approach for the following reasons:

1. There is no current process to change, so change management is not an overriding concern;
2. There are two deadlines, depending on the type of pre-existing accounts, regardless of the type of business line or geographic location;
3. Same business requirements for all pre-existing accounts;
4. A single certifying officer must certify completion of the pre-existing account analysis for the entire FFI expanded affiliated group and
5. It is not necessary to prescribe the pre-existing account review to become BAU at the FFI as there are hard and fast deadlines to complete the analysis.



# V. Centralization vs. Decentralization

## D. Decision Factors to Consider

Decision Criteria	Onboarding Updates for FATCA Purposes	Pre-Existing Account Review for FATCA Purposes
1. Current systems, policies and procedures	Likely differs by geography and/or business line	Does not currently exist
2. Systematic approach for task	Likely differs by geography and/or business line	The same across geographies
3. Coordination across FFI expanded affiliated group	Necessary at a high level for business requirements, but some geographies or business lines implement business requirement differently based upon current practices	Business requirements are the same across business lines and geographies; Consideration should be given to the necessity for a single person to certify completion for entire FFI expanded affiliated group
4. Standardized training	Training tailored to current and future onboarding procedures	Standardized training could be used as the business requirements for analysis across business lines and geographies are the same
5. Deadlines and timing of completion	Updates have to be completed by July 1, 2013 and become BAU going forward	July 1, 2014 for individual high value accounts and prima facie FFIs; July 1, 2015 for all remaining accounts
6. Leveraging resources and technology across geographies and business lines for greater efficiencies	Likely only available across geographies or business lines that have similar or the same onboarding procedures and technology	Business requirements across business lines and geographies are identical so leveraging the same resources (also see Legal Constraints) and technology is an option
7. Necessity to have different processes across regions or business lines	Likely mandatory for the update of updating of onboarding procedures	Business requirements across business lines and geographies are identical so no necessity to have different processes
8. Legal constraints	Handled at the business line and/or geographic region level	May necessitate the use of a few teams across geographic regions to address privacy laws/restrictions

# Questions & Contact Information

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# Questions?

**Thank You**  
**For Attending This Webcast**