



BULLETIN – 130916/25

ICMSA Bulletin - FATCA – notification of a “Material Change” occurring after 1 July 2014 for a grandfathered security

Issued by the International Capital Market Services Association www.icmsa.org

The purpose of this bulletin is to clarify the operational flows of the notification of a Material Change¹ affecting a security after 1 July 2014 along the chain of intermediaries from the issuer to the investor.

The FATCA regulations have provided for the "grandfathering" of certain US-source debt securities issued before 1 July 2014. Payments considered as withholdable under FATCA made on a grandfathered security (mainly interest payments) will not be subject to FATCA withholding unless a Material Change affects this security on or after 1 July 2014. In such case the security would lose its grandfathered status and any related withholdable payments would be taxable under FATCA.

The final FATCA regulations provide that:

1. A withholding agent, other than the issuer of the obligation (or an agent of the issuer) may, absent actual knowledge, rely on a written statement by the issuer of the obligation to determine whether such obligation meets the requirements for grandfathered treatment.
2. A withholding agent is required to treat a modification as material only if the withholding agent knows or has reason to know that such modification was material.
3. A withholding agent, other than the issuer of the obligation (or an agent of the issuer), absent actual knowledge, will have reason to know of a material modification if it receives a disclosure thereof from the issuer of the obligation (or from such issuer's agent).

Notification of a Material Change

In order to ensure that the information pertaining to a Material Change is passed along the chain of intermediaries from the issuer to the investor in a timely manner, the ICMSA recommends that the following steps are taken:

1. Issuer agents ensure that they receive the commitment of their issuers to inform the agents immediately of:
 - (i) any change deemed material in accordance with the US FATCA regulations affecting a grandfathered security, and
 - (ii) the effective date of such Material Change causing the change in the taxability under FATCA of certain payments made in relation to the security.
2. Upon receipt of this information from the issuer or issuer agent, the common depository or common service provider notifies it in turn to the ICSDs as a corporate action affecting the terms and conditions of the security, pursuant to its existing contractual arrangements with the ICSDs.
3. Upon receipt of this information from the common depository or common service provider, the ICSDs inform their respective participants/clients and update their records accordingly to enable a correct FATCA withholding and reporting process in relation to that security as of the effective date mentioned in the notification.

¹ A Material Change is any significant modification of a debt instrument as described in Treasury Regulation section 1.1001-3.