FEBRUARY 5, 2015

White paper on implementation of the OECD's Common Reporting Standard

1. Introduction

1 This white paper reflects the views of the Securities Industry and Financial Markets Association (SIFMA)[1], the Association for Financial Markets in Europe (AFME), and the Asia Securities Industry and Financial Markets Association (ASIFMA), collectively, the "Working Group" with regard to implementing the OECD's Common Reporting Standard (CRS).

2 We welcome this opportunity to work with the OECD Secretariat and participating CRS jurisdictions in meeting the challenges of implementing the CRS. We have been considering the requirements of the CRS and the changes to operational and IT requirements for financial institutions that operate in multiple jurisdictions. This white paper outlines our recommendations relating to critical elements of the CRS to help achieve effective implementation. We would hope that these recommendations could be considered for inclusion in further OECD guidance, individual country legislation, regulation and guidance as appropriate.

2. Background on the Working Group

3 The Working Group, formed in October 2014, consists of experts in information reporting from a wide range of global financial institutions, all of whom have spent a significant

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org

AFME represents a broad range of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks and other financial institutions. AFME advocates stable, competitive and sustainable European financial markets, which support economic growth and benefit society. For more information, visit http://www.afme.eu

ASIFMA is an independent, regional trade association with over 70 member firms comprising a diverse range of leading financial institutions from both the buy and sell side. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region's economic growth. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. www.asifma.org

amount of time in recent years on the implementation of the US Foreign Account Tax Compliance Act (FATCA) and the Model 1 Intergovernmental Agreement (IGA), on which the CRS is based, and are the individuals who will be leading their firms on CRS implementation.

4 The Working Group fully supports the policy goals of the CRS and is committed to ensuring its efficient and effective implementation.

5 We believe that an open dialogue among business, the OECD and Competent Authorities is critical to ensuring that potential implementation and compliance burdens are minimised. Based on the discussions of the Working Group, the following overarching key principles have been identified that we respectfully request the OECD and participating jurisdictions to prioritize:

- Transparency and consultation with stakeholders over plans for issuing any law, regulations or guidance, regarding both timing and scope.
- A harmonised approach to the CRS amongst participating jurisdictions to ensure the Common Reporting Standard is "common" upon implementation; and
- Where possible, and in accordance with local legislative and privacy restrictions, minimising any departure from the OECD Standard by participating jurisdictions.

6 Whilst this white paper is primarily concerned with how these principles are best achieved, our in depth discussions have also been driven by the Working Group's experience with FATCA and we have based our recommendations on achieving the following, where possible:

1) A balance of CRS consistency at a global implementation level with country-specific IGA requirements that may diverge from the OECD's CRS implementation guidelines
2) Identification of areas which we feel could be improved/clarified based on our experience with FATCA

7 It is likely that some of the recommendations are best dealt with by the OECD; others are more likely best dealt with by Competent Authorities. At all levels, we believe the development of the CRS can be best facilitated through open and effective dialogue amongst all stakeholders. We therefore welcome discussions at the international, regional and individual country levels to help implement CRS.

3. Commonality – Priority issues and principles

8 Through a detailed review of the OECD's final standard and Commentary, we have identified more than 50 areas where there is the potential for jurisdictions to vary their implementation of the CRS (the potential variations are listed in Appendix 1 to this white paper). Some of these areas are discussed in the CRS Handbook released by the OECD. The 50-plus variations contained within Appendix 1 are classified under the following six key headings:

3.1 Rules for late adopters

Issue

9 While a large number of jurisdictions are committed to the early adoption of the CRS, there remain a significant number of jurisdictions that have either committed to later adoption or have not committed to a specific adoption deadline.

10 This staggered implementation means that financial institutions (FIs) may be restricted to collecting information from a defined subset of clients, and adjusting such processes each time a new jurisdiction is added to the list of CRS participants.

Working Group position

11 In order to ensure consistency among Competent Authorities, participating Competent Authorities should allow for a "big bang approach," allowing FIs to implement systems and processes to capture relevant information from all clients.

12 In terms of reporting such information, the Working Group believes it would be preferable for FIs to collect and report all client data for residents of jurisdictions included in a "white list" of participating jurisdictions (existing and expected) to be created and maintained by

the OECD and made available to local Competent Authorities. This will remove a significant process burden that would otherwise have to be endured by FIs, i.e., having to report each subset of clients as and when a new participating adopts the CRS. The information for clients resident in "expected" jurisdictions could be held by the local Competent Authority until the relevant jurisdiction has fully adopted the CRS, at which time the information exchange could occur.

13 We recognise that to allow FIs to collect and subsequently report this information from all their clients, irrespective of a legal obligation to do so, may require an amendment of the applicable data privacy and bank secrecy laws in some jurisdictions.

14 This concept is a major issue for the Working Group as there are still many countries in Asia, for example, that are adopting strict data privacy rules, while some countries regard exchange of information as a violation of state secrecy laws.

15 Whilst the Working Group appreciates this issue is for participating jurisdictions, we ask that the OECD take the lead, encouraging Competent Authorities to deal with this critical issue.

3.2 Determining residence

Issue

16 The determination of the country in which an individual or entity is to be treated as fiscally "resident" is a key issue that requires further commentary and guidance. Commentary on Section IV (p.127, Para. 4) and Commentary on Section VI (p.144, Para. 7) states:

17 *"The domestic laws of the various jurisdictions lay down the conditions under which an individual/entity is to be treated as fiscally "resident"."*

Working Group position

18 We would like to reiterate that the responsibility of determining residence, whether single or multiple, lies fully on the client and the FI's responsibility is limited to:

1) obtaining certification of residence from the account holder;
2) subjecting this certification to a reasonableness test according to a prescribed set of indicia (including information received on specific change of circumstances) and
3) curing that indicia with prescribed documentation.

19 We believe it is the role of the local Competent Authorities to provide guidance to the public on the residency rules and such publication of resident criteria should not impose additional requirements on FI to test the reasonableness of the certification of their clients.

3.3 Definitions

Issue

20 We foresee difficulty if different definitions of important terms are used in different jurisdictions. This will be most acute for global FIs operating in a number of countries and trying to implement both CRS and FATCA.

21 Without any rectification this will require those organisations to customize a global CRS compliance program for all local variations. The resolution of this issue will require a combination of input from the OECD and individual Competent Authorities. The use of definitions under the Model 1 IGA, where possible, would minimise any potential differences with existing FATCA requirements and thereby minimise implementation challenges. The following are some examples of areas where consistent definitions are needed:

3.3.1 Entity classifications

22 If entity classifications vary across jurisdictions, multinational FIs may need to characterize similar entities differently in various jurisdictions. This will mean that the centralised programme will need to deal with and identify such local country variations, i.e., this represents a deviation from the hoped for "common" reporting standard. Such variations would likely create confusion for businesses that work across borders, result in an increase in the cost of compliance, and likely decrease the reliability of the data collected. Examples are set out below:

3.3.1.1 Holding companies

23 One area where a clearer definition of "financial institution" would be helpful is in relation to holding companies within financial groups. Under FATCA, a holding company formed or used to hold a private equity fund (for example) is treated as an FI in its own right. This will cause confusion with respect to the treatment of such entities for CRS purposes. We believe that so long as a holding company does not maintain customer accounts and is not itself an

investment vehicle whereby investors can participate in a portfolio of holdings, the holding company should not be treated as an FI.

3.3.1.2 Trusts

24 A further area where consistent interpretation is needed is on the classification of trusts with individual trustees. Under FATCA, Canada and the Netherlands classify such trusts as Passive NFFEs even where an FI is managing the investments in the trust. In other countries, such as the UK, if a trust with individual trustees has a discretionary management mandate with an investment advisor it will be classified as an FI and have to do its own reporting (rather than rely on the investment manager or custodian to do the reporting). A common definition in this area for CRS would be helpful but through our experience with FATCA, we appreciate the difficulties in obtaining clarity across all jurisdictions. The Working Group's preference would be to follow the local IGA where possible to minimize the operational gap between compliance with FATCA and the CRS. We note that this is a complex area which we would be pleased to discuss in more detail.

3.3.1.3 Controlling person

25 We believe that a clearer definition of "controlling person" is required. The term is defined in the CRS as the natural person who exercises control over the entity and states that it should be interpreted in a manner consistent with Financial Action Task Force (FATF) recommendations. This is similar to the definition in the Model 1 FATCA IGA. Experience has shown, however, that reference to the FATF recommendations does not establish clear traceability into local law and has not been entirely easy to apply, in particular as it has not necessarily been implemented in each jurisdiction. The Working Group would welcome the opportunity to discuss this matter in more detail.

3.3.1.4 Non-reporting Financial Institutions (Non-reporting FIs)

26 It is possible that different jurisdictions may define the term "Non-reporting FI" differently.

27 See Commentary on Section VIII (p.171, Para. 49) – "The FI should be defined in domestic law as a Non-Reporting FI. This is satisfied where a jurisdiction defines a specific type of FI as a Non-Reporting FI, and that definition is contained in domestic law. This would typically be consistent with the types

of FI treated as "exempt beneficial owners" or "deemed compliant FFIs" in the IGAs under FATCA."

28 The Working Group believes that there should be a consistency of classification across jurisdictions, including with respect to entities in jurisdictions that are not participating in CRS. We suggest therefore, that the commentaries be amended to reflect a single definition of the term Non-Reporting FI.

3.3.1.5 Investment Entities

29 The treatment of Investment Entities in participating and non-participating countries is not consistent. For example, if an investment entity in country A has an account in country B and there is no agreement between country A and country B the investment entity will be treated as a Passive NFFE and the FI in country B will report controlling persons of the investment entity who are resident in country C which has an agreement with country B. However if there is an agreement between country A and country B and between country B and country C but no agreement between country A and country C the controlling person in country C is not reported either via Country A or B.

30 Referring to the Working Group's recommendation to a) Rules for late adopters (in paragraph 12, above), this issue would be eased if information on all clients were collected and reported to the local Competent Authority, with the information only being exchanged as and when a new jurisdiction participates in the CRS.

31 A further improvement would be for the OECD to provide guidance or a standard in defining Passive NFFE along with a standardized approach to reporting of Passive NFFEs. The Working Group believes this should be in line with FATCA.

3.3.2 Financial accounts / excluded accounts

32 A similar situation may arise if financial accounts and excluded accounts are defined differently by jurisdictions. These differences should be eliminated where possible.

33 There is scope for the creation of a global list of exempted products to ensure there is a baseline of consistency. However there would need to be periodic review of such a list to ensure it remains up to date.

3.3.3 Passive income

34 At present the guidance given in the OECD's Commentary (see para 126) provides examples of what would generally be considered to be passive income but this is subject to the condition that "reference must be made to each jurisdiction's particular rules". This will require multinational organisations to review multiple sets of rules and, as noted above, may give rise to a number of potential issues.

35 Passive income should be more clearly defined.

3.3.4 Gross proceeds

36 Under the Commentary, each jurisdiction may choose to gradually introduce requirements for the reporting of gross proceeds. Reporting FIs will need sufficient time to make any necessary system changes in order to be in a position to report accurate information. Furthermore, in order to implement this significant requirement, we believe that a uniform definition of gross proceeds is necessary.

37 We believe that the definition of gross proceeds in the CRS should be aligned with the definition in FATCA, modified by the European Union's Directive on Administrative Co-operation (DAC). We note that the definition and rules regarding gross proceeds under FATCA are not yet settled.

38 We suggest, therefore, that the definition of gross proceeds not be addressed before the US has finalised its rules on gross proceeds. We also suggest that as the model FATCA IGAs state that US Treasury and its FATCA Partners will consult before addressing gross proceeds, the CRS should not implement any gross proceeds provisions until after that process is completed.

Working Group position

39 In addition to the specific examples above, there are many examples where the Working Group believes consistency is essential and is best achieved by providing consistent definitions. If the model agreements are not amended to provide consistent definitions, this can be done by requiring that jurisdictions adopt a consistent definition in local guidance. Alternatively, the CRS Handbook could set out core principles for participating jurisdictions. Such consistency will allow implementing countries to realise both the OECD's

vision of a common standard and maximise efficiency and minimize the cost to Reporting FIs.

40 To the extent possible, definitions should be aligned to those within FATCA.

3.4 Timing of account due diligence

Issue

41 The Commentary states it expects there will be a general two-year time period for reviewing Pre-existing Individual / Entity Accounts and identifying Reportable Accounts.

42 See for example Commentary on Section III (p.126, Para 51) – *"Paragraph D contains the rule governing the timing of the review procedures for identifying Reportable Accounts among Pre-existing Individual Accounts. Such rule requires that the review must be completed by [xx/xx/xxxx]. While the selection of this date is a decision of the jurisdiction implementing the Common Reporting Standard, it is expected that the date selected for that purpose is the year following the year selected for the term "Pre-existing Account" with respect to High Value Accounts, and the second year following the year selected for such term with respect to Lower Value Accounts."*

Working Group position

43 The Working Group believes that the timeframes for completing due diligence should not vary by jurisdiction. In any event, Reporting FIs should be given no less than one year for pre-existing high value individual account holders and two years for the remaining account holders to complete their review.

3.5 Compliance

3.5.1 Coordination of Procedures

Issue

44 Due to the large number of participating jurisdictions, the coordination of compliance procedures for Reporting FIs under the CRS will pose challenges. Areas of concern include how jurisdictions will request information from Reporting FIs when undocumented accounts are reported and how they will assess a Reporting FI's compliance with CRS obligations.

45 Differing audit, review and compliance procedures in different jurisdictions would increase the cost of a common global assurance program at global FIs.

Working Group position

46 Considering the potential complexities, we believe that a clear and globally consistent approach for Competent Authorities to review Reporting FI compliance will be the only workable and cost effective way to ensure compliance. Whilst the Working Group appreciates this may be a difficult task given the autonomous nature and goals of Competent Authorities, one area of initial focus should be on agreeing on a consistent approach to identifying auditable information. For example, record retention requirements should be consistent across all jurisdictions.

47 We suggest that a procedure similar to that under the FATCA IGAs be adopted. Reporting FIs should be responsible for their own compliance. Under such a system, a local Competent Authority may ask them to demonstrate how they are ensuring compliance. Additional procedures should only be required if a risk factor is identified, for example identifying weaknesses in AML/KYC procedures or identifying failures of CRS procedures. If risk factors are identified by a foreign Competent Authority it should be made clear that it is the domestic Competent Authority that has the power to resolve such issues.

48 We suggest that the agreed process should be as follows: The primary Competent Authority for reviewing a Reporting FI should be the local Competent Authority. If the local Competent Authority does not review a Reporting FI, but another Competent Authority wishes to, that other Competent Authority may initiate it by requesting the local Competent Authority to do so, outlining its concerns or reasons e.g. incorrect or missing data. Once the local Competent Authority has reviewed the reasonableness of the request, it may proceed with the request. Information requests should be made on a uniform basis, so that reporting and record retention to the reviewing Competent Authorities is standardized.

49 Such a coordinated procedure will allow FIs to control costs of ongoing compliance while ensuring that Competent Authorities get the information they need.

50 As an additional general matter, statutes of limitation should be standardized (for example, three years following the end of each calendar year). A standard threshold for failure to comply with CRS should also be adopted. We suggest that penalties for compliance failures should only be applied if 10% of the total accounts covered are incorrectly documented, reviewed or reported.

3.5.2 Communication between Competent Authorities and Reporting FIs

Issue

51 The Model Competent Authority Agreement does not provide for direct communication between Competent Authorities in one jurisdiction and FIs in another. Instead, the Agreement provides that where a Competent Authority believes an error has occurred, it will notify the local Competent Authority who will then take the appropriate action. However, the Commentary suggests, as an alternative, that Competent Authorities may allow direct contact between a Competent Authority in one jurisdiction and a Reporting FI in another jurisdiction.

Working Group position

52 We believe that contact with FIs should only be initiated by their home country Competent Authority. The administrative policy behind the CRS is to provide for government-to-government exchange of information. Direct contact by foreign Competent Authorities with FIs appears inconsistent with that policy. There may also be legal or data protection impediments to such contact unless dealt with through local legislation.

53 As noted in the previous section, the goals of the CRS can be best met by coordinating compliance efforts through local Competent Authorities. We suggest, therefore, that contact should be made via the home jurisdiction Competent Authority and not directly between foreign Competent Authorities and Reporting FIs.

3.6 Choices for Reporting FIs and participating jurisdictions

Issues

54 In certain places the Commentary provides that a jurisdiction may permit Reporting FIs to perform certain actions. The purpose of this discretion is presumably to recognise how markets operate in certain areas and to avoid any potential disruptive effects for a Reporting FI seeking to comply with the CRS. The Commentary will typically state that a "jurisdiction may allow" alternative approaches. Examples are:

3.6.1 Use of third party service providers

55 The Commentary provides that each jurisdiction may allow Reporting FIs to use third-party service providers to fulfil their reporting and due diligence obligations. However, the obligation for compliance remains with the Reporting FI.

56 See Commentary on Section II (p.108, Para 6) – *"According to paragraph D, each Jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions (e.g. a jurisdiction may permit Reporting Financial Institutions to rely on due diligence procedures performed by service providers)."*

Working Group position

57 Jurisdictions must allow Reporting FIs to use service providers to fulfil their CRS obligations.

3.6.2 New accounts of Pre-existing Customers

58 The Commentary allows adopting jurisdictions to enable Reporting FIs in their jurisdiction to treat new accounts of pre-existing customers as pre-existing accounts.

59 See Commentary on Section VIII (p.181, Para. 82) – *"When implementing the CRS, jurisdictions are free to modify the definition of a Financial Account in order to also include certain new accounts of pre-existing customers."*

Working Group position

60 The default position should be that new accounts of pre-existing customers are treated as pre-existing accounts. This would ensure consistency with FATCA. We suggest a further provision be included to allow FIs to apply this rule by business line or to a defined group of business.

3.6.3 Application of High Value Account rules to Lower Value Accounts

61 The Commentary allows Reporting FIs to apply the due diligence procedures for High Value accounts to Lower Value accounts.

62 See Commentary on Section II (p.18, Para. 8) – *"Each jurisdiction may allow Reporting FIs to apply the due diligence procedures for High Value accounts to Lower Value accounts."*

Working Group position

63 Jurisdictions must allow the application of High Value Account rules to Lower Value Accounts.

3.6.4 Prior year exchange of information

64 It is understood that the "early adopter" jurisdictions will have CRS in effect for 2016, with Reporting FIs required to make their first reports in 2017. A further set of jurisdictions are expected to adopt CRS starting in 2017. Under the model Commentary, individual jurisdictions may choose to exchange information with respect to years before the adoption date.

65 See Commentary on Section 3 (p.73, Para. 3) – *"A jurisdiction may choose, subject to its domestic law, to exchange with respect to the earlier years in which case this is also consistent with the CRS and the Model CAA."*

Working Group position

66 Late adopters could be severely impacted due to the inability to obtain customer consent in prior years. In order to avoid this, we believe jurisdictions should only be required to exchange information with respect to years starting when an agreement is adopted. Further complications would arise with respect to collection of gross proceeds information, for example, if this information is not already collected. This would present a significant industry challenge.

3.7 Application of a de minimis rule

Issue

67 Similar to the model FATCA IGAs, the CRS rules contain a de minimis rule for pre-existing entity accounts that do not exceed USD 250,000 on the date the Competent Authority Agreement (CAA) is effective (although unlike the model FATCA IGAs, the Model CAA does not provide that such de minimis accounts do not have to be reviewed until their value exceeds USD 1,000,000 – the Model CAA requires review once the value exceeds USD 250,000). Regarding individual accounts, there is no de minimis threshold in the CRS rules for pre-existing individual accounts or for new individual depositary accounts or cash value insurance contracts.

Working Group position

68 We believe that the lack of a de minimis rule raises a number of complications for FIs, namely concerning: i) the sheer volume of accounts this impacts; ii) potential privacy concerns in participating jurisdictions; iii) any delays to reporting this may cause due to the increased burden the lack of a de minimis rule would bring to the due diligence exercise; iv) the value of such information being required to be received and processed by local Competent Authorities. To elaborate further on some of these points, our experience with FATCA suggests the due diligence timelines to be far too short. Providing a de minimis exception would ensure FIs do not use limited resources on accounts presenting little risk of tax avoidance. The Working Group would wish the CRS to mirror the de minimis thresholds in the FATCA rules – USD 250,000 for pre-existing entity accounts, USD 50,000 for pre-existing individual accounts, USD 250,000 for pre-existing individual cash value insurance contracts and annuity contracts and USD 250,000 for pre-existing entity accounts, with all de minimis accounts not required to be reviewed until their balance or value exceeds USD 1,000,000. Similarly to FATCA, individual bank accounts and cash value insurance contracts with a balance or value not exceeding USD 50,000 should also be considered de minimis.

69 The Working Group appreciates the fact that the lack of a de minimis rule has been raised in a variety of fora. Nevertheless, we continue to believe that the lack of a de minimis rule will create time line problems for FIs in implementing CRS.

Appendix 1