



cutting through complexity



International Conference on FATCA

Entity Classification and Due
Diligence Requirements

01 February 2013 - Draft for discussion



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Purpose

- Classify Entity Account Holders by FATCA status and obtain the related documentation to determine if their Financial Accounts are U.S., held by a recalcitrant account holder or a Nonparticipating FFI

	Reporting	Withholding
Accounts held by Specified US Persons	✓	✗
Accounts held by NPPFI or recalcitrants*	✓	✓
Non-US Accounts	✗	✗

IRS approach

- Financial Account approach vs. Client approach

IGA vs. FR

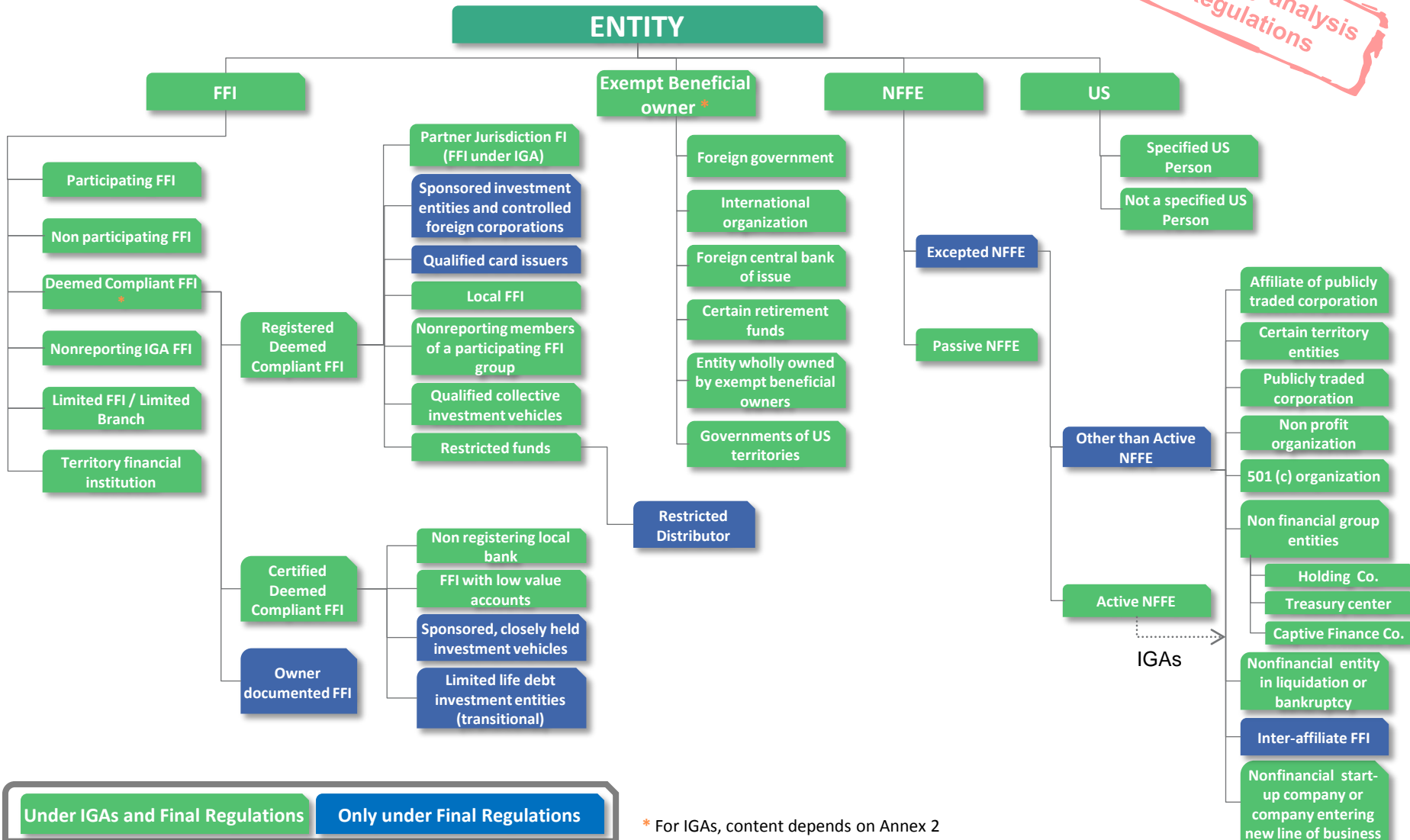
- Under the Final Regulations, a PFFI must establish the FATCA status of the Account Holder and each payee regardless of whether the PFFI makes a payment to the account or not
- Under IGAs, the term “Entity” means a legal person or a legal arrangement such as a trust vs. any person other than an individual in the Final Regulations

* No withholding under IGAs

FATCA – Entity classification and Due Diligence requirements

Entity classification Overview

Based on preliminary analysis of the Final Regulations



Under IGAs and Final Regulations **Only under Final Regulations**

* For IGAs, content depends on Annex 2

	Final Regulations	IGA Models I & II	Comments
Active NFFE	<ul style="list-style-type: none"> Less than 50% of the NFFE's gross income is passive income and less than 50 % of the assets held by the NFFE are assets that produce or are held for the production of passive income 	<ul style="list-style-type: none"> Same as the Final Regulations while adding some categories of Excepted FFI, Excepted NFFE and Non-profit organization from the Final Regulations 	<ul style="list-style-type: none"> IGA I: No Passive income definition FR: Passive income is a portion of gross income that consists of dividends, interests, rents royalties... + New exceptions
Passive NFFE	<ul style="list-style-type: none"> A Passive NFFE is considered as a US owned foreign entity if it is held by one or more substantial US owners 	<ul style="list-style-type: none"> A Passive NFFE is considered as a US owned foreign entity if it is held by one or more Controlling Persons who are U.S. citizens or residents 	<ul style="list-style-type: none"> IGA I & II vs FR : Different definitions
	<ul style="list-style-type: none"> Substantial US owners are any specified U.S. person that owns, directly or indirectly, more than ten percent of the stock of a corporation (by vote or value) 	<ul style="list-style-type: none"> Controlling Persons means the natural persons who exercise control over an entity. 	<ul style="list-style-type: none"> IGA I & II: IGA's definition consistent with the current EU's AML procedures

Final Regulations

IGA Models I & II

Comments

Investment Entity

- The entity primarily **conducts as a business** one or more of the following activities or operations **for or on behalf of a customer** :
 - Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures;
 - **Individual or collective portfolio management**; or
 - Otherwise investing, administering, or managing **funds, money, or financial assets on behalf of other persons**.

This subparagraph shall be interpreted in a manner consistent with **similar language set forth** in the definition of “financial institution” **in the Financial Action Task Force Recommendations**.

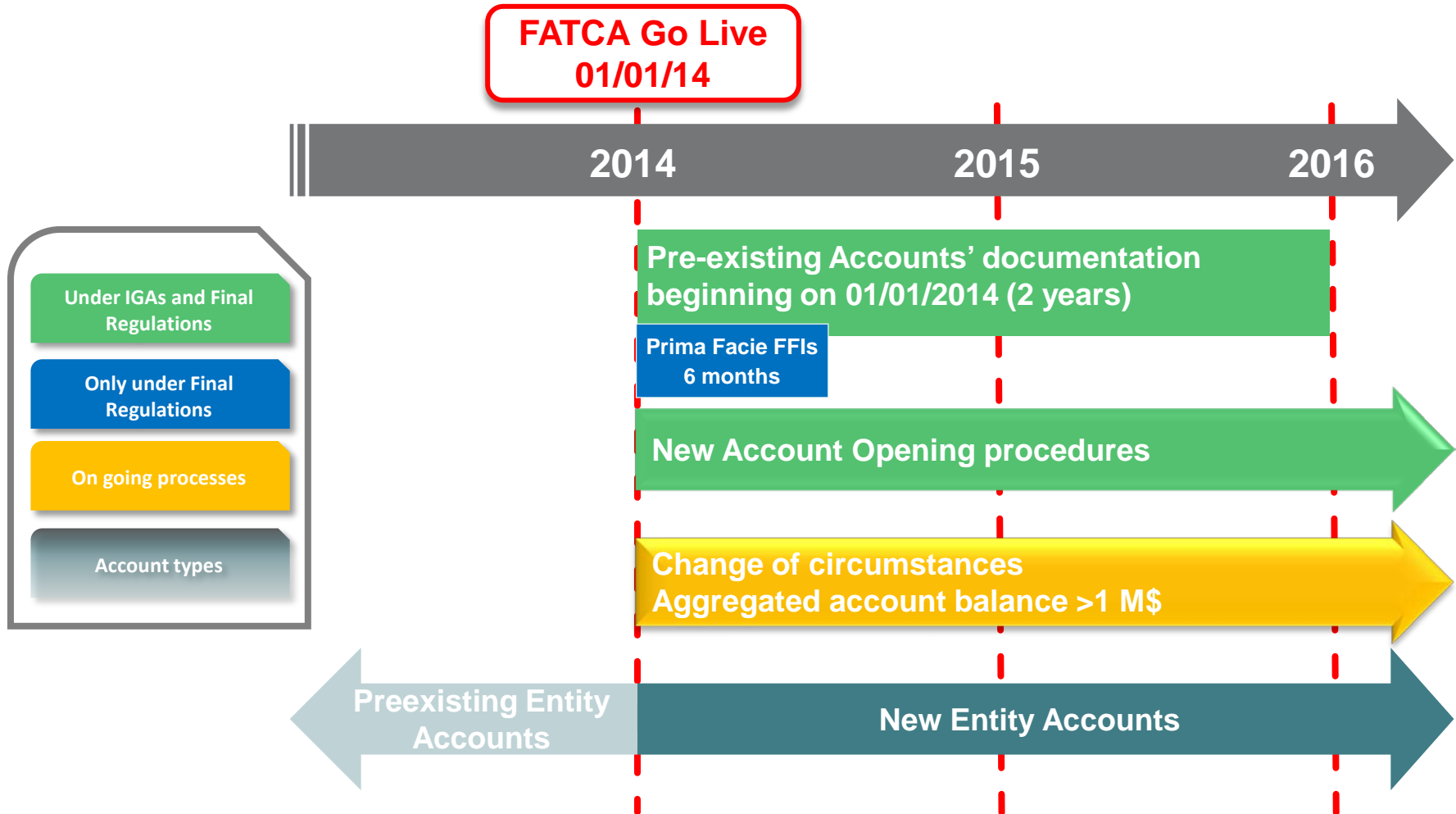
- The entity’s gross income **is primarily attributable to investing, reinvesting, or trading** in financial assets and the entity is **managed by another entity that a depository or custodial institutions, a specified insurance company and another Investment Entity**

- The entity **functions or holds itself out as** a CIV, mutual fund, ETF, private equity fund [...] any similar investment vehicle established **with an investment strategy of investing, reinvesting, or trading in financial assets**

The Differences in definitions may have an impact on the treatment of certain entities
e.g. Family Trust

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Timeline



New in the Final Regulations:

A new account of a customer that has a preexisting obligation can be treated as a preexisting obligation, under certain conditions

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Due Diligences on Entity Accounts for under IGAs and Final Regulations

Steps

Accounts exempted from review:
Aggregated balance ≤ 250K\$

Accounts not subject to review: accounts holders already identified as Specified US Persons

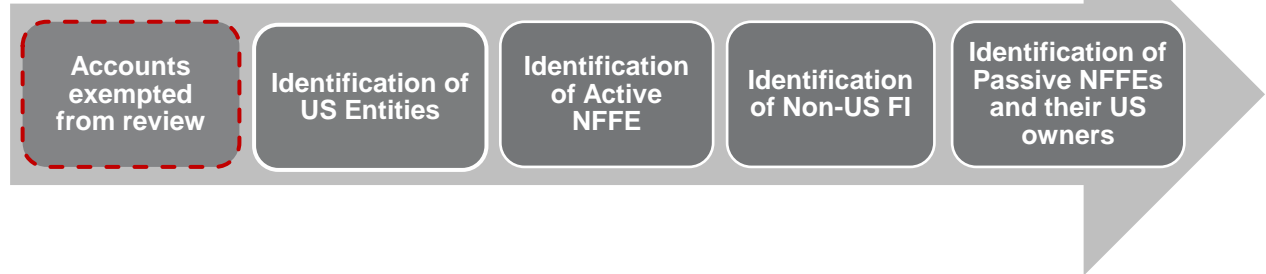
Identification of US Entities

Identification of Non-US FI

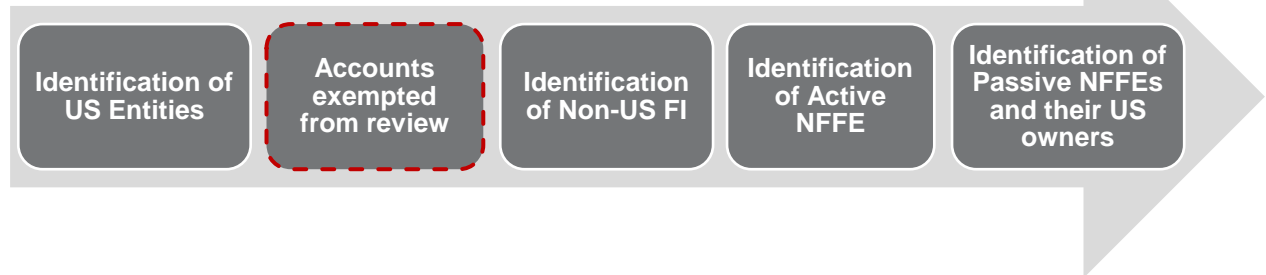
Identification of Active NFFE

Identification of Passive NFFEs and their US owners

Example for a Retail Bank



Example for an IB



Under IGAs and Final Regulations

Only under Final Regulations

Option

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Due Diligences on Preexisting Entity Accounts

Steps

Accounts exempted from review:

Aggregated balance ≤ 250K\$

Accounts not subject to review: accounts holders already identified as Specified US Persons

Identification of US Entities

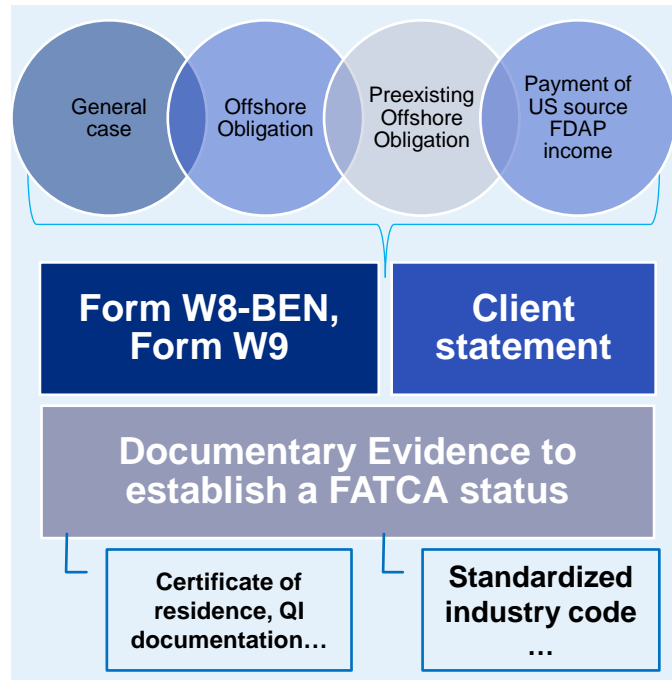
Identification of Non-US FI

Identification of Active NFFE

Identification of Passive NFFEs and their US owners

Final Regulations

- Documentation already collected / QI process



IGA Models I & II

- Identification based on **the information maintained for regulatory or customer relationship purposes** (including AML/KYC procedures)

→ Self-certification to be obtained for CDCFFI, Exempt Beneficial Owners or Excepted FFIs

→ PFFI and RDCFFI : FI identifying number to be verifying on a published IRS FFI list

- Identification based on **information in the FFI's possession or that is publicly available**

→ **reasonably** determine the entity as Active NFFE

- **Self-certification** to be obtained from the **Passive NFFE and the Controlling Persons** to determine their **US status** (or information collected and maintained / AML & KYC procedures if account balance < 1M\$)

FATCA – Entity classification and Due Diligence requirements

Due Diligences on New Entity Accounts

Steps

~~Accounts exempted from review:
Aggregated balance ≤ 250K\$~~

Identification of US Entities

Identification of Non-US FI

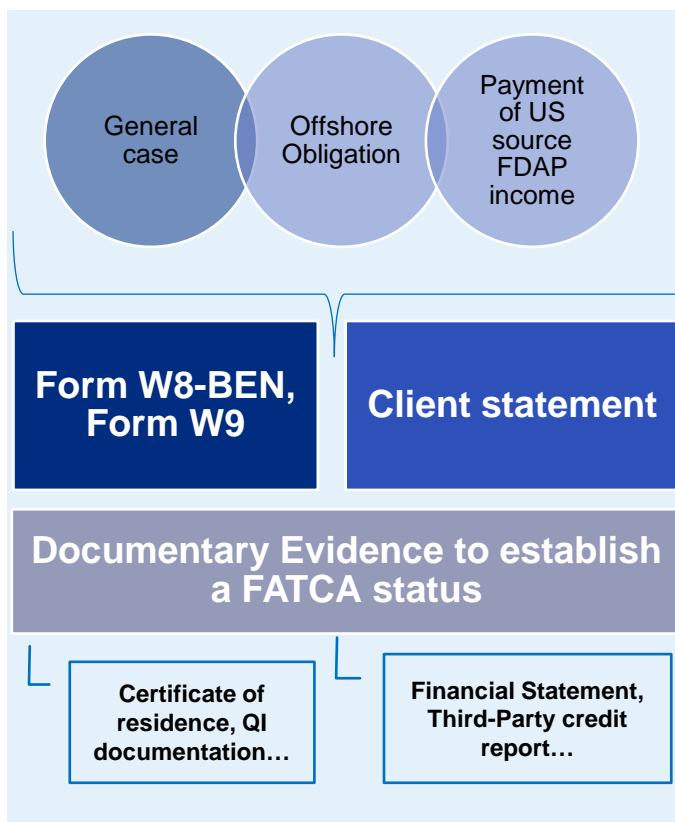
Identification of Active NFFE

Identification of Passive NFFEs and their US owners

Final Regulations

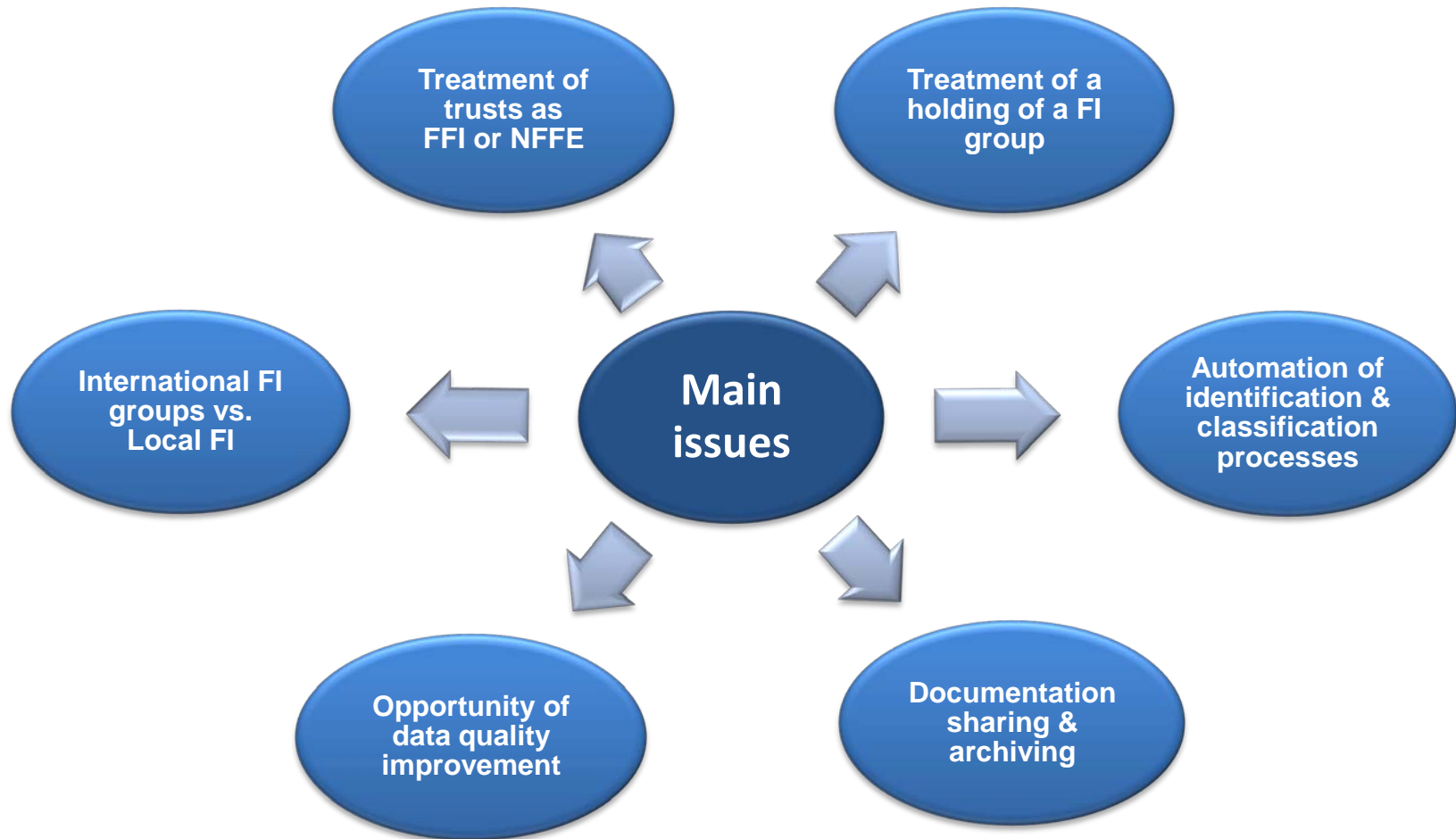
90 days

- All new Entity Accounts are subject to the review and due diligences



IGA Models I & II

- Obtain a **self-certification** from the **Account Holder** except for FIs located in countries under IGA and Active NFFEs for which it is possible to **reasonably** determine their status on publicly available information or in possession of the FI
 - Thus a self-certification is to be obtained from PFFIs, DCFFIs, EBO ...
- A **self-certification** is to be obtained from Passive NFFEs
- Identify the Controlling Persons as determined under **AML/KYC Procedures**
- Determine whether any such person is a **citizen or resident of the US** on the basis of a **self-certification** from the **Account Holder** or such person.



Gains of IGAs vs. Regulations

- Less burdensome documentation and also less contacts with clients: use of information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) as well as information that is publicly available
- “Controlling Persons” identified following the local AML/KYC rules (generally 25%) rather than the threshold of 10% of the Final Regulations

Uncertainties

- Under IGAs, some uncertainties remain with regards to the self-certification. Would be done using W8/W9 forms for Pre-existing Entity Accounts?
- While the Final Regulations have introduced changes on FFIs and new categories of Deemed Compliant FFIs, how will FIs under IGAs benefit from these categories?



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Your contacts



Stéphane Salabert

Senior Manager, Advisory Services Bank



KPMG S.A.	Tel	+33 (0)1 55 68 73 39
1, cours Valmy	Fax	+33 (0)1 55 68 78 11
F-92923 Paris La Défense Cedex	Mob	+33 (0)6 27 58 54 92

ssalabert@kpmg.fr



Patrice Pouliguen

Senior Advisor



STC Partners	Tel	+33 (0)1 53 53 30 30
171, boulevard Haussmann	Fax	+33 (0)1 53 53 30 53
F-75008 Paris	Mob	+33 (0)6 85 75 98 25

ppo@stcpartners.fr

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