

15 September 2020

*Via Electronic Delivery to:* [bureau.jf2b@dgfip.finances.gouv.fr](mailto:bureau.jf2b@dgfip.finances.gouv.fr)French Tax Administration  
139 rue de Bercy  
75012 Paris  
France*RE: US CIV industry comments on  
BOI-RPPM-RCM-30-30-20-70*

Dear French Tax Administration,

The Investment Company Institute (ICI),<sup>1</sup> on behalf of the investors in its members' funds, supports strongly an administrable mechanism for providing all comparable non-French funds with the possibility of an at-source exemption from withholding tax. The proposed guidance released on 15 August 2020 is appreciated greatly.

We have two specific comments on the guidance. Although we provide these comments in the context of our members' funds that are organized in the United States and registered under the Investment Company Act of 1940 (the "1940 Act")<sup>2</sup> as registered investment companies (or "RICs"), these comments have general applicability.

First, we suggest that the procedures provided by this guidance be modified, beginning in 2023, for those RICs that have received a favorable determination and still meet all of the conditions for exemption as they have not had a change in circumstance. In this scenario, similar to the treatment of UCITS, we urge that RICs provide paying agents with a completed BOI-Form-000089 and an affidavit that the conditions for exemption still are met. This confirmation would be renewed annually. These modified procedures would reduce the level of analysis performed by French paying agents by eliminating the need for detailed documentation.

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<sup>1</sup> The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$26.0 trillion in the United States, serving more than 100 million US shareholders, and US\$7.9 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

<sup>2</sup> <http://www.sec.gov/about/laws/ica40.pdf>

Second, we understand that the parties that perform services comparable to those performed by a depository must be independent from a safekeeping perspective. The guidance also suggests, however, that the parties must have no “relationship of interest.” This additional requirement, if it is indeed a requirement, is inconsistent with how we understand depositories operate in France. Specifically, when French funds are managed by a bank, it is common for the fund manager and the depository to be members of the same banking group. Consequently, it is not appropriate to condition the exemption on there being no relationship of interest between the parties. The important characteristic, as provided in the guidance, is that the parties be independent from the perspective of the actual safekeeping and segregation of assets.

In closing, we understand that the FTA recently has begun to approve claims based upon the documentation provided by our members. We appreciate the FTA’s efforts to make these determinations expeditiously—as only the FTA can provide the assurances that French paying agents may require, from a liability perspective, before providing at-source relief.

Attached to this letter are three appendices.

- Appendix A describes the information that we believe should be treated by the FTA as sufficient to establish that a RIC satisfies the seven characteristics required by Title I and BOI-Form-000089 to benefit from the exemption. As RICs are subject to the exact same regulatory regime, it should not be necessary for every RIC to provide copies of the relevant US statutes that are referenced in the letter and these appendices.
- Appendix B describes the extensive regulatory regime provided by US law for providing investor protections—regarding the actual safekeeping and segregation of assets—that are comparable to those provided under French law by a depository. These same protections are provided under US law by various parties other than the management company, including the fund’s board, the fund’s chief compliance officer (CCO), the fund’s transfer agent, the fund’s independent public accountancy firm, and the fund’s global custodian.
- Appendix C explains in detail the various laws, including four securities laws, that apply uniformly to all RICs.

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We appreciate the opportunity to provide these comments. Please feel to contact the undersigned at [lawson@ici.org](mailto:lawson@ici.org) or 1-202-957-7226 if we can provide you with any additional information.

With kind regards,

*/s/ Keith Lawson*

Keith Lawson  
Deputy General Counsel, Tax Law  
Investment Company Institute

Appendices