

Excise Tax on Obligations Not in Registered Form - Audit Technique Guide (ATG)

Publication Date - June 2006

Revision Date - February 2015

NOTE: This guide is current through the publication date. Since changes may have occurred after the publication date that would affect the accuracy of this document, no guarantees are made concerning the technical accuracy after the publication date.

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Chapter 1 - Introduction

IRC section 4701(a) imposes a tax on the principal amount of a registered required obligation not in registered form issued by any United States person. The tax was implemented by the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-248, §310(b)(4)(A). It applies to most public offered debt obligations issued after 1982 unless they are issued in registered form. The tax does not apply to obligations issued in bearer form pursuant to warrants or convertible bonds before August 10, 1982 if they are under arrangements reasonably designed to ensure that they will be sold or resold only to foreign persons.

The purpose of IRC section 4701, along with its companion IRC section 163(f), is to stop the issuance of bearer bonds to citizens and residents of the United States. While IRC section 4701 imposes an excise tax as a penalty to the issuer of the bearer bond, IRC section 163(f) disallows the deduction for the interest on the bearer bond. Since bearer bonds made it difficult to determine the recipient of the interest for tax purposes, IRC sections 4701 and 163(f) were enacted to make it too expensive to issue a bearer bond to a United States person. Bearer bonds can still be issued by United States businesses in foreign markets to foreign persons, and capital is still raised in this manner.

Reported on:

This tax is reported on Form 720, a quarterly Excise Tax return, Line 031.

Law:

Imposition of the tax - Internal Revenue Code section 4701 imposes an excise tax on registration-required obligations, as defined in Internal Revenue Code section 163(f), which are issued in non-registered (bearer) form. The tax is imposed on any person who issues a registration-required obligation in bearer form. (IRC §4701(a)).

Computation of the tax - For such non-registered obligations issued after 12-31-82, the tax is computed by multiplying 1% against the principal amount of the bond, multiplied again by the number of years (or portions thereof) in the term of the obligations. (IRC §4701(a)(1) and IRC §4701(a)(2)).

Regulation section 5f.103-1(c) defines the term registered form as follows:

- (c) Registered form - (1) General rule. An obligation issued after January 20, 1987, is in registered form if-
- (i) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder,
 - (ii) The obligation to the principal of and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) (as described in paragraph (c)(2) of this section), or

- (iii) The obligation is registered as to both the principal and any stated interest with the issuer (or its agent) and may be transferred through both methods described in subdivisions (i) and (ii).

(2) Special rule for registration of a book entry obligation. An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an interest in the obligation.

Definitions:

Principal Amount - The term "principal amount" for a discounted obligation is the issue price, and for all other obligations, including obligations sold at a premium, the term "principal amount" is the stated redemption at maturity. (Treasury Regulation §46.4701-1(c)).

Registration - Required Obligation - Section 4701(b)(1) provides that the term "registration-required obligation" has the same meaning as when used in section 163(f), except that such term shall not include any obligations required to be registered under section 149(a) or (ii) is described in subparagraph (B).

(B) Certain obligations not included. An obligation is described in this subparagraph if-

- (i) There are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,
- (ii) Interest on such obligation is payable only outside the United States and its possessions, and
- (iii) On the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

Section 163(f)(2)(A) provides that the term "registered-required obligation" means any obligation (including any obligation issued by a government entity) other than an obligation which-

- (i) Is issued by a natural person,
- (ii) Is not of a type offered to the public,
- (iii) Has a maturity (at issue) of not more than 1 year.

(B) Authority to include other obligations. Clauses (ii) and (iii) of subparagraph (A) shall not apply to any obligation if-

- (i) Such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and
- (ii) Such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) Book entries permitted, etc. For purposes of this subsection, rules similar to the rules of section 149(a)(3) [[26 USCS § 149\(a\)\(3\)](#)] shall apply, except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section.

Arrangements reasonably designed to ensure sale to non United States persons is addressed in Treasury Regulation section 1.163-5(c)(2)(i) and should be referred to when debt is issued to foreign persons.

Obligation - The term "obligation" includes bonds, debentures, notes, certificates, and other evidence of indebtedness regardless of how denominated. (Treasury Regulation §46.4701-1(b)(2)).

Issuer - the "issuer" is the person whose interest deduction would be disallowed solely by reason of 163(f)(1). (Treasury Regulation §46.4701-1(b)(5)).

Date of Issuance - For obligations intended to be offered to the public, the term "date of issuance" means the date the obligation is first sold to the public at the issuance price. For an obligation which is privately placed, the term "date of issuance" is the date the obligation is first sold by the issuer. (Treasury Regulation §46.4701-1(b)(6)).

Issue Price - For:

- Publicly offered debt instruments not issued for property — the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instrument was sold.
- Other debt instruments not issued for property and not publicly offered the issue price of each such instrument is the price paid by the first buyer of such debt instrument.
- Debt instruments issued for property where there is public trading and which are part of an issue a portion of which is traded on an established securities market, or are issued for stock or securities which are traded on an established market, or to the extent provided in the regulations, are issued for property (other than stock or securities) of a kind regularly traded on an established market - the issue price of such debt instrument shall be the fair market value of such property. (Internal Revenue Code section 1273(b) and Treasury Regulation §46.4701-1(b)(7)).

Bearer Bond - An unregistered, negotiable bond on which interest and principal are payable to the holder, regardless of whom it was originally issued to. The coupons are attached to the bond, and each coupon represents a single interest payment. The holder submits a coupon, usually semi-annually, to the issuer or paying agent to receive payment.

Convertible Bond - A convertible bond is a bond which can be converted into the company's stock. You can exercise the convertible bond and exchange the bond into a predetermined number of shares in the company.

Eurobond - A bond issued by a domestic company in a foreign market, in a currency other than the currency of the foreign country. Example: A U.S. company issues bonds in Europe, payable in U.S. dollars, i.e. a dollar Eurobond is called a Eurodollar bond. A Yen Eurobond is called a Euroyen bond.

A Eurobond is a tradable instrument: it is intended to be bought and sold during the period up to its maturity. It is usually launched through a public offering and is most frequently listed on the London and Luxemburg stock exchanges.

It's important to note that Eurobonds can be issued in bearer or registered form. If in registered form Euroclear or Clearstream are used as central securities depositories to record the holders of the Eurobonds similar to the role of the Depository Trust Company (See discussion below).

The Securities Act of 1933

The Securities Act of 1933 has two basic objectives:

- Require that investors receive financial and other significant information concerning securities being offered for public sale; and
- Prohibit deceit, misrepresentations, and other fraud in the sale of securities.

Purpose of Registration

A primary means of accomplishing these goals is the disclosure of important financial information through the registration of securities. This information enables investors to make informed judgments about whether to purchase a company's securities.

The Registration Process

In general, securities sold in the U.S. must be registered. The registration forms a company files provide essential facts about the securities and the company issuing them. In general, registration forms call for:

- A description of the company's properties and business;
- A description of the security to be offered for sale;
- Information about the management of the company; and
- Financial statements certified by independent accountants.

All companies, both domestic and foreign, must file their registration statements electronically. These statements and the accompanying prospectus become public shortly after filing, and investors can access them using EDGAR. Registration statements are subject to examination for compliance with disclosure requirements.

Not all offerings of securities must be registered with the Securities and Exchange Commission (the "SEC"). Some exemptions from the registration requirement include:

- Private offerings to a limited number of persons or institutions;
- Offerings of limited size;
- Intrastate offerings; and
- Securities of municipal, state, and federal governments.

Please Note:

- When a company is required to register a public offering of a security with the SEC, it is registering the issuance of the security and not the owners of the security. This does not mean however, the issuance is not subject to tax. We must look to the issuer and determine whether the debt offering is in registered form per the excise tax regulations.
- Also, when a company does not have to register a security with the SEC, it does not automatically give rise to taxation. Again, we must look to the issuer and determine whether the debt offering is in registered form per the excise tax regulations.
- Registration of securities with the SEC and registered form per the excise tax regulations are two different concepts and must be viewed independently of each other.

Depository Trust & Clearing Corporation

The following information is taken from a public debt offering filing with the Securities and Exchange Commission. The purpose of its presentation is to explain the role of the Depository Trust Company (DTC) in conjunction with public debt offerings. The examiner may see issuers using the services of the DTC in its debt offerings.

The Depository Trust and Clearing Corporation (DTCC), through its subsidiaries, provides clearance, settlement and information services for equities, corporate and municipal bonds, government and mortgage backed securities, over-the-counter credit derivatives and emerging market debt trades. DTCC's depository provides custody asset servicing for more than two million securities issued from the United States and 100 other countries and territories.

The Depository Trust Company (DTC) is a limited-purpose trust company organized under the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning on the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among participants of securities transactions, such as transfers and pledges in deposited securities through electronic computerized book-entry changes in participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is owned by a number of its direct participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to indirect participants such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a direct participant either directly or indirectly.

Purchases of debt securities under the DTC system must be made by or through direct participants, which will receive a credit for the debt securities on DTC's records. The ownership interest of each actual purchaser of debt security will be recorded on the direct and indirect participants' records. The beneficial owners will not receive written confirmation from DTC of their purchase, but beneficial owners are expected to receive a written confirmation providing details of the transaction, as well as periodic statements of their holdings, from the direct or indirect participants through which the beneficial owner entered into the transaction. Transfers of ownership interest in the debt securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interest in debt securities, except in the event that use of the book-entry system for debt securities is discontinued.

To facilitate subsequent transfers, all debt securities deposited by participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of debt securities with DTC and their registration in the name of Cede & Co. will not change the beneficial ownership of the debt securities. DTC has no knowledge of the actual beneficial owners of the debt securities; DTC's records reflect only the identity of the direct participants to whose accounts the debt securities are credited, which may or may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers.

Delivery of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Principal and interest payments, if any, on the debt securities will be made to Cede & Co., as nominee of DTC. DTC's practice is to credit direct participants' accounts, upon DTC's receipt of funds and corresponding detail information from the issuer or the trustee, on the applicable payable date in accordance with their respective holdings shown on DTC's records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of that participants and not of DTC, the trustee or the issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. is the responsibility of the issuer or the trustee. Disbursement of payments from Cede & Co. to direct participants is DTC's responsibility. Disbursement of payments to beneficial owners is the responsibility of direct and indirect participants.

A beneficial owner must give notice through a participant to a tender agent to elect to have its debt securities purchased or tendered. The beneficial owner must deliver debt securities by causing the direct participants to transfer the participant's interest in the debt securities, on DTC's records, to a tender agent. The requirement for physical delivery of debt securities in connection with an optional tender or a mandatory purchase is satisfied when the ownership rights in the debt securities are transferred by direct participants on DTC's records and followed by a book-entry credit of tendered debt securities to the tender agent's account.

DTC may discontinue providing its services as securities depository for the debt securities at any time by giving reasonable notice to the issuer or the trustee. Under these circumstances, if a successor securities depository is not obtained, then debt securities must be delivered.

The issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, debt security certificates will be printed and delivered.

The use of the DTC in debt offerings as a clearing agency along with its system of record keeping of debt securities fits the definition of registered form per regulation section 5f.103-1(c) regardless that it has no knowledge of the actual beneficial owners of debt securities. This is true because the direct participants who hold an interest in the global note of the issuer, maintains a record of beneficial owners of the debt securities.

The key to the definition of registered form is that a system of recording keeping is in place that can identify the beneficial owner of the obligation and the obligation may be transferred only through a book entry system.

Chapter 2 - Audit Techniques

Annual Reports - Financial Statements

Large business organizations, which include most of the Coordinated Industry Cases, are constantly raising capital for expansion and investments. This is accomplished by issuing new stock or through borrowing money. In borrowing money, a corporation will issue various forms of debt instruments and secure various lines of credit. While each subsidiary corporation is liable for an excise tax return, the audit for Obligations Not in Registered Form should concentrate on the parent corporation. This is because the parent corporation usually has the best credit rating, and can receive lower interest rates. As a result, most debt offerings should flow through the parent corporation. For obligations issued in non-registered form, the first step of the audit process is to review the corporation's Annual Report, along with the Forms 10-Q and 10-K filed with the Securities and Exchange Commission (SEC).

Review of the financial reports should not be limited to the Annual Report and SEC filings. Cash Flow Statements should be reviewed for cash provided by (and used for) financing activities. If long-term debt borrowings and long-term debt repayments are present, the audit for Obligations Not in Registered Form should proceed. The next item to look at on the Annual Reports is the Financial Comments and/or Footnotes. Two particular items should be identified in reviewing the Financial Comments, one relates to foreign exchange conversions, exchanges, or translations, and the other relates to debt financing.

Since one of the keys to finding Obligations Not in Registered Form relates to raising capital in foreign markets, references in the Annual Report and/or Form 10-K Report to foreign exchange conversions, gains and losses on foreign exchanges, or currency translations should be noted and added to the audit workpapers. The debt financing part of the reports (Annual Report and Form 10-K Report) should be reviewed, and debt obligations showing conversions from foreign

currencies should be noted in the work papers. Evidence of debt obligations from foreign sources is an indication of possible debt obligations not in registered form issue.

Coordination with other Examination Specialists

In examining Obligations Not in Registered Form, the Excise Tax Specialist should coordinate this issue with the Coordinated Industry Case Team Coordinator and the Financial Products Specialist. Before submitting an Information Document Request for records relating to Obligations in Non-Registered Form, a meeting should be held with the Team Coordinator and Financial Products Specialist to make sure the same records have not already been requested. The Excise Tax Specialist should work closely with the Financial Products Specialist, who is also interested in foreign obligations to determine if gains and losses on currency fluctuations have been properly reported for income tax purposes.

Shown below is an example of an Information Document Request for various foreign debt offerings in Exhibit A-1:

Exhibit A-1

Please refer to Form 4564 noting that the header and footer are completed as usual and the description of items requested is as follows:

Description of Document Requested:

- General Ledger – Long Term Debt
- Deal packages for each debt offering containing copies of the Offering Prospectus, Dealer/Selling Agreement, Program Manual, Issue and Paying Agent Agreement, Deed of Covenant and Indenture Agreement, specimen copies of the temporary, permanent and definitive security and talon or interest coupons as applicable, Counsel Opinion Letter
- Please provide certification as to non-U.S. beneficial ownership, which was received prior to the earlier of the date of the first actual payment of interest by the issuer on the obligation, or the date of delivery by the issuer of the obligation in definitive form. (Reg. Sec. 1.163-5(c)(2)(i)(D)(3)(i).
- Filings with the United States Securities and Exchange Commission with respect to debt offerings.

The Foreign Obligation Deal Package

The foreign obligation deal package should contain a copy of all the notes issued by the corporation for overseas sales during the period involved. A deal package for a foreign debt offering should contain documents requested in Exhibit A-1. The notes, along with all related legal documentation for each issuance should be reviewed in detail, and a schedule of the notes and possible problems causing taxability as Obligations Not in Registered Form should be listed.

An example of how this note should be shown in a work paper is as follows in Exhibit A-2:

Exhibit A-2 – Work Paper Example

List of Corporate Obligation Notes - Issues Which Were Reviewed	
Name of Bond	Explanation
Example Corporation \$100,000,000 Public Offering – July 16, 2002 6 7/8% Debentures Due July 16, 2012	This obligation had a Registration Statement under the Securities Act of 1933, File # 7-78912, 22-11336.
Example Corporation ¥20,000,000,000/U.S. \$95,696,200 8% Dual Currency Yen/U.S. Dollar Notes Due 2005 Notes will bear interest from January 3, 2000	This is a registered-required obligation issued in bearer form. The note tries to meet the requirements of obligations not required to be registered under Section 163(f)(2)(B) but appears to fail specific requirement under Section 163(f)(2)(B)(ii)(II)

After reviewing the deal file (as discussed in Chapter 3), it was determined that the second note listed on the work paper above (Exhibit A-2), is a temporary global note for the full amount that was issued by a Japanese bank, as a fiscal agent. This is a typical arrangement for these types of issues, until all the smaller “Definitive Notes” can be sold for the full amount. In this case, the Definitive Securities were bearer notes issued in 1,000,000 yen dominations. The Global Note, which is also a bearer note, is a temporary security and is exchangeable in whole or from time to time, in part without charge upon request of the holder for the Definitive Securities in bearer form, (a) not earlier than 90 days after the date on which the distribution of the securities has been completed (which in this case did exceed one year) and (b) as promptly as practicable following the presentation of certification, in the form required by the Fiscal Agency Agreement for such purpose, that the beneficial owner or owners of the Global Security are not United States persons.

Until exchanged in full for the Definitive Securities, the Global Security shall in all respects be entitled to the same benefits and subject to the same terms and conditions of the Definitive Securities and those contained in the Fiscal Agency Agreement, except neither the holder thereof nor the beneficial owners of this Global Security shall be entitled to receive payment of interest hereon.

This second type of note, listed in the work paper (Exhibit A-2) above, may or may not be subject to the Obligations Not in Registered Form Excise Tax, and the examining agent must inspect all the related information in the deal file to determine the taxability of both the Global Security and the related Definitive Securities. Both types of notes should be inspected in detail. Based on the information contained on the notes, it was determined the Global Security found to be issued in bearer form. In order not to be subject to the Obligations Not in Registered Excise Tax, various requirements of Internal Revenue Code section 163 must be met.

Debt issued in the United States

The deal package should contain a copy of all the obligations issued by the entity. A deal package should contain documents as requested in Exhibit A-1. The taxpayer should be asked what system of records it maintains to record each owner of the obligation. The obligation, along with all related legal documentation for each issuance should be reviewed in detail, and a schedule of the obligations and possible problems causing taxability as Obligations Not in Registered Form should be listed. If no record of ownership for each obligation issued is maintained, the obligation was issued in bearer form and the tax applies.

Chapter 3 - Determining Taxability of the Note

How to Apply the Law to the Documents

Since Internal Revenue Code section 4701(b)(1) states that the term "registration-required obligation" has the same meaning as when used in section 163(f), except that such term shall not include any obligation required to be registered under section 149(a), we must turn to section 163(f) to determine what a registration-required obligation is. Internal Revenue Code section 4701(b)(2) also states that the term "registered form" has the same meaning as used in section 163(f). Internal Revenue Code section 149(a) states that all bonds whose interest is excluded from income under section 103 must be registered. Since that registration requirement applies to bonds issued by state and local governments, and we are dealing with taxing non-government issued securities, Internal Revenue Code section 163(f) will be the key code section in determining the taxability of the security.

As previously mentioned, various documents related to the issuance of the security must be reviewed to determine taxability. Examples of these documents are contained in Exhibits shown in the Appendix at the end of this guide. Shown in the Appendix are examples of the notes, both Global Security (Exhibit A-3) and Definitive Security (Exhibit A-4), and related information, such as the Selling Group Agreement (Exhibit A-5) and Offering Circular (Exhibit A-6). It should be noted that in the course of the audit, specimen copies of the notes should be requested, as the purchaser of the security would hold the actual notes.

Using the Global Security, Definitive Security, the Selling Group Agreement for the bond issue, and the Offering Circular, we will apply various tests of Internal Revenue Code section 163(f) to determine the applicability of the Obligations Not in Registered Form Tax to the offering. To accomplish this, Internal Revenue Code section 163(f)'s various requirements have been broken down into a series of tests to apply to a bond offering to determine if the offering is subject to the Excise Tax.

Test One – One of the tests of the Global Security is to be a type of security that would be required to be registered if issued in the United States. For example, in order to be considered taxable, a Temporary Global Security issued for foreign debt would have to be a registered-required obligation. Under IRC section 163(f)(2)(A)(iii), a Temporary Global Security may not be considered a registration-required obligation if it does not (at issue) have a maturity of more than one year.

Under Treas. Reg. §1.163-5(c)(ii)(B), the term "temporary global security" means a security which is held for the benefit of the purchasers of the obligations of the issuer and interests in which are exchangeable for securities in definitive, registered, or bearer form prior to its stated maturity. The term, however, does not include an obligation that is not retired within a reasonable period of time after the completion of the initial offering. Rev. Rul. 89-9, 1989-1 C.B. 76.

Exercise One – Inspect the Global Security shown as Exhibit A-3. Does this Temporary Global Security meet the taxability test 1 described above? Why or why not would this Temporary Global Security be subject to the Excise Tax on Obligations Not in Registered Form?

Answer to Exercise One - The Global Security may be subject to the excise tax, as it does have a maturity date (January 3rd, 2005) of more than one year (at issue), and therefore would be considered a registration-required obligation. On many occasions, the maturity date may be stated as the last date on which definitive securities have been exchanged, at which time the security will be recalled. Audit steps should be taken to ensure that this date exceeds one year before taxing such security.

Test Two – A security is also not considered a "registration-required obligation" if issued by a natural person, or is not a type offered to the Public. (IRC Section 163(f)(2)(A)(i) and (ii))

Exercise Two - Inspect the Global Security in Exhibit A-3, the Definitive Security in Exhibit A-4, the Selling Group Agreement in Exhibit A-5, and the Offering Circular in Exhibit A-6. List the items found in the Securities, Selling Group Agreement and Offering Circular that would indicate that applying test two would result in a registration-required obligation.

Answer to Exercise Two - The following descriptions contained on the Securities, Selling Group Agreement, and Offering Circular indicate that the Securities in question are not issued by a natural person and are a type of security offered to the public:

Offering Circular – The mere existence of an Offering Circular indicates it is being offered to the public. The mention of an application to list the notes on the Luxembourg Stock exchange is another indication of a public offering and availability. Example Corporation issues the bonds, and the corporation is not a natural person.

Selling Group Agreement – Reference to an Offering Circular issued in connection with the notes indicates that they are available to the public. The Selling Group Agreement also indicates that Example Corporation, and not a natural person issue the notes. A statement that the notes will be offered to a selling group consisting of banks, brokers, and dealers indicates that the notes are available to the public.

Definitive Security – The face of the note indicates that it is issued by Example Corporation, not a natural person. The fact that the interest and principal is payable to the bearer of the attached coupons the amount shown is an indication that it is available to the public, as anyone can be a bearer of the coupon.

Global Security – Once again, the face of the note indicates that it is issued by Example Corporation, not a natural person. The Temporary Global Security also will make payment of the principal amount to the bearer of the Global Security, and the Global Security states it shall in all respects be entitled to the same benefits and subject to the same terms and conditions of the definitive securities and those contained in the Fiscal Agency Agreement, except that neither the Holder hereof nor the beneficial owners of their Global Security shall be entitled to receive payment of interest thereof. This statement relates to the terms and conditions of the Definitive Security, Selling Group Agreement, and Offering Circular, as such available to the public.

Test Three – If a registration-required obligation is issued not in registered form, it would be subject to the tax on Obligations Not in Registered Form if it fails to meet the exception of a registration-required obligation under IRC section 4701(b)(1)(B), which states,

"Certain obligations not included. – An obligation is described in this subparagraph if –

- (i) There are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person, and
- (ii) Interest on such obligation is payable only outside the United States and its possessions, and
- (iii) On the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws."

Test three actually has a number of small checks within the test to determine the taxability of the securities. The first mini-test is that the obligation is issued not in registered form. The next part is that there must be arrangements reasonably designed to ensure sale to non-United States persons as defined in Regulation section §1.163-5(c)(2)(i).

The last part of test three is very clear and precise. In order to be exempt from the excise tax, in the case of an obligation not in registered form, on the face of such obligation there must be a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws. Pursuant to Treas. Reg. §1.163-5(c)(ii)(B), a temporary global security within the meaning of the regulations does not have to contain this statement.

Exercise Three – Review the Global Security, the Definitive Security, the Selling Group Agreement and the Offering Circular. Find and list all obvious arrangements designed to ensure that such obligation will be sold only to a person that is not a United States person.

Answer to Exercise Three - On the face of the Global Security, the second sentence states, "Neither this Security nor any portion hereof may be offered or sold directly or indirectly in the United States of America, its territories or possessions (including the Commonwealth of Puerto Rico) ("United States") or to nationals or residents thereof or to any corporation, partnership, or other entity created or organized in or under the Laws of the United States or

as a political subdivision thereof or to any estate or trust which is subject to United States Federal Income Taxation regardless of the source of its income ("United States Persons").

On the Selling Group Agreement for the securities, on the second page, the entire paragraph (b) would meet this arrangement. It states "You understand that the Notes have not been and will not be registered under the Securities Act of 1933 of the United States and may not be offered or sold directly or indirectly in the United States or to U.S. persons as part of the distribution of the Notes. You further represent and agree that any Notes subscribed by you will be subscribed by you as principal for distribution in conformity with the provisions of this agreement and that you have not offered or sold and will not offer or sell directly or indirectly any such Notes in the United States or to any U.S. person (except to a manager or a selling group member). You also agree that, except for sales to managers or a selling group members, you have not offered or sold and will not offer or sell Notes (otherwise acquired) directly or indirectly in the United States or to any U.S. person prior to 90 days after completion of the distribution of the Notes, as determined by Xxxzz. Finally, you agree to deliver to each purchaser from you of Notes acquired by you as part of the distribution a written confirmation stating substantially the following:

"The Notes have not been registered under the Securities Act of 1933 of the United States and, accordingly, if you are a dealer, (i) you represent and warrant that all Notes purchased by you have been purchased as principal and that you have not offered or sold, and you agree that you will not offer or sell, any such Notes directly or indirectly in the United States or to U.S. persons and are not purchasing any of such Notes for the account of any such persons and (ii) you will deliver to all purchasers of such Notes from you a written confirmation containing the statements set forth herein. As used in this confirmation, "United States" means the United States of America and its territories and possessions, and "U.S. person" means any national or resident of the United States, including any corporation, partnership or other entity created or organized under the laws thereof or any political sub-division thereof and any estate or trust that is subject to United States federal income taxation regardless of the source of its income."

As used in this paragraph (b), "United States" and "U.S. person" have the meanings set forth in the confirmation above.

Once again, on the front page of the Offering Circular, in bold in the middle of the first page is the statement, "The Notes have not been registered under the United States Securities Act of 1933 and may not be offered or sold, directly or indirectly, in the United States of America (including its territories and possessions) or to U.S. Persons as set forth herein. See Subscription and Sale."

A second more direct arrangement is the comment, "The temporary global Note will be exchangeable for definitive Notes in bearer form with interest coupons attached no earlier than 90 days following the completion of the distribution of the Notes as determined by Lbsma Europe Limited, upon certification that the beneficial owners thereof are not U.S. Persons."

Exercise Four – Review the Securities in Exhibit A-3 and A-4, and determine if they have the required statement on the face of the obligation “that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.”

Answer to Exercise Four – The global security in exhibit A-3, even though it is labeled Temporary Global Security, does not qualify as a "temporary global security" within the meaning of the regulations under section 163(f) because it has a five year term, which is not a reasonable period of time for a temporary global security to be outstanding. Therefore, it does not qualify for the exception in Treas. Reg. §1.163-5(c)(ii)(B) to the required statement. The Global Security does not have the required statement on the face of the obligation "that any United States person who holds such obligation will be subject to limitations under the United States income tax laws." The Definitive Security, on the face of the Note has the statement, "Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And 1287(a) Of The United States Internal Revenue Code Of 19xx, As Amended," which meets the requirement.

Exercise Five – Compute the Obligations Not in Registered Form Excise Tax due on the Securities shown on Exhibits A-3 and A-4, if any amount is due.

Answer to Exercise Five – The Temporary Global Security, Exhibit A-3, would be subject to the Excise Tax on Obligations not in Registered Form. This security is a "registration-required obligation" since under IRC Section 163(f) it is an obligation not issued by a natural person (issued by Example Corporation), is of a type offered to the public, has a maturity of more than 1 year and does not meet the foreign targeting requirements of §163(f)(2)(B). On most examinations, the Temporary Global Security will not exceed the one-year limitation, but if like this security, it does exceed one year, the tax on Obligations Not in Registered Form would apply. The Temporary Global Security in this case fails to meet the requirements of the exemption of a registration-required obligation under IRC Section 163(f)(2)(B)(ii)(II), which requires that on the face of the obligation there is a statement that any United States person who holds the obligation will be subject to limitations under United States income tax laws. As none of the exceptions in §163(f)(2) apply, the Global Security is subject to the Excise Tax on Obligations Not in Registered Form.

Since the Security is issued for Yen (¥20,000,000,000) on January 3rd, 2000, to compute the tax, the yen value is converted to dollars. The Offering Circular, prepared at the time of the security issue, shows a value of ¥124.90 = U.S. \$1.00., so the Security would have a value of \$160,128,102.00. Since the Global Security has a maturity in 5 years, the tax would be computed as $\$160,128,102. \times 1\% (.01) \times 5 = \$8,009,405.10$. (Internal Revenue Code Section 4701(a)) This example mirrors one in Revenue Ruling 89-9 (1989-1 C.B. 76) where a temporary Global Security was outstanding for seven years and the Definitive Security was never issued.

The Definitive Security would not be subject to the tax, as it meets all the exceptions IRC section 163(f)(2)(B) to become a "Certain Obligations not included" and therefore this Definitive Security is not a registration-required obligation.

In summary,

In order for a bearer security issued not in registered form to be subject to the Obligations Not in Registered Form Excise Tax, it must be:

- Issued by other than a natural person
- Of a type offered to the public
- Mature in excess of 1 year

If the above test is met, in order to avoid being taxed as an Obligation Not in Registered Form, §4701(b)(1)(B) require that an obligation must be designed as follows:

- (i) There are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,
- (ii) Interest on such obligation is payable only outside the United States and its possessions, and
- (iii) On the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

In order to determine the taxability of these foreign issued obligations, close examination of all the debt documents is required as shown by the above tests and exercises.

Sources of Information

Internal Revenue Code Section 4701
Treasury Regulation 46.4701-1
Internal Revenue Code Section 163
Treasury Regulation 1.163-5
Internal Revenue Code Section 149
Internal Revenue Code Section 103
Treasury Regulation 5f.103.1
Treasury Regulation 5f.163.1
Revenue Ruling 89-9, 1989-1 C.B. 76, also 1989-4 I.R.B. 4
Notice 2012-20; 2012-1 C.B. 574
Private Letter Ruling 9626056
Private Letter Ruling 9613002
Private Letter Ruling 9704005
<http://www.investorwords.com>

Please contact Joe Mazzuca, @ 630-493-5008 or joseph.a.mazzuca@irs.gov if you have any questions or need additional guidance.

Appendix

Exhibit A-3 – Global Security

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933. NEITHER THIS SECURITY NOR ANY PORTION HEREOF MAY BE OFFERED OR SOLD DIRECTLY OR INDIRECTLY IN THE UNITED STATES OF AMERICA, ITS TERRITORIES OR POSSESSIONS (INCLUDING THE COMMONWEALTH OF PUERTO RICO) (“UNITED STATES”) OR TO NATIONALS OR RESIDENTS THEREOF OR TO ANY CORPORATION, PARTNERSHIP, OR OTHER ENTITY CREATED OR ORGANIZED IN OR UNDER THE LAWS OF THE UNITED STATES OR AS A POLITICAL SUBDIVISION THEREOF OR TO ANY ESTATE OR TRUST WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME (“UNITED STATES PERSONS”).

Article I. EXAMPLE CORPORATION

8% Dual Currency Yen/U.S. Dollar Due January 3, 2005

TEMPORARY GLOBAL SECURITY

Example Corporation (the “company”), a corporation duly organized and existing under the laws of the state of Illinois, for value received, hereby promises to pay to bearer upon presentation and surrender of this Global Security the principal sum of Twenty Billion Japanese Yen (¥20,000,000,000) on January 3, 2005, and to pay interest thereon, from January 3, 2000 at the rate of 8% per annum, until the principle hereof is paid or made available for payment; provided, however, that interest on the Global Security shall be payable only after the issuance of the definitive Securities in bearer form for which this Global Security is exchangeable and only upon presentation and surrender of the interest coupons thereto attached as they severally mature.

This Global Security is one of a duly authorized issue of Securities of the Company designated as specified in the title hereof, issued and to be issued in accordance with the provisions of the Fiscal Agency Agreement, dated as of January 3, 2000 (the “Fiscal Agency Agreement”), between the Company and The Foreign Japanese Example Bank Limited, as fiscal agent (the “Fiscal Agent”). It is a temporary security and is exchangeable in whole or from time to time in part without charge upon request of the Holder hereof for the definitive Securities in bearer form, with interest coupons attached, of authorized denominations, (a) not earlier than 90 days after the date on which the distribution of Securities has been completed as Example Europe Limited shall have advised the Fiscal Agent in writing and (b) as promptly as practicable following presentation of certification, in the form required by the Fiscal Agency Agreement for such purposes, that the beneficial owner or owners of this Global Security (or, if such exchange is only for a part of this Global Security, of such part) are not United States Persons. Upon any exchange of a part of this Global Security of definitive Securities, the portion of the principal amount hereof so exchanged shall be endorsed by the Fiscal Agent on the Schedule hereto, and the principal amount hereof shall be reduced for all purposes by the amount so exchanged.

Until exchanged in full for definitive Securities, this Global Security shall in all respects be entitled to the same benefits and subject to the same terms and conditions of the definitive

Securities and those contained in the Fiscal Agency Agreement, except that neither the Holder hereof nor the beneficial owners of this Global Security shall be entitled to receive payment of interest hereon.

This Global Security shall be governed by and construed in accordance with the laws of the State of (Pick a state).

All terms used in this Global Security which are defined in the Fiscal Agency Agreement or the definitive Securities shall have the meanings assigned to them therein.

Unless the certificate of authentication hereon has been executed by the Fiscal Agent by the manual signature of one of its duly authorized officers, this Global Security shall not be valid or obligatory for any purpose.

In Witness Whereof, the Company has caused this Global Security to be duly executed.

Dated as of January 3, 2000

Example Corporation

By (Signature Line)

Exhibit A-4 Definitive Security

[Form of Definitive Securities]

[Form of Face]

Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And 1287(a) Of The United States Internal Revenue Code Of 19xx, As Amended.

¥1,000,000

№. 000000

Example Corporation
6¹/₈% Yen Note Due January 30, 2005

Example Corporation (the “Company”), a corporation duly organized and existing under the laws of the State of Delaware, for value received, hereby promises to pay the bearer upon presentation and surrender of this Security the principal sum of One Million Japanese Yen on January 30, 2005 and to pay interest thereon, from January 30, 2000, annually in arrears on January 30, in each year (an “Interest Payment Date”), commencing January 30, 2000, at the rate of 6¹/₈% per annum (calculated on the basis of a year of twelve 30-day months), until the principal hereof is paid or made available for payment. Such payments of principal and interest

(including any additional amounts payable pursuant to Paragraph 5) shall be made, subject to any laws or regulations applicable thereto and to the right of the Company (limited as provided below) to terminate the appointment of any such paying agency, at the main offices of The XXXX Bank of Japan, Limited in Tokyo. The XXXX Bank of Japan, Limited, London Branch, the XXXX Bank of Japan (Luxembourg) S.A. in Luxembourg, A Predominate Trust Company of New York in Brussels, and a Predominate Swiss Bank in Zurich, or at such other offices or agencies outside the United States, its territories and possessions as the Company may designate, in such coin or currency of the United States (in the case of principal) or of Japan (in the case of interest) as at the time of payment shall be legal tender for the payment therein of public or private debts, against presentation and surrender of, in the case of interest, the relevant interest coupon and, in the case of principal, this Security, (i) in the case of principal, by transfer to a United States dollar account (in the case of a non-resident of Japan, to a non-resident dollar account) maintained by the payee with, or by United States dollar check drawn on, a bank (in the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo and (ii) in the case of interest, by transfer to a yen account (in the case of payment to a non-resident of Japan, to a non-resident yen account) maintained by the payee with, or by yen check drawn on, a bank (in the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo. Payment on this security shall be payable only at an office or agency located outside the United States, its territories or its possessions (including the Commonwealth of Puerto Rico) and may not be made by transfer to an account in, or by mail to an address in, the United States, its territories or its possessions (including the Commonwealth of Puerto Rico). Notwithstanding the foregoing, if permitted by United States Treasury regulations without adverse Federal tax consequences to the Company, such payments may be made at a paying agency in New York City only if the Company determines that such payment of the full amount at all offices and agencies located outside of the United States through which payment is to be made in accordance with the terms of this Security is illegal or effectively precluded because of the imposition of exchange controls or other similar restrictions on the full payment or receipt thereof. The Company covenants that until this Security has been delivered to the Fiscal Agent for cancellation, or monies sufficient to pay the principal of and interest on this Security have been made available for payment and either paid or returned to the Company, as provided herein, it will at all times maintain one or more offices or agencies in each of Tokyo and Europe (which, so long as the Securities are listed on the Luxembourg Stock Exchange and such exchange shall so require, shall include an office or agency in Luxembourg) for the payment of the principal and interest on the Securities as herein provided.

Reference is hereby made to the further provisions of this Security set forth on the reverses hereof, which further provisions shall for all purposes have the same effect as through fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this security to be duly executed and its corporate seal to be hereunto affixed and attested and duly executed coupons to be annexed hereto.

DATED as of January 30, 2000.

**Certificate of Authentication
of the Fiscal Agent**

This is one of the Securities referred to in the within mentioned
Fiscal Agency Agreement
THE XXXX BANK OF JAPAN, LIMITED
As Fiscal Agent
By:

Example Corporation

By:
Executive Vice President and
Officer
Attest:
By:
Assistant Secretary

**Example
Corporation**

Japanese Yen
20,000,000,000
6 $\frac{1}{8}$ % Yen Notes
Due January 30,
2005

**1245400009
22222 00**

Please Note: The interest coupons and the coupon to the left of this notice
(which is for the payment of principal) are designed to be processed by
optical character reading (OCR) system. To Assist processing please ensure
that interest coupons are detached along the dotted lines.

Example Corporation

Yen 20,000,000,000 6 $\frac{1}{8}$ % Notes Due January 30, 2005

¥65,125
Due
January 20, 2001

Unless the Security to which this coupon appertains shall have been called for previous
redemption and payment thereof duly provided for, on the date set forth hereon, Example
Corporation (the "company") will pay to bearer, upon surrender hereof, at the paying agencies
set out on the reverse hereof, or at such other points outside the United States of America, its
territories and its possessions (including the Commonwealth of Puerto Rico) as the company
may determine from time to time, the amount shown hereon (together with any additional
amounts with respect thereof which the company may be required to pay according to the terms
of the Security). Payments will be made in lawful money of yen amounts (in the case of payment
to a non-resident of Japan, to a non-resident yen account), by a yen check drawn on a bank (in
the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo.

Example Corporation
By: John Hancock

12454678000092 33333 0001

Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under
United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And
1287(a) Of The United States Internal Revenue Code Of 19xx, As Amended.

Example Corporation
Yen 20,000,000,000 6 $\frac{1}{8}$ % Notes Due January 30, 2005

¥65,125
Due
January 20, 2002

Unless the Security to which this coupon appertains shall have been called for previous redemption and payment thereof duly provided for, on the date set forth hereon, Example Corporation (the "company") will pay to bearer, upon surrender hereof, at the paying agencies set out on the reverse hereof, or at such other points outside the United States of America, its territories and its possessions (including the Commonwealth of Puerto Rico) as the company may determine from time to time, the amount shown hereon (together with any additional amounts with respect thereof which the company may be required to pay according to the terms of the Security). Payments will be made in lawful money of yen amounts (in the case of payment to a non-resident of Japan, to a non-resident yen account), by a yen check drawn on a bank (in the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo.

Example Corporation
By: John Hancock

12454678000092 444444 00002

Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And 1287(a) Of The United States Internal Revenue Code Of 19xx, As Amended.

Example Corporation
Yen 20,000,000,000 6 $\frac{1}{8}$ % Notes Due January 30, 2005

¥65,125
Due
January 20, 2003

Unless the Security to which this coupon appertains shall have been called for previous redemption and payment thereof duly provided for, on the date set forth hereon, Example Corporation (the "company") will pay to bearer, upon surrender hereof, at the paying agencies set out on the reverse hereof, or at such other points outside the United States of America, its territories and its possessions (including the Commonwealth of Puerto Rico) as the company may determine from time to time, the amount shown hereon (together with any additional amounts with respect thereof which the company may be required to pay according to the terms of the Security). Payments will be made in lawful money of yen amounts (in the case of payment to a non-resident of Japan, to a non-resident yen account), by a yen check drawn on a bank (in the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo.

Example Corporation
By: John Hancock

12454678000092 555555 00003

Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And

Example Corporation
Yen 20,000,000,000 6½% Notes Due January 30, 2005

¥65,125
Due
January 20, 2004

Unless the Security to which this coupon appertains shall have been called for previous redemption and payment thereof duly provided for, on the date set forth hereon, Example Corporation (the “company”) will pay to bearer, upon surrender hereof, at the paying agencies set out on the reverse hereof, or at such other points outside the United States of America, its territories and its possessions (including the Commonwealth of Puerto Rico) as the company may determine from time to time, the amount shown hereon (together with any additional amounts with respect thereof which the company may be required to pay according to the terms of the Security). Payments will be made in lawful money of yen amounts (in the case of payment to a non-resident of Japan, to a non-resident yen account), by a yen check drawn on a bank (in the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo.

Example Corporation
By: John Hancock

12454678000092 6666666 000004

Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And 1287(a) Of The United States Internal Revenue Code Of 19xx, As Amended.

Example Corporation
Yen 20,000,000,000 6½% Notes Due January 30, 2005

¥65,125
Due
January 20, 2005

Unless the Security to which this coupon appertains shall have been called for previous redemption and payment thereof duly provided for, on the date set forth hereon, Example Corporation (the “company”) will pay to bearer, upon surrender hereof, at the paying agencies set out on the reverse hereof, or at such other points outside the United States of America, its territories and its possessions (including the Commonwealth of Puerto Rico) as the company may determine from time to time, the amount shown hereon (together with any additional amounts with respect thereof which the company may be required to pay according to the terms of the Security). Payments will be made in lawful money of yen amounts (in the case of payment to a non-resident of Japan, to a non-resident yen account), by a yen check drawn on a bank (in the case of payment to a non-resident of Japan, an authorized foreign exchange bank) in Tokyo.

Example Corporation
By: John Hancock

12454678000092 777777 000005

Any United States Person Who Holds This Obligation Will Be Subject To Limitations Under United States Income Tax Laws, Including The Limitation Provided In Sections 165(j) And 1287(a) Of The United States Internal Revenue Code Of 19xx, As Amended.

Note that in Exhibit A-4 above, the Definitive Securities above have detachable coupons to remove and take to a bank and cash in for the interest payment. This is the key mark of a bearer security, the bearer of the coupon is entitled to the interest, no name and no social security number is needed. This makes this type of security also prone to theft, as the security itself has value.

Exhibit A-5 Selling Group Agreement

Example Corporation

¥20,000,000,000/U.S. \$170,940,017

8% Dual Currency Yen/U.S. Dollar Notes Due 2005

Selling Group Agreement

January 3, 2000

Dear Sirs:

On behalf of the Managers named in Schedule I hereto (the "Managers"), we refer to our telex of January 3, 2000 relating to the issue of ¥20,000,000,000 of 8% Dual Currency Yen/U.S. Dollar Notes Due January 2005 (the "Notes") of Example Corporation, a Pick a State corporation (the "Company"), and enclose two copies of the proof dated December 23, 1999 of the Offering Circular being issued in connection with the Notes.

No action has been taken to permit a public offering of the Notes or distribution of the Offering Circular in preliminary or final form in any jurisdiction where action would be required for such purposes. In this connection, your attention is drawn to paragraphs (a) through (e) below.

We expect on or about January 3, 2000 to enter into a subscription agreement (the "Subscription") with the Company to subscribe or, on behalf of the Company, arrange for subscription for the Notes at the Issue price of 101³/₈ % of the yen principal amount plus accrued interest, if any. A Selling Group concession of 1 ¹/₄ % of the yen principal amount of the Notes will be allowed from the issue price.

Following execution of the Subscription Agreement, we expect to offer the Notes, on behalf of the Company, to a Selling Group consisting of banks, brokers and dealers (including ourselves)

on the basis of the final Offering Circular and on the terms contained herein.

The Notes, in the form of a temporary global Note, are expected to be deposited with a common depository in EURO-FAPPEAR and DECEL, for the accounts of the subscribers, against payment at 700 hours, Tokyo time on January 10, 2000 (the “Closing Date”), although the Closing Date may be postponed to such other time and date as the Company and ourselves shall determine. You will be notified by telex of payment instructions in respect of Notes subscribed by you. You authorize us to advance or arrange for the advance of funds to cover any delay in the receipt of your payment and to charge interest at current rates thereon. Definitive Notes will be available not earlier than 90 days after the completion of the Notes, as determined by Xxxzz Bermuda Limited (“Xxxzz”), upon certification as to non-U.S. beneficial ownership.

The following conditions will be binding on you as a member of the Selling Group:

(a) You understand that the Notes have not been and will not be registered under the Securities and Exchange Law of Japan, and accordingly you undertake that (i) the Notes that you subscribe will be subscribed by you as a principal and (ii) you will not offer, sell or deliver any Notes directly or indirectly in Japan or to, or for the benefit of, any Japanese person (which term as used in this Agreement means any person resident in Japan, including any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale directly or indirectly in Japan or to any Japanese person during the period of 180 days after the Closing Date and, thereafter, you will not do so except under circumstances which will result in compliance with all applicable laws and regulations of Japan;

(b) You understand that the Notes have not been and will not be registered under the Securities Act of 1933 of the United States and may not be offered or sold directly or indirectly in the United States or to U.S. persons as part of the Distribution of the Notes. You further represent and agree that any Notes subscribed by you will be subscribed by you as principal for distribution in conformity with the provisions of this agreement and that you have not offered or sold and will not offer or sell directly or indirectly any such Notes in the United States or to any U.S. person (except to a manager of Selling Group member). You also agree that, except for sales to Managers or Selling Group members, you have not offered or sold and will not offer or sell Notes (otherwise acquired) directly or indirectly in the United States or to any U.S. person prior to 90 days after completion of the distribution of the Notes, as determined by Xxxzz. Finally, you agree to deliver to each purchaser from you of Notes acquired by you as part of the distribution a written confirmation stating substantially the following:

“The Notes have not been registered under the Securities Act of 1933 of the United States and, accordingly, if you are a dealer, (i) you represent and warrant that all Notes purchased by you have been purchased as principal and that you have not offered or sold, and you agree that you will not offer or sell, any such Notes directly or indirectly in the United States or to U.S. persons and are not purchasing any of such Notes for the account of any such persons and (ii) you will deliver to all purchasers of such Notes from you a written confirmation containing the statements set forth herein. As used in this confirmation, “United States” means the United States of America and its territories and possessions, and “U.S. person” means any national or resident of

the United States, including any corporation, partnership or other entity created or organized under the laws thereof or any political sub-division thereof and any estate or trust that is subject to United States federal income taxation regardless of the source of its income.”

As used in this paragraph (b), “United States” and “U.S. person” have the meanings set forth in the confirmation above.

(c) You will comply with all applicable laws and regulations, and will obtain any consent, approval or permission required for the subscription, offer or sale by you of Notes, under the laws and regulations in each jurisdiction to which you are subject or in which you may offer or sell Notes.

(d) You are not authorized to give any information or make any representation in connection with the offering and sale of the Notes other than those contained in the final Offering Circular, and you will indemnify the Company and ourselves against any losses, liabilities, damages, or claims, or actions in respect hereof, which the Company or any of us may incur or which may be made against the Company or any of us arising out of or in connection with (i) the making of you or any unauthorized representation or the giving by you of any information which is not contained in the final Offering Circular, or (ii) any failure by you to observe any of the restrictions or agreements set forth above.

This is not an offer of Notes. We expect to make offers of Notes, on behalf of the Company and subject to execution of the Subscription Agreement, by telex/cable by January 1, 2000 at the issue price plus accrued interest, if any, less Selling Group concession. If the subscription Agreement is not entered into, or is terminated by the Managers prior to payment hereunder, you will be released from your obligation to subscribe and pay for any Notes allotted to you and no party hereto will have any rights or liabilities hereunder, except those arising out of any prior breach of the provisions of paragraphs (a) through (c) above and the indemnity in paragraph (d) in respect of such breach. Neither the Company nor the Managers shall have any liability to any Selling Group member by reason of the Managers having exercised any right to terminate the Subscription Agreement.

This Agreement, in relation to which time shall be of the essence, shall be governed by and constructed in accordance with the laws of (any state you choose), United States of America.

Please confirm your acceptance of the foregoing conditions by signing the form of Acceptance on the enclosed duplicate of this letter and returning it, without detaching it from the letter, to Xxxzz Bermuda Limited, xxx St, Town, Bermuda, so as to arrive no later than 10:00 hours, Bermuda Time, on January 1, 2000. It is expected that allotment of Notes will be made on January 2, 2000 after signing the Subscription Agreement, which allotment will be deemed accepted by you unless you notify us by telex or cable to the contrary by 18:00 hours, Bermuda time, on January 2, 2000.

Yours faithfully
The Managers

Exhibit A-6 Offering Circular2. Recordkeeping requirements

**Offering Circular
¥20,000,000,000/U.S. \$170,940,017**

8% Dual Currency Yen/U.S. Dollar Notes Due 2005

Example Corporation

The 8% Dual Currency Yen/U.S. Dollar Notes due 2005 (the “Notes”) will bear interest from January 6, 2000 and thereafter annually in arrears on January 6 of each year. The Notes will mature on January 6, 2005 and the principal thereof will be payable in United States dollars at an exchange rate for yen to dollars of ¥124.90=U.S. \$1.00. The Notes are not redeemable except in the event of certain changes affecting taxation, or reporting requirements with respect thereof in the United States. See “Description of the Notes Redemption”. The Notes will be issued in bearer form in the denomination of Y1,000,000.

Principal and interest are payable without deduction for or on account of United States withholding taxes to the extent set forth herein under “Taxation”, “Description of the Notes—Payment of Additional Amounts” and “Description of the Notes—Redemption”.

Application will be made to list the Notes on the Luxembourg Stock Exchange.

Issue price of the Notes: 101⁵/₈% of the principal amount plus accrued interest from January 6, 2000, if any.

The Notes have not been registered under the United States Securities Act of 1933 and may not be offered or sold, directly or indirectly, in the United States of America (including its territories and possessions) or to U.S. Persons as set forth herein. See “Subscription and Sale”.

The Notes initially will be represented by a temporary global Note without interest coupons which is expected to be deposited with a common depository for EURO-FAPPEAR SYSTEM and DEXEL S.A. on or about January 6, 2000. The temporary global Note will be exchangeable for definitive Notes in Bearer form with interest coupons attached not earlier than 90 days following the completion of the distribution of the Notes as determined by Lbsma Europe Limited, upon certification that the beneficial owners thereof are not U.S. Persons.

Lbsma Europe Limited

Tiki YOYO International Limited
Europe Country Bank International Limited
Producers of Money AG
Maynoies French Limited
Potato Royal Bank Limited
Eighth Chicago Limited

Okdoke Guaranty LTD.
American Bank International
Japan Monery Limited
Broker Europe Limited
Joe & Joey Co. Ltd.
KPR International Limited

The date of this Offering Circular is October 1, 1999

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