The Clearing House

Joseph R. Alexander
Senior Vice President and Senior Counsel
Phone 212.612.9234
joe.alexander@theclearinghouse.org

July 1, 2010

The Honorable Max Baucus
Chairman
Senate Committee on Finance
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Re: SA 4340 Proposed Amendment to H.R. 4213 Introduced June 10, 2010

Dear Chairman Baucus:

The Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks,[1] respectfully submits this letter to explain our concerns regarding S.A. 4340, an amendment proposed by Senator Levin (D-MI) on June 10, 2010, to the American Jobs and Closing Tax Loopholes Act of 2010 (H.R. 4213), which is currently pending.

S.A. 4340 would modify 31 U.S.C. § 5318A (a provision that has been in the law since 2001 and authorizes Treasury to promulgate rules to combat money laundering[2]) by extending it to financial institutions that are "impeding United States tax enforcement".

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[1] The members of The Clearing House Association are: Bank of America, National Association; The Bank of New York Mellon; Capital One, National Association; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; The Royal Bank of Scotland, N.V.; UBS AG; U.S. Bank National Association; and Wells Fargo Bank, National Association.

[2] 31 U.S.C. 5318A(a) reads as follows: "The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c)."

The Clearing House and its members are strong supporters of efforts to improve tax compliance and combat tax evasion through increased transparency and greater information sharing. We also share the view that the use of offshore accounts to evade U.S. tax is unacceptable. However, Congress and the Obama Administration have already acted, in March of this year, by enacting the Foreign Account Tax Compliance Act (or "FATCA") as part of the HIRE Act.

The FATCA provisions are a detailed and comprehensive set of rules designed to combat various types of activities by foreign financial institutions (and others) that impede U.S. tax enforcement. These sweeping new rules are, as the name "Foreign Account Tax Compliance Act" indicates, aimed at ensuring compliance with the U.S. tax rules by persons having foreign accounts. FATCA will, among other things, require foreign financial institutions to identify who their U.S. customers are, and then report those customers' banking activities to the IRS. Foreign financial institutions that do not comply with the new reporting requirements will be faced with significant new U.S. withholding taxes imposed on their U.S.-source investment income. Because of the extensive information required to be reported and because of the harsh penalty imposed on those who fail to do so, there is universal agreement that FATCA is a substantial expansion of the tools Treasury has to prevent offshore tax evasion.

S.A. 4340 appears to be aimed at the same problem as FATCA and also targets foreign financial institutions. For example, S.A. 4340 would authorize Treasury to determine whether a foreign jurisdiction or a foreign financial institution is "impeding United States tax enforcement," even though that term is not defined. Having made that determination, Treasury could then prohibit or impose conditions upon (i) that foreign financial institution opening or maintaining a correspondent or payable through account in the U.S., or (ii) the approval or processing of a credit or debit card transaction involving such a foreign financial institution. Thus, customers of such a foreign institution could be prevented from using their credit or debit cards in the United States, adversely affecting merchants, hoteliers, and other U.S. persons whose livelihood depends on sales to foreign tourists.

FATCA has given Treasury new powers, and also significant new responsibilities. Treasury and the IRS have already commenced the substantial amount of work required to make FATCA work (including designing regulations, forms, and information gathering and processing systems, and educating agents). The taxpayer community (including The Clearing House and its member banks) have already commenced an active dialogue with Treasury and the IRS in order to assist them in making FATCA work. Congress recognized that this process would take time and therefore made FATCA effective beginning in 2013

S.A. 4340 is therefore not necessary, and we believe it would only divert attention away from the important task of implementing the FATCA rules. For the foregoing reasons, we believe that S.A. 4340 should be rejected.

The Clearing House and its members are, and will continue to, work towards a smooth implementation of the FATCA regime and remain committed to assisting Treasury in combating offshore tax evasion.

If you have any questions regarding this matter please contact me at 212-612-9234 or Henry V. Wysocki, Senior Vice President and Senior Counsel, at 212-612-9216.

Very truly yours,