



**REVERSE** inquiries

*Workshop Series*

BENCHMARK AND PROPRIETARY INDICES

February 2019

**WHAT'S AN INDEX?**

# Indices

- Structured products are often linked to proprietary or novel indices. Proprietary indices may raise issues under the Securities Act of 1933, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 (“IAA”)
- General issues to consider
  - Is the index created by the issuer or an affiliate (“proprietary”) or by a third party?
  - Will there be adequate disclosure about the index and its methodology?
  - Are there elements of discretion in the index, thus raising IAA issues?
  - How does the index compare against a “benchmark,” such as the NYSE generic listing rules?

# COMPLIANCE ASPECTS

# Proprietary indices

- Proprietary index information
- If an affiliate of the investment bank, or a group within the investment bank, creates or maintains the index, then that index provider must be walled off from those who structure and market the product
  - Those who create and market the structured product cannot influence the index features or its components
  - NYSE Arca Equity Rule 5.2E(j)(6)(C): “If the value of an Index-Linked Security listed under Rule 5.2E(j)(6) is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect a ‘firewall’ around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer”
  - A separate group within the investment bank should be responsible for any index development
  - Who “owns” the index within the investment bank once it has been created?

# Proprietary indices *(cont'd)*

- Window cleaning
  - If the index concentrates in a few equity securities (i.e., a “narrow-based” index), the issuer of the product and the broker-dealer selling the product should perform “window cleaning” procedures
    - Window cleaning procedures are comparable to those used when issuing a product linked to a small basket of stocks, or when linking to a non-proprietary index that has a high concentration in a particular security (the percentage amount may be anywhere from 5% to 20%)
    - These procedures should prevent the issuance of a product linked to a security with respect to which the broker-dealer possesses material non-public information, or as to which the broker-dealer’s research arm has a negative rating or recommendation
      - Concerns diminish somewhat when there are a large number of index constituents
  - The “window cleaning” function or filter should not be written into the index but rather should be a step that is required by the firm’s compliance policies and procedures
    - For example, do not include as an index rule checking whether index constituent is the subject of research coverage

# Third-party indices

- If the index is generated by a third-party provider
  - Perform diligence on the third-party provider
    - Does the provider have sufficient experience?
    - Does the provider periodically conduct internal reviews to ensure that the index methodology is consistently and accurately applied?
    - What is the index's history?
  - Is the third-party provider a regulated entity?
    - To the extent the third party is itself a broker-dealer or an RIA, compliance and diligence process likely will be more easily addressed
    - If the provider is not a broker-dealer or an RIA, what exceptions from registration is it relying on?
    - How is the provider being compensated?

# Third-party indices *(cont'd)*

- Ensure that the index sponsor has protections in place against the misuse of material, nonpublic information
  - NYSE Arca Equity Rule 5.2E(j)(6)(C): “Any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio”
- Will the third party be the index sponsor, or play any other role? For example, is it also the calculation agent?
- Diligence whether the provider has complied or intends to comply with the IOSCO standards and the European benchmark regulations to the extent applicable
- Will a license be required to reference the index?



# Narrow versus broad-based index

- NYSE Arca Rule 5.2E(j)(6): Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities
  - SEC has approved certain “generic” NYSE listing rules
  - Equity Index-Linked criteria for indices (summarized)
    - Minimum of ten constituents
    - Minimum market value per component of at least \$75 million
    - Minimum monthly trading volume
    - No single component can be more than 25% of the dollar weight of the index, and the five highest dollar-weighted components cannot exceed 50% of the dollar weight (60% for an index of fewer than 25 components)

# Narrow versus broad-based index *(cont'd)*

- 90% of the index's weight and at least 80% of the number of components must be eligible for standardized option trading on the NYSE. Requirement doesn't apply if:
  - No underlying component represents more than 10% of the dollar weight of the index; and
  - The index has a minimum of 20 components
- General themes
  - Indices with more than 20-25 components are subject to fewer requirements
  - Avoid top-heavy indices
  - Actively traded components

# Regulatory hot buttons

- FINRA Report on Conflicts of Interest
  - Focuses on potential conflicts arising when an index calculation agent is an affiliate of the issuer or the underwriter
  - Highlights that in the context of a structured product the performance of which is linked to a proprietary index (created and maintained by the product issuer) there may be hidden costs, which may be high and may be difficult for an investor to assess
    - Assessing the structure and composition of the index has become a focus in SEC enforcement actions
      - Are there any “index adjustment factors” or “fees” that might suggest that the index is a managed index?
      - Are there other “embedded” fees?

# Regulatory hot buttons *(cont'd)*

- If there are roll costs or transaction costs incorporated in the index that are designed to replicate cost of investing in the strategy directly, then confirm that those costs do not include any broker-dealer compensation
- If there are costs incorporated into the index that are intended to account for hedging, then ensure that mid-market prices are used
- Convergence concerns
  - Over time, there has been more blurring of lines as between product types
    - Traditional 1940 Act products and “managed accounts”
    - ETFs
    - 1933 Act products, where there is a security (not an investment company and no “ongoing management”)
  - Monitor how the product is marketed and how the product is discussed internally
  - Ensure that there is no “active” management

# Regulatory hot buttons *(cont'd)*

- European benchmark index rulemaking and legislation
  - In the aftermath of the LIBOR/EURIBOR investigations, there has been increased focus on measures that are intended to promote index transparency and restore investor confidence
  - Generally, guidance from IOSCO, ESMA and European Commission has focused on “benchmark indices”
  - Benchmark indices are understood to be more widely recognized and used indices, such as those produced by the exchanges, as well as interbank rates

# Regulatory hot buttons *(cont'd)*

- ESMA-EBA Principles

- Emphasize good governance, sound methodology and transparency, in order to limit the risks of conflicts of interest and manipulation
- Two approaches suggested: a governance-based approach and a transparency-based approach
- Governance-based approach
  - Governance mechanisms to set up and calculate indices
  - Requires an independent committee to oversee the production of indices
  - The committee would be responsible for approving the rules for the indices
- Transparency-based approach
  - Disclose to regulators and the providers' clients the methodology for calculation of the index and the sources of data used

# Regulatory hot buttons *(cont'd)*

- ESMA-EBA Principles (cont'd)
  - Information sources: the principles address sourcing of the inputs for the index (third party information versus solicited quotes, for example)
  - Past performance: the principles emphasize that retail clients should be able to access index past performance data
  - Continuity: once an index is created, there is a strong interest in continuity of the index, so this requires considering how a successor to the index provider or index calculation agent would be identified

# Index governance

- Regardless of whether ESMA-EBA guidance or EU legislation will be applicable to your institution, conducting an audit of indices is useful
- Consider, among other things, the following:
  - Formalizing in policies and procedures the approval process for a new index
  - Review existing indices
    - Identify who “owns” the index within the bank
    - Ensure that there is a process for periodic index reviews
    - Is there a written index methodology? Who reviews and maintains?
    - Do policies and procedures address changes to the index, consultation regarding index changes and publication of changes, etc.?
    - Is there a policy in place to ensure any quotes or pricing data is obtained from third party sources? Is this audited or reviewed?



# Index governance *(cont'd)*

- If internal sources are used for pricing purposes, is this disclosed?
  - Is there a third party calculation agent?
  - Is there written calculation agreement?
- Is there a stated purpose for the index? How is the index used? Is it used to benchmark performance of funds? To replicate a strategy?
  - Was the index created at the request of a client? Does client maintain any discretion over the index?
  - Are the appropriate information walls in place? Are these tested?
  - Have all of the actual/potential conflicts of interest been identified and disclosed?

# DISCLOSURE ISSUES

# Disclosure issues

- Generally, the index methodology should be publicly available
- A link to the methodology is recommended (but not live!)
  - A detailed methodology is essential if the index were to be transferred to another sponsor; the methodology will ensure continuity
  - Opaque methodologies with formulae:
    - Translate into plain English
    - How to summarize — risk of error
    - Include complex formulae in the offering document?
  - Roles: index sponsor, calculation agent, information dissemination
    - Disclose any conflicts of interest
    - Are there similar indices to compare against, with appropriate disclosure as to the differences?
    - Quarterly high and low closing levels of the index and the daily closing level should be publicly available free of charge at the close of business on each trading day

# Disclosure issues – equity indices

- General equity index information, summarized from the methodology:
  - Method of calculation
  - Name of calculation agent
  - A list of the top ten constituents and all constituents representing 5% or more of the weighting of the index, and their respective weightings and, if available, a link to a list of all of the constituents
  - How the constituents were chosen, and how new constituents are selected
  - Index changes and reweightings/rebalancings: when and how?
  - How does the index account for corporate events (mergers, etc.) and how does it factors in market disruption events?
  - If the index contains constituents from multiple industries or sectors and constituents have been classified accordingly by the index sponsor, what are the industry or sector weightings? Similarly, any country weightings?

# Disclosure issues – commodities indices

- General commodities index information (indices of physical commodities or commodities futures), summarized from the methodology:
  - Describe constituents — physical commodities, commodities futures or options to purchase commodities, and the markets on which they trade
  - List the top ten constituents, and all constituents representing 5% or more of the weighting of the index, and their respective weightings and, if available, a link to a list of all of the constituents
  - Describe the method by which the constituents were chosen or obtained
  - Describe when and under what circumstances the constituents may be changed, reweighted, substituted or traded, as applicable
  - Describe any rolling periods
  - Summarize any fees or expenses charged or incurred by the index sponsor

# INVESTMENT COMPANY ACT AND ADVISERS ACT ISSUES

# IAA issues

- Investment Company Act (“ICA”) considerations
  - Would the SEC recharacterize the structured product itself as an unregistered investment company (a “de facto” investment company)?
    - Is the pool of reference assets itself a separate issuer?
      - *Prudential Insurance* case – separate accounts
    - Cannot do indirectly what you cannot do directly

# IAA issues *(cont'd)*

- Avoiding ICA issues in Delta One instruments
  - Delta One instruments are structured products that are unsecured debt obligations of issuer the return on which is linked to a reference asset
    - Does the investor's return rely exclusively on credit of issuer?
    - Does return depend on investment in identifiable pool of securities?
  - Is the issuer required to own reference assets in order to provide the return?
  - Does the issuer “control” reference assets?
  - Does the investor's return depend on the issuer's ability to manage the investment?
    - Is a structured product linked to a tailored or narrow-based index an indirect means to construct a managed portfolio?
  - Are the issuer's investments to hedge its obligations held in the issuer's general assets or in a segregated account?
  - Narrow-based versus broad-based index?



# IAA issues *(cont'd)*

- Avoiding ICA issues in Delta One Instruments
  - Does the index involve investment discretion?
    - Static baskets of equities or commodities, even if initially selected based on a particular strategy, do not, in our view, present discretion issues
    - A research-driven index may involve discretion; however, the determination will be fact-specific
  - Core issue: look at substance of structured product and its terms, as well as the rights of the holder of the structured product, rather than number of securities that comprise the referenced index

# IAA issues *(cont'd)*

- Avoiding Investment Advisers Act (“IAA”) issues
  - Index that involves discretion raises issues under IAA
    - Does structured product resemble “investment advice”?
  - Is broker-dealer sponsor of structured product acting as an investment adviser in the context of offering a product referencing the index?
  - Can broker-dealer rely on “broker-dealer” exemption from definition of investment adviser (Section 202(a)(11)(C) of IAA)?
    - Provides advice (the sale of the note or the swap) that is “solely incidental” to its role as a broker or dealer
      - Is broker-dealer’s principal role structuring the note? distributing the note?
    - Receives no compensation for its services (i.e., no “special” advisory fee or index fee) that would suggest that broker-dealer is actively managing a strategy
      - Is the index a rules-based index?

# IAA issues *(cont'd)*

- Can an entity that is not a broker-dealer or investment adviser rely on the publisher's exception from registration?
  - “Today, funds track indexes in a huge number of varieties. Some indexes focus on narrower strategies. Others use alternative weighting methods, like those for “smart beta” funds. In some cases, funds track custom indexes or indexes from an affiliated provider.
  - These changes appear to reflect the progression of a maturing market for index products, and I am sure we will continue seeing innovation. As market practices around indexes change, however, should we revisit the status of certain index providers as investment advisers? I understand that the question of whether an index provider is an investment adviser or a fund adviser might appear to be settled. Under the Advisers Act, I believe index providers have historically concluded that, even if they are investment advisers, they may rely on the publisher's exclusion from the definition of “investment adviser.” However, recent developments appear to have moved certain index providers away from what we might think of as publishers.”

# IAA issues (cont'd)

- Other questions to consider
  - ***The integrity of the index:*** consider separating the roles of the personnel who develop the index and any sales and marketing personnel. Any index should be subject to a governance and oversight and supervisory process. If this is case, then one ought to conclude that the principal role of the broker-dealer selling the Delta-One Instrument is limited to structuring the financial product and selling the financial product, not providing advice as a function of participating in the construction of the index or the selection of the index constituents.
  - ***The purpose of the index:*** evaluate the role and purpose of the index. Is there a business purpose or objective served by the creation of the index? For example, was the index created to serve as a benchmark for funds tracking their performance? Does the index embody an investment thesis? In practice, over the history of the index, has the index reflected that investment strategy? An index that was generated at the request of a structured products or swaps business group and used as a reference asset would raise concerns.

## IAA issues *(cont'd)*

- Other questions to consider *(cont'd)*
  - ***The role of the broker-dealer:*** is the broker-dealer advising indirectly on the merits of the underlying index constituents simply by selling a Delta-One Instrument referencing that index? This would seem unlikely. The relevant transaction documents usually expressly inform the investor whether this is the case. We believe that statements in transaction documentation would be respected.
  - ***Business element:*** in the context of selling the Delta-One Instrument, is the broker-dealer holding itself out as rendering advice on the index or any index constituent? Is it receiving a separate commission or a fee or compensation that is specific to an “advice” component?

## IAA issues *(cont'd)*

- Other questions to consider *(cont'd)*
  - ***Regular business of the broker-dealer:*** if there arguably is an element of advice in connection with the broker-dealer's sales of the financial product, is it solely incidental to the conduct of its business as a broker-dealer?

# INDEX EXAMPLES FOR DISCUSSION

# “Best Picks” Notes

- Dual-registered broker-dealer and RIA has a research department that is subject to all of the usual restrictions regarding separation
- Research department has a long-standing history of publishing the group’s “best picks” for the next calendar year
  - Stock picks made only once a year in December for subsequent year
- List is published for independent business purposes
- Third-party issuer (or its affiliated broker-dealer) structures a note referencing the Best Picks
- Third party issuer and broker-dealer have no input into the underlying constituents



# Thematic stock picks

- Similar analysis where
  - An independent firm (may be a broker-dealer or an RIA) “picks” securities of companies in a particular industry, such as energy companies
  - A third-party issuer offers a note referencing the performance of those stocks

# Research-based index

- Dual-registered broker-dealer and RIA establishes an index (ACF)
  - Index is rules-based
    - Rules are reduced to writing
    - Rules are documented
    - Identifiable, objective criteria applied to a universe of stocks
    - A third party may replicate the criteria, apply the criteria, and make the calculations
    - Method for addressing rebalancings, corporate events, etc. is detailed in the methodology and not discretionary
    - An index sponsor and an index calculation agent are identified
    - A successor “index sponsor” and/or calculation agent could step in and calculate the index levels
    - Index levels are regularly published

# Research-based index *(cont'd)*

- The Index is designed to track the performance on a volume-weighted basis of certain stocks
- Stocks are selected using initial research picks (for example, Analysts' Current Favorites)
- Divergence from actual list; list is published regularly. Long history of publishing the “picks”
- Monthly rebalancing
- No “fees” incorporated into Index
- Two years after the index was created, the Index was used as a reference asset
- Third party issuer, third party broker-dealer

# “Quantamental” approach

- One can draw a distinction between a rules-based index and a “quantamental” approach
  - Series of stocks identified through research picks, or based on objective criteria, such as SIC code
  - Then, RIA may apply its own “screen” to the series of stocks
  - Screening factors may not be “objective” and may involve significant discretion
    - Factors or analysis undertaken by the RIA cannot be reduced to writing
    - A third party would not be able to step in and “audit” or reproduce the results obtained by the third party

# Rules-based index, research a factor

- Is it inconsistent to conclude that you can have a “rules-based” index if the initial “universe” of index constituents are companies that are the subject of research coverage?
  - Highly fact-specific inquiry
  - Why was the index formulated?
  - Are index rules reduced to writing?
  - Are the index rules objective?
  - Could a third party calculate the index level?
  - Is more weight given to research criterion versus other criteria?

# THE TAX ADVISOR'S PERSPECTIVE ON INDICES

# Agenda

- What does a tax advisor see in an index?
- Dividend equivalent regulations
- Basket notices

# What does a tax advisor see in an index?

- The tax advisor is trying to determine whether the index should be viewed as a standalone investment or as an investment in the underlying securities for federal income tax purposes
- Tax consequences to investors in index-based derivatives can vary widely depending on index composition and mechanics
- Therefore, to ensure the client achieves the desired tax result, the tax advisor needs to know how the index is calculated



# Dividend equivalent withholding

- As a reminder, Section 871(m) and its regulations impose a 30% U.S. withholding tax on U.S.-source “dividend equivalent” amounts – a dividend equivalent includes:
  - Any substitute dividend made pursuant to a securities-lending or “repo” transaction
  - Any amount paid pursuant to a “specified notional principal contract” and that is contingent on, or determined by reference to, the payment of a U.S.-source dividend
  - Any amount that the Treasury determines is substantially similar to the above items
  - Specified equity-linked instruments (e.g., structured notes)

# A derivative based on a qualified index is exempt from Section 871(m)

- Safe harbor in Regulation Section 1.871-15(l) for “...certain passive indices that are based on a diverse basket of publicly-traded securities and that are widely used by numerous market participants.”
- Determine on first business day of relevant calendar year

# Qualified index

- References 25 or more component securities
- Long only
- No component more than 15%
- Five or fewer can't represent more than 40%
- Rebalanced according to publicly stated, predefined criteria
- Annual dividend yield in prior year not greater than 1.5 times S&P 500 annual dividend yield
- Traded through futures contracts or options on recognized exchange

# Qualified index—de minimis rule

- Widely traded
- Only references “underlying securities” (i.e., U.S. corporations) 10% or less (by weight)
- Index was not created for tax avoidance purposes

# Exception for certain MLP indices

- The Section 871(m) regulations contain an exception for instruments linked to certain partnerships if the partnership does not
  - Carry on a trade or business of dealing or trading in securities
  - Hold a “significant investment” in U.S. securities or Section 871(m) transactions, generally defined to be 25% or more of the value of a partnership’s assets; or
  - Directly or indirectly hold an interest in a lower tier partnership that holds U.S. securities or Section 871(m) transactions

# The basket contract problem

- At least one large investment fund for many years invested using “basket contracts.”
- The fund entered into a two year option over a “basket” of common stocks with a bank.
- The option designated a portfolio manager related to the fund. Over the course of two years, manager would change out components to make basket performance more profitable.
- The contract was designed so that the fund would not recognize gain or loss currently, and would receive long term capital gain at maturity, thus converting ordinary income and short-term capital gain into long-term capital gain.
- IRS did not like, see CCA 201547004.

# Notice 2015-74: basket contract is a transaction of interest

- Taxpayer enters into contract with Counterparty where return based on performance of reference basket
- Contract has a term of more than one year
- Taxpayer or Taxpayer's Designee has exercised discretion to change assets in the basket or trading algorithm
- Taxpayer's tax return reflects a tax benefit, e.g., deferral or conversion of short-term capital gain to long-term capital gain

# Notice 2015-74: designee

- Taxpayer's agent under agency law
- Person compensated by Taxpayer for suggesting, requesting, or determining changes in the basket/algorithm
- Not a designee:
  - Investment advisor of, for example, a mutual fund whose securities included in the basket
  - Because of person's use of, payment of fee for, or authority to suggest changes in (i) a widely used and publicly quoted index based on objective financial information, or (ii) index that tracks a broad market or market segment



# Notice 2015-74: taxpayer does not have discretion if

- Changes made according to objective instructions, operations or calculations disclosed at inception
- Taxpayer does not have a right to change the rules
- Exercise of routine judgment in administration of the rules is permitted
- Error correction is permitted
- Adjustments to respond to unanticipated events (e.g., stock split, merger, etc.) permitted

# Notice 2015-74: excluded contracts

- Contract is excluded if:
  - the contract is traded on (a) national securities exchange regulated by SEC or a domestic board of trade subject to CFTC jurisdiction, or (b) foreign exchange or board of trade subject to regulation by comparable regulator, or
  - the contract is treated as contingent payment debt instrument, subject to current inclusion of OID at comparable yield or as a variable rate debt instrument

# Disclaimer

- These materials are provided by Mayer Brown and reflect information as of February 4, 2019.
- The contents are intended to provide a general guide to the subject matter only and should not be treated as a substitute for specific advice concerning individual situations.
- You may not copy or modify the materials or use them for any commercial purpose without our express prior written permission.

# Reportable Transaction Disclosure Statement

▶ **Attach to your tax return.**  
 ▶ **See separate instructions.**

Name(s) shown on return (individuals enter last name, first name, middle initial) Identifying number

Number, street, and room or suite no.	City or town	State	ZIP code
---------------------------------------	--------------	-------	----------

**A** If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 ..... ▶ Statement number \_\_\_\_\_ of \_\_\_\_\_

**B** Enter the form number of the tax return to which this form is attached or related ..... ▶ \_\_\_\_\_  
 Enter the year of the tax return identified above ..... ▶ \_\_\_\_\_  
 Is this Form 8886 being filed with an amended tax return? ..... ▶  Yes  No

**C** Check the box(es) that apply (see instructions).  Initial year filer  Protective disclosure

**1 a** Name of reportable transaction

**1 b** Initial year participated in transaction **1 c** Reportable transaction or tax shelter registration number (see instructions)

**2** Identify the type of reportable transaction. Check all boxes that apply (see instructions).  
**a**  Listed **c**  Contractual protection **e**  Transaction of interest  
**b**  Confidential **d**  Loss

**3** If you checked box 2a or 2e, enter the published guidance number for the listed transaction or transaction of interest ..... ▶ \_\_\_\_\_

**4** Enter the number of "same as or substantially similar" transactions reported on this form ..... ▶ \_\_\_\_\_

**5** If you participated in this reportable transaction through a partnership, S corporation, trust, and foreign entity, check the applicable boxes and provide the information below for the entity(s) (see instructions). (Attach additional sheets, if necessary.)

<b>a</b> Type of entity .....	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust
	<input type="checkbox"/> S corporation	<input type="checkbox"/> Foreign	<input type="checkbox"/> S corporation	<input type="checkbox"/> Foreign
<b>b</b> Name .....	_____			
<b>c</b> Employer identification number (EIN), if known ....	_____			
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) .....	_____			

**6** Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

a Name	Identifying number (if known)	Fees paid	State	ZIP code
Number, street, and room or suite no.	City or town	\$		
<b>b</b> Name	Identifying number (if known)	Fees paid		
Number, street, and room or suite no.	City or town	\$		

**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- Deductions                       Exclusions from gross income                       Absence of adjustments to basis                       Tax Credits
- Capital loss                       Nonrecognition of gain                       Deferral
- Ordinary loss                       Adjustments to basis                       Other \_\_\_\_\_

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

---

---

---

---

---

---

---

---

**8** Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.

**a** Type of individual or entity:     Tax-exempt                       Foreign                       Related

Name	Identifying number
------	--------------------

Address

Description

---

---

---

---

---

---

---

---

**b** Type of individual or entity:     Tax-exempt                       Foreign                       Related

Name	Identifying number
------	--------------------

Address

Description

---

---

---

---

---

---

---

---

# MAYER • BROWN

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauli & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.