

FORM W-8 WORKSHOP

HOW TO CORRECTLY
COMPLETE THIS FORM -
REAL LIFE SITUATIONS

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Why is the W-8 Form So Important?

- FATCA requirements
- Different types of F.F.I.'s with which a client may want to do business
- No compliance = No business
- Being right without compliance = Being wrong
- Not depended on having U.S. situs asset

Two Types of W-8 Forms

- W-8BEN-E (Certificate of Status of Beneficial Owner for United States Tax withholding and Reporting (Entities))
- W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for U.S. Tax Withholding and Reporting)

Determine the correct W-8 Form

- Who is the Beneficial Owner?
- Recipients that are treated as corporations are generally treated as beneficial owners of the payment
 - Use Form W-8BEN-E
- Recipients that are treated as partnerships are generally not treated as the beneficial owners of the payment
 - Use Form W-8IMY

How to Correctly Complete the Form

- Determine F.A.T.C.A. status of payee and of beneficial owners
- Use definitions in applicable I.G.A. to determine F.F.I. status
- Use definitions in Treasury regulations to determine N.F.F.E. status – form so designed
- May nevertheless use I.G.A. definitions in certain circumstances

F.F.I. Status - General

- “Participating F.F.I.” if no applicable I.G.A.
- “Reporting Model 1 F.F.I.” or “Reporting Model 2 F.F.I.”
- Excluded F.F.I.’s with applicable I.G.A. (Annex II entities and deemed compliant entities under regulations) will be treated as “Nonreporting I.G.A. F.F.I.”
- If no I.G.A., specific statuses, e.g.: “Nonfinancial group entity,” “501(c) organization” and “Excepted nonfinancial start up company,”

Collective Investment Vehicles

- If requirements are met, the status is:
 - “Non-reporting I.G.A. F.F.I.” or
 - “Registered deemed-compliant F.F.I. (other than a reporting Model 1 F.F.I. or sponsored F.F.I. that has not obtained a G.I.I.N.)”

Sponsored Entities

- “Nonreporting I.G.A. F.F.I.”
- “Sponsored F.F.I. that has not obtained a G.I.I.N.”
- After December 31, 2015: “Registered deemed-compliant F.F.I. (other than a reporting Model 1 F.F.I. or sponsored F.F.I. that has not obtained a G.I.I.N.)”
- If closely held sponsored entity: “Certified deemed-compliant sponsored, closely held investment vehicle”

General Partner of Investment Entity

- If certain requirements are met by the investment manager or advisor, the status is:
 - “Non-reporting I.G.A. F.F.I.”
 - “Certified deemed-compliant investment advisors and investment managers”

N.F.F.E.

- Under Treasury regulations, distinguish between Exempt N.F.F.E.'s and Passive N.F.F.E.'s
- Under I.G.A., distinguish between Active N.F.F.E. and Passive N.F.F.E.
- Certification as Active N.F.F.E. in the form may not be applicable if I.G.A. definition used
 - Use other exemption statuses if applicable under regulations
 - If not applicable, leave Line 5 empty

Problematic Sample Fact Patterns

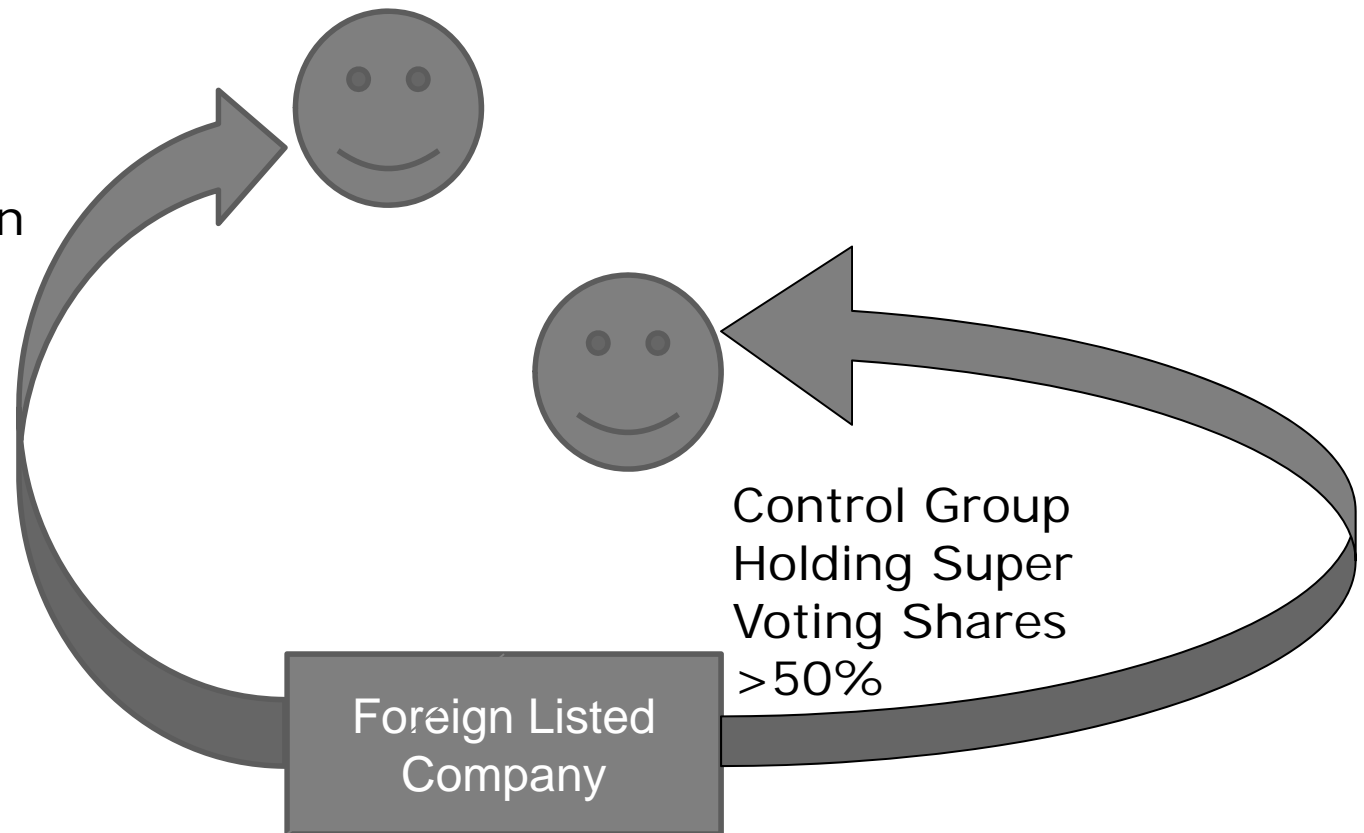
- Publicly traded entities
- Investment Entities/Funds
- Family trusts
- Holding Companies/Treasury Centers

Sample Fact Pattern – Publicly Traded Company

Public
shareholders

Active Trading in
Publicly Held
Shares >50%

Active Business
Operations



The Publicly Traded Corporation Problem

- Must have its stock “regularly traded” on one or more “established securities markets”
- Query: How is “regularly traded” defined?
 - Under Treasury regulations:
 - Principal Class Listed: more than 50% of vote and value
 - Trading Activity: at least 60 days and at least 10% of the average number of shares outstanding
 - Under an I.G.A.:
 - “Meaningful volume” of trading on an ongoing basis

Discussion

- More than 50% of the company's stock are listed and regularly traded on an established market;
- Super voting rights to founders = less than 50% of the vote is traded
- Query: What W-8 status applies?

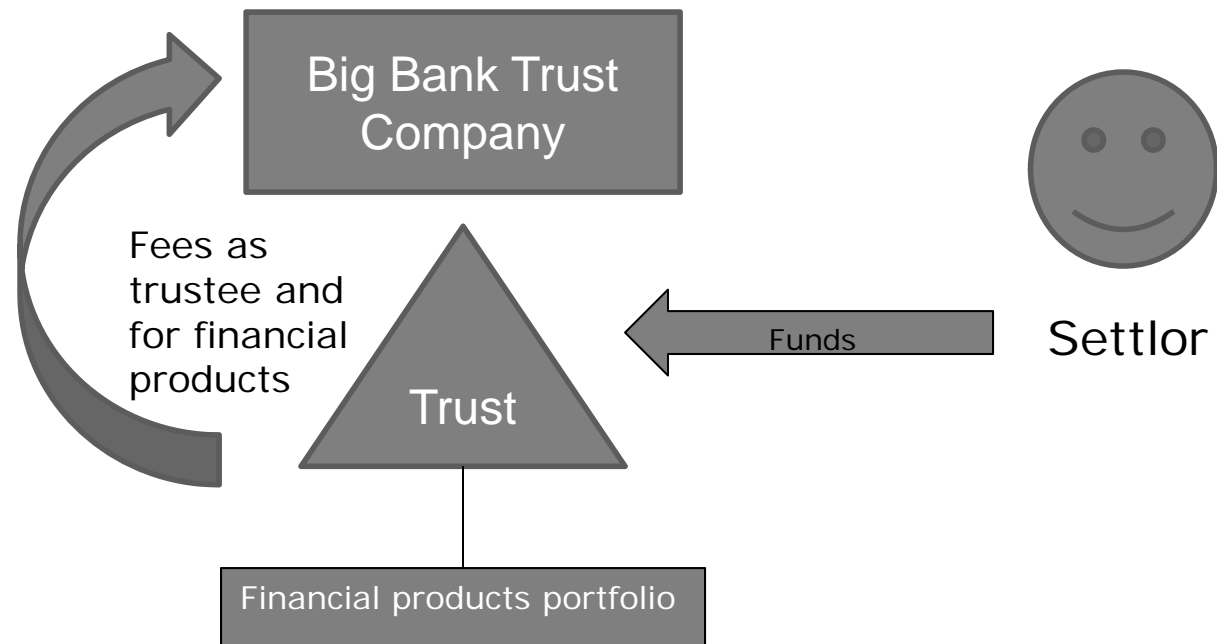
Sample Fact Pattern – Trusts

U.S.



Beneficiaries

Off-shore



Discussion

- Trusts are F.F.I.'s if professionally managed
- Query: what level of involvement rises to management?
 - If administrative power enough?
 - Is decision making power required?
 - Does it matter who gives advise if it is not the trustee?
- Otherwise, normally "Passive N.F.F.E."
 - Grantor trust
 - Non-grantor trusts
- If trust is a resident of an I.G.A. country, trust can be treated as "Nonreporting I.G.A. F.F.I." as a trustee documented trust;

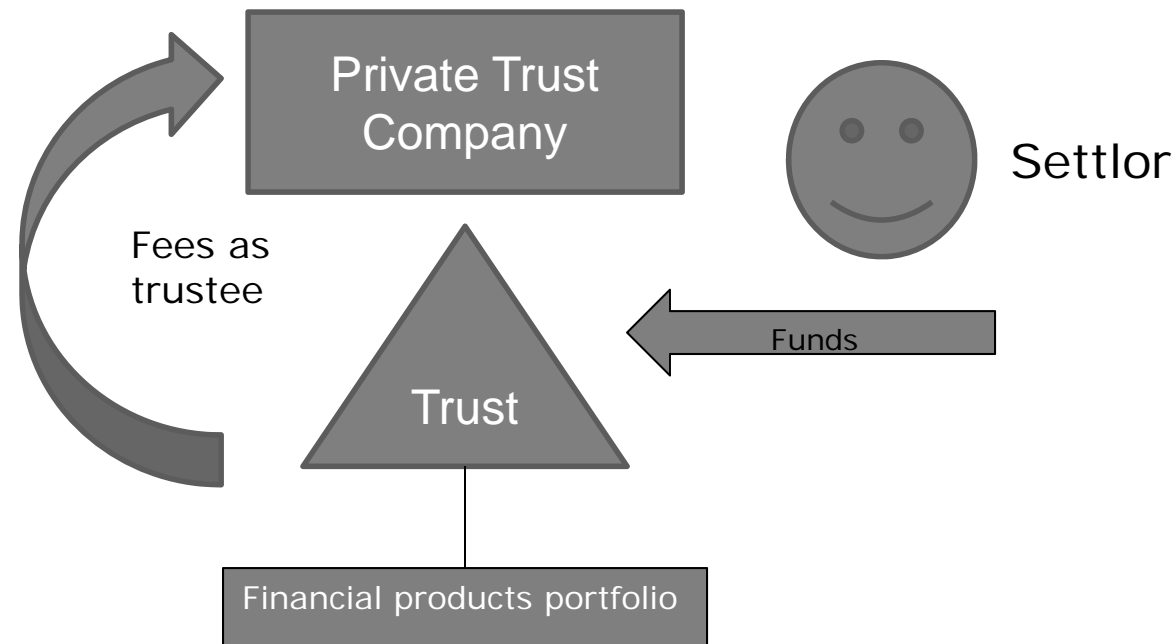
Trusts - Sample Fact Pattern 2

U.S.

Beneficiaries



Off-shore



Trusts - Sample Fact Pattern 3

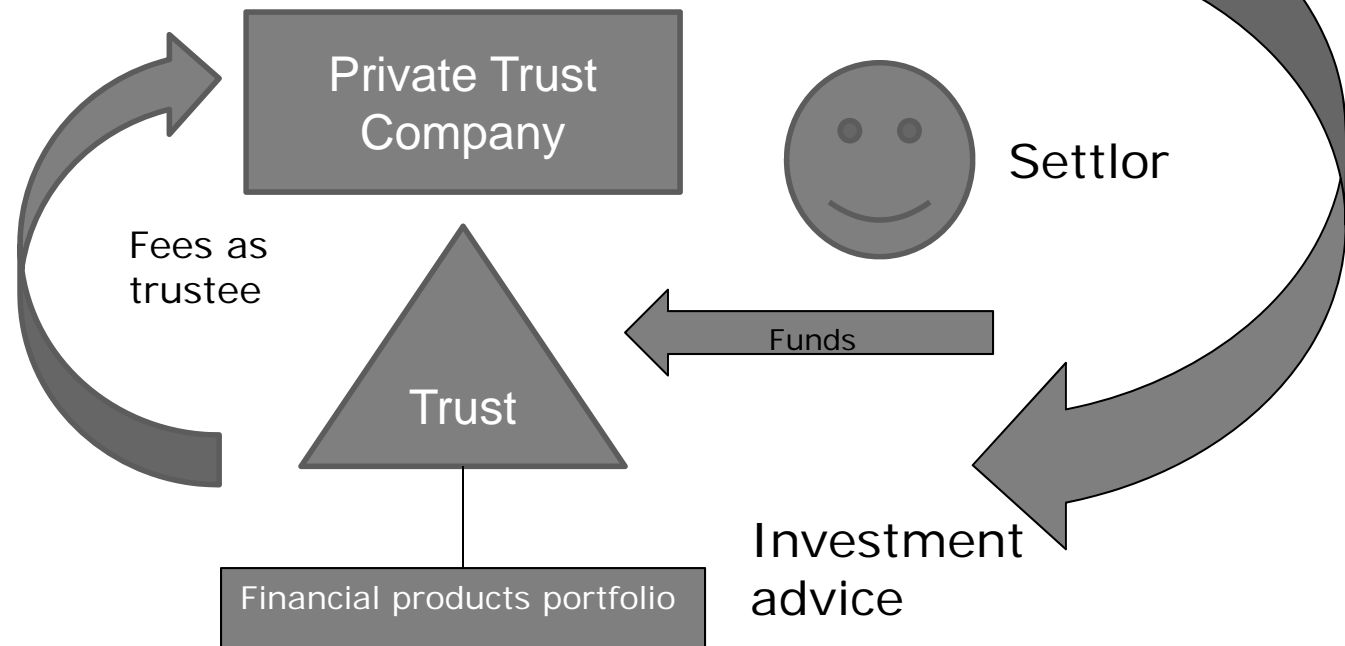
U.S.

Beneficiaries



Settlor's son

Off-shore



Trusts - Sample Fact Pattern 4

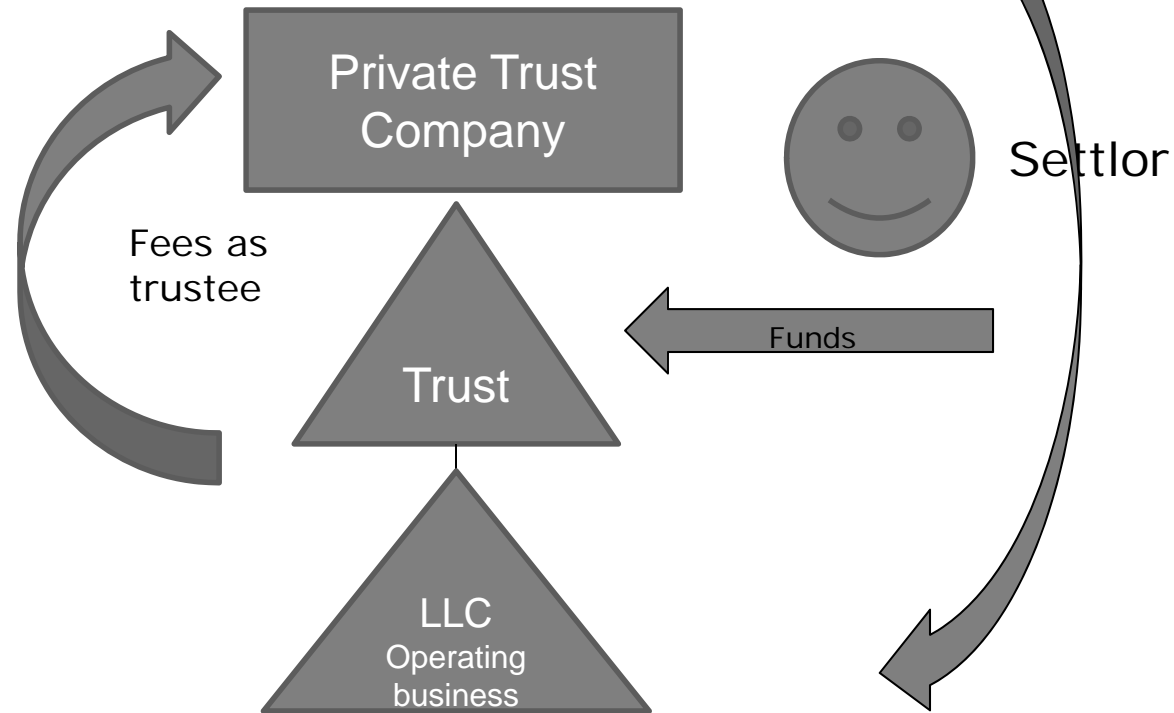
U.S.

Beneficiaries



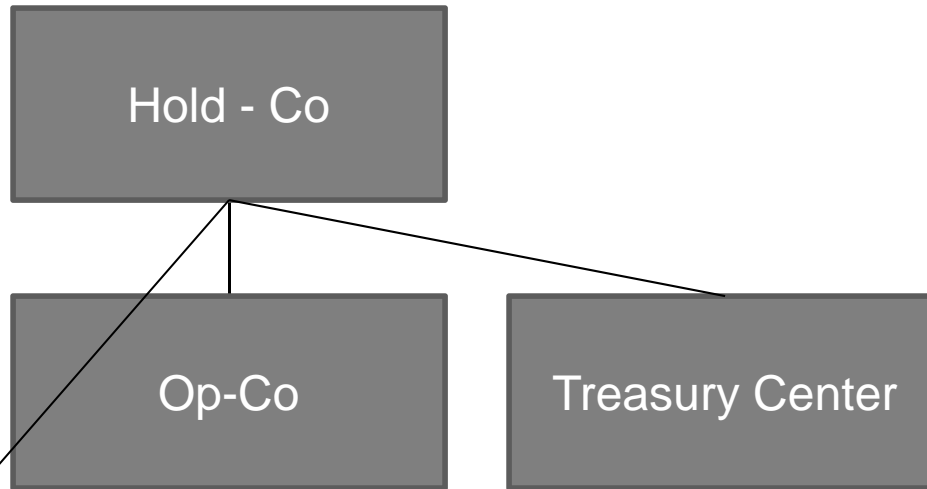
CEO

Off-shore

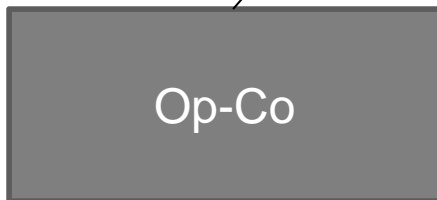


Sample Fact Pattern – Holding Companies

Off-shore



U.S.



ruchelman

c o r p o r a t e
i n t e r n a t i o n a l
t a x a t i o n

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Important Notice

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