

# Joint Industry FATCA Seminar

## Breakout Session 1

### Asset Management, Fund Distribution & Trustee



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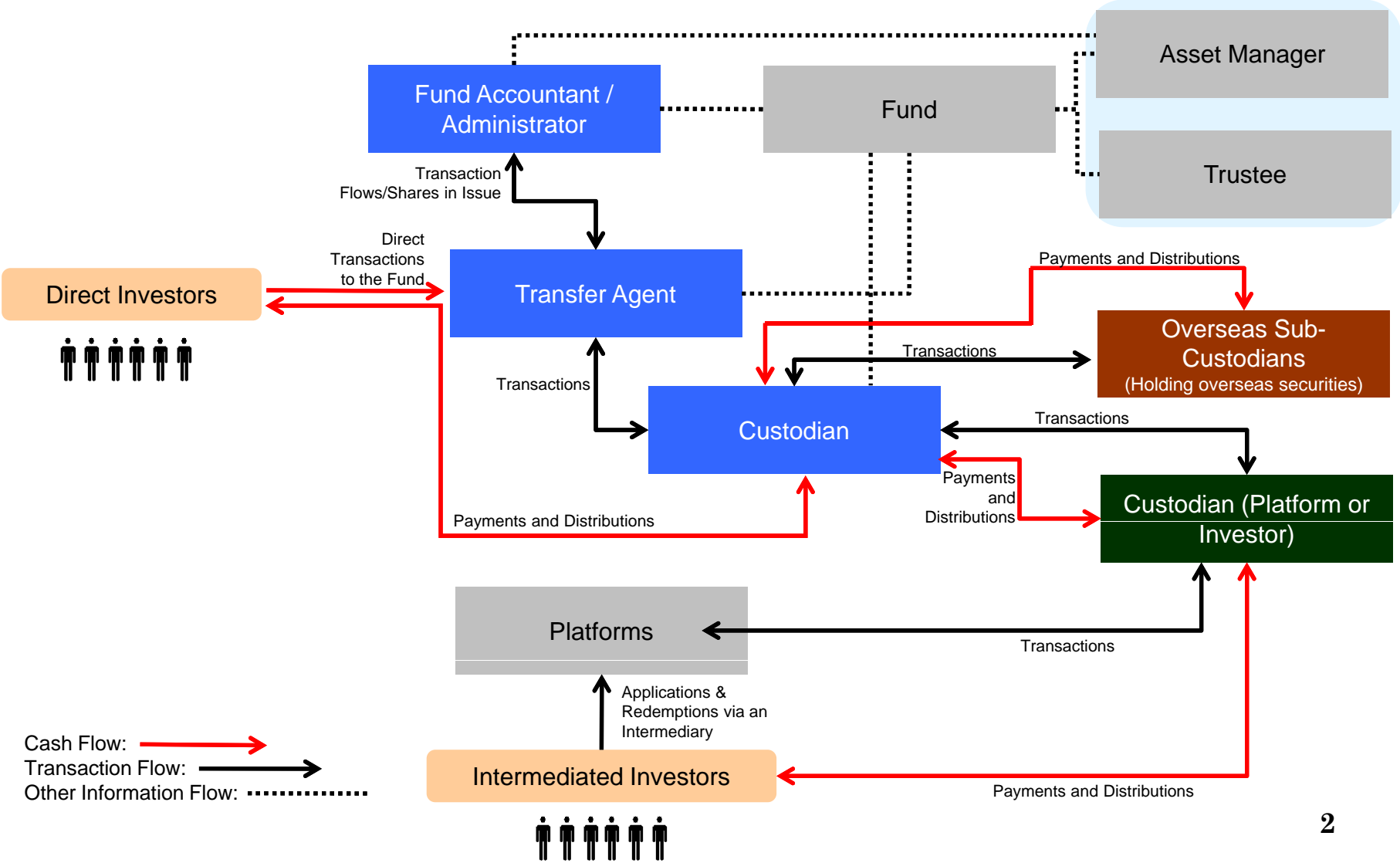
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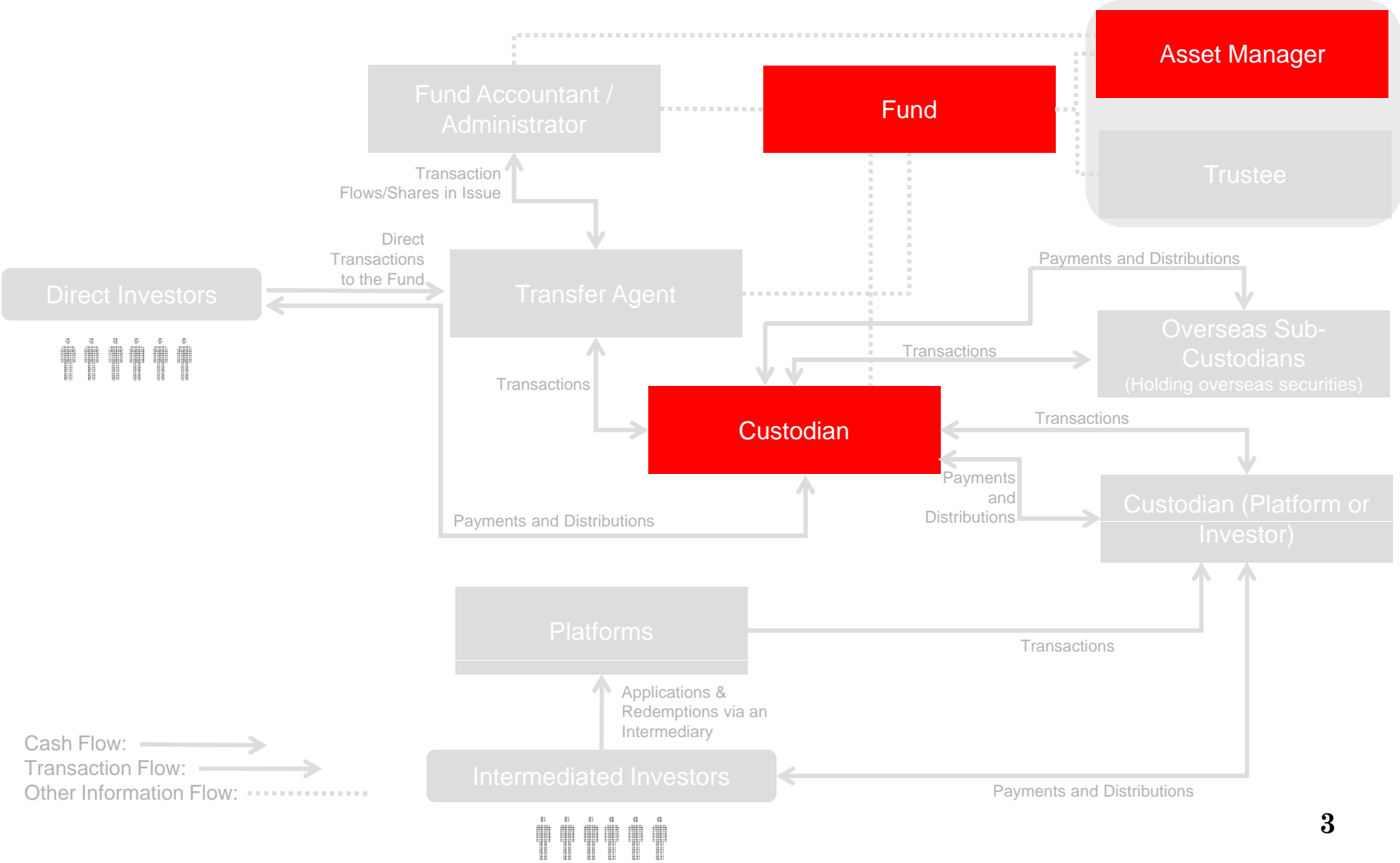
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# Impact of FATCA on Asset Management Industry



# Who Are The FFIs?

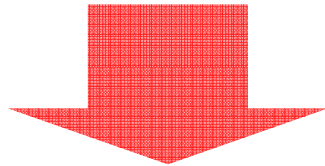


# FFIs that Qualify for Reduced Compliance Requirements

- **“Deemed Compliance”**
  - FFIs in countries that have entered into cooperation agreements with the United States
  - Local FFIs
  - Retirement plans
- Two registered deemed compliant categories apply specifically to investment funds:
  - **Qualified Investment Vehicle:** Regulated as a collective investment vehicle and all record holders are participating FFIs, deemed-compliant FFIs, certain “exempt beneficial owners” or exempt US accounts
  - **Restricted Fund:** Regulated as an investment fund under the law of its country of organization, and

# Can You Reduce the Business and Operating Model Impact?

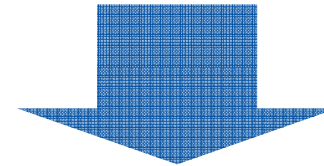
**Can you reduce the Business Model Impact?**



**Modify the business to reduce impact**

Restricting Channels / Markets	Restructuring Entities
Moving Customers	Changing Products
Exiting Customers	Exiting U.S. Investments

**Can you reduce the Operational Impact?**



**Modify operations to comply**

Avoid Need To Build WHT Engines	Leveraging KYC / AML
Leveraging Existing System Projects	Leveraging Planned Customer Contact
Leveraging Identification Initiatives	Turning Off The Tap Now

# FATCA Impacts – Overview

- **Business Impacts:**

- Investors
- Distributors
- Service Providers
- Portfolio level (e.g. Counter-parties, Investees, etc)

# FATCA Business Impacts

## Investor

- Consider legal rights:
  - To require documentation from equity and debt holders in accordance with FATCA
  - To report in compliance with FATCA (including the right to demand effective waivers of applicable privacy laws or other laws or regulations that might prevent full reporting under FATCA)
  - To withhold tax against passthru payments and withholdable payments in accordance with FATCA
  - To close accounts if required by FATCA
- Consider liquidity issues, possible side pockets and/or penalties against capital account balance
- Consider the investor experience during the account opening and remediation process and potential communications with investors concerning FATCA

## Distributors

- Obligations of distributors to comply with FATCA (e.g. a PFFIs) in order to ensure that ultimate fund investors are not harmed and to manage fund management's reputational risks
- Recourse in the event obligations are not properly carried out, the distributor is found to be out of compliance with its obligations as PFFI or U.S. withholding agents, investors are harmed.

# FATCA Business Impacts (Continued)

## Service Providers

- Obligations of administrators and other service providers that the fund and fund management will rely upon to carry out FATCA obligations
- Recourse in the event obligations are not properly carried out and the fund is found to be out of compliance with its obligations as PFFI or U.S. withholding agent

## Counter-parties

- Consider FATCA issues in drafting new obligations (e.g. right to withhold and carve-outs from tax gross-up provisions in debt obligations)

## Investees

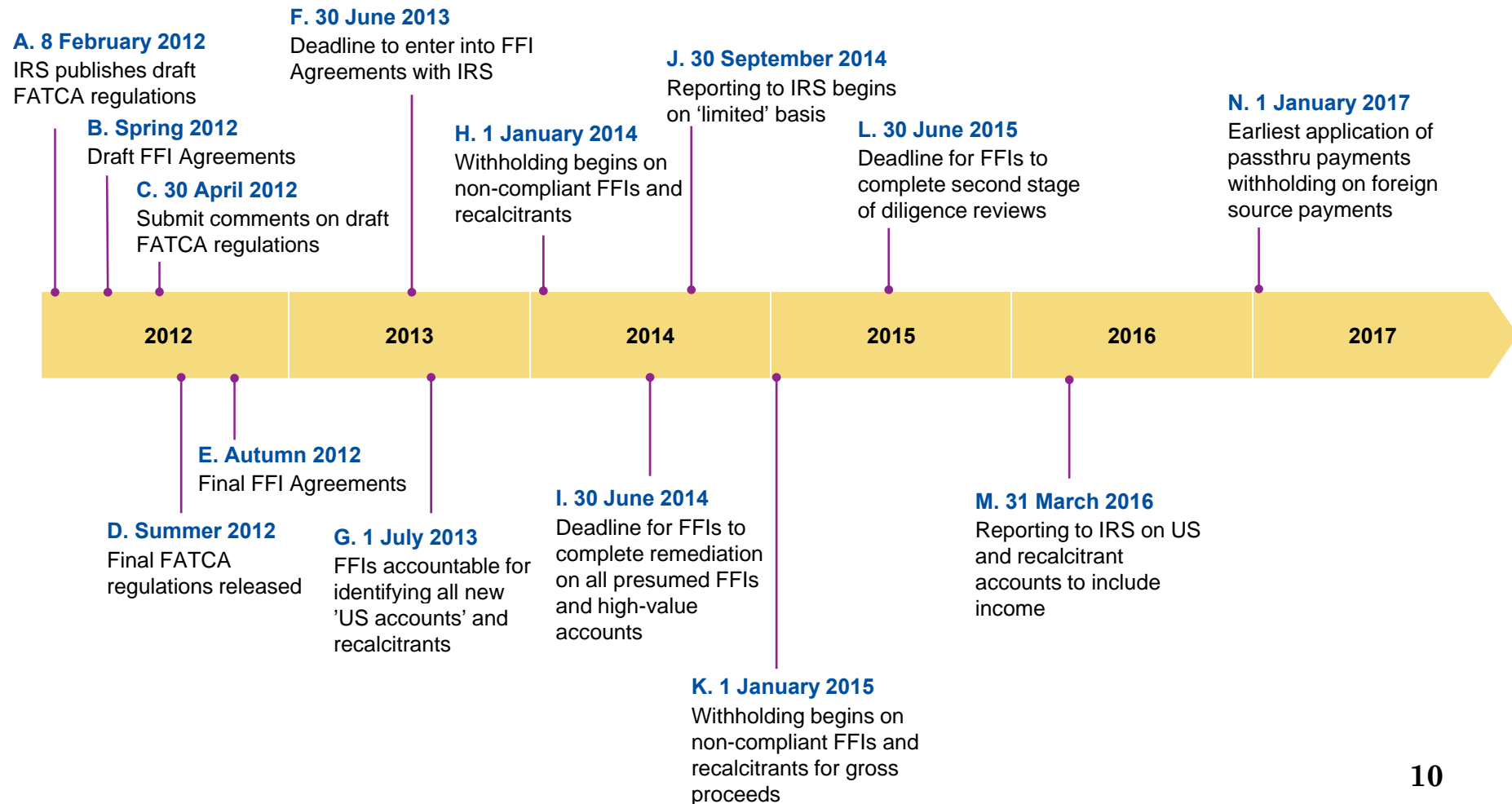
- Incorporate additional due diligence criteria that takes into consideration new risks relating to FATCA (e.g., potential FFI status or withholding agent status of PE fund portfolio company targets)



# Which Functions Need to be Involved in a FATCA Programme?

		<i>Impacted Functional Groups</i>									
	<b>Workstream</b>	<i>Tax</i>	<i>Legal</i>	<i>Reg. Comp.</i>	<i>Customer Facing</i>	<i>KYC/ AML Team</i>	<i>Finance</i>	<i>Operations</i>	<i>Product Mgmt</i>	<i>Info. Tech.</i>	<i>Risk</i>
<b>A</b>	<b>FFI Agreement</b>	√	√	√			√		√		√
<b>B</b>	<b>Onboarding</b>		√	√	√	√		√	√	√	√
<b>C</b>	<b>Remediation</b>		√	√	√	√		√	√	√	√
<b>D</b>	<b>Tax Withholding</b>	√					√	√	√	√	
<b>E</b>	<b>Tax Reporting</b>	√					√	√	√	√	
<b>F</b>	<b>Compliance</b>	√	√	√	√	√		√	√	√	√

# FATCA Timeline Following 8 February 2012 Regulations



Note: As of February 2012.