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The FATCA Opportunity for Offshore Service Providers

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FATCA Basics



- FATCA in five words: **Name names or pay up**
 - FATCA encourages certain non-U.S. entities to provide information about their U.S. owners or account holders by imposing a 30% withholding tax on “withholdable payments” made to those who do not provide such information.
 - Specifically, withholding generally applies to withholdable payments made:
 - by U.S. withholding agents to non-U.S. financial institutions unless they disclose their U.S. account holders,
 - by U.S. withholding agents to certain other non-U.S. entities unless they disclose their U.S. owners, and
 - by U.S. withholding agents or participating foreign financial institutions to any account holder that refuses to provide information about its U.S. or non-U.S. status.
- Three types of withholdable payments:
 - U.S. source dividends, interest, royalties, and other similar income (withholding began July 1, 2014),
 - the gross proceeds from the sale of stock or debt (withholding begins January 1, 2017), and
 - certain other payments attributable to the foregoing (withholding begins once the IRS issues implementing regulations).
- A non-U.S. government can change how FATCA applies within its jurisdiction by entering into an inter-governmental agreement (an “IGA”) with the IRS. This presentation focuses on non-IGA jurisdictions.

FATCA Terminology



- FATCA: The U.S. Foreign Account Tax Compliance Act, added by the HIRE Act of 2010. FATCA added new Chapter 4 to the U.S. Internal Revenue Code, sections 1471-1474.
- FFI and NFFE: Every non-U.S. entity is classified as either a foreign financial institution (an “FFI”) or a non-financial foreign entity (an “NFFE”).
 - FFIs include
 - depository institutions (e.g., banks),
 - custodial institutions (e.g., broker-dealers), and
 - “investment entities.”
 - Investment entities include entities described in any of the following three categories:
 - The entity makes more than 50% of its income from trading, investing, administering, or managing assets on behalf of customers;
 - The entity (i) derives more than 50% of its income from investing in securities and (ii) has assets that are professionally managed; or
 - The entity is a collective investment vehicle, mutual fund, private equity fund, etc.
 - NFFEs are all non-U.S. entities other than FFIs.

FATCA Terminology *cont'd*



- FATCA Status of FFIs:
 - Non-Participating FFI: An FFI that takes no action—this is the default. Non-participating FFIs are withheld upon and their accounts may be closed by financial institutions.
 - Participating FFI: An FFI that fulfills the following requirements:
 - registration with the IRS (pursuant to which the FFI and IRS enter into an “FFI agreement”),
 - on-going compliance with the terms of the FFI agreement,
 - determination of the FATCA treatment of each account holder,
 - withholding on certain account holders and/or reporting of account holders’ FATCA treatment to U.S. withholding agents, and
 - annual reporting of certain account holders and other information to the IRS.
 - Deemed-compliant FFI: An FFI that falls into a specific category allowing it to be treated as FATCA compliant without the expense of achieving participating FFI status.

Deemed-Compliant FFIs



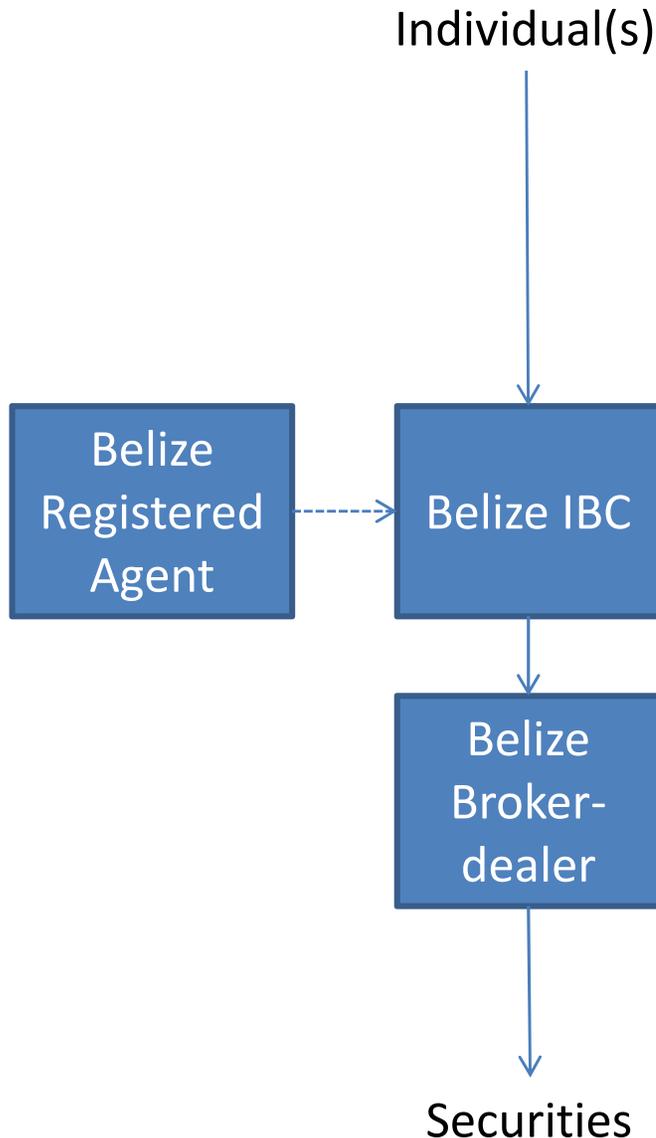
- Local FFI: a regulated financial institution that primarily operates in its country of incorporation and does business with locals.
- Non-registering local bank: a bank or credit union that primarily operates in its country of incorporation and has less than US\$175 million in assets.
- FFI with only low-value accounts: an FFI other than an investment entity with no accounts in excess of US\$50,000 and less than US\$50 million in assets on its balance sheet.
- Owner-documented FFI: an investment entity with respect to which a U.S. withholding agent or participating FFI has agreed to report all required information to the IRS. An FFI can only be an owner-documented FFI with respect to one participating FFI or U.S. withholding agent.
- Sponsored investment entity: an investment entity that is sponsored by a person with management authority over it (e.g., a trustee). The sponsor agrees to perform due diligence on the sponsored entity's owners and report certain information to the IRS.

Application—IBCs



Example Structure

- One or more individuals own 100% of the shares of Belize IBC.
- Individual(s) could be U.S. or non-U.S.
- Belize Registered Agent is the registered agent for the IBC.
- Belize IBC's only activity is to hold an account with Belize Broker-dealer, through which it holds securities.
- The securities could be U.S. or non-U.S.

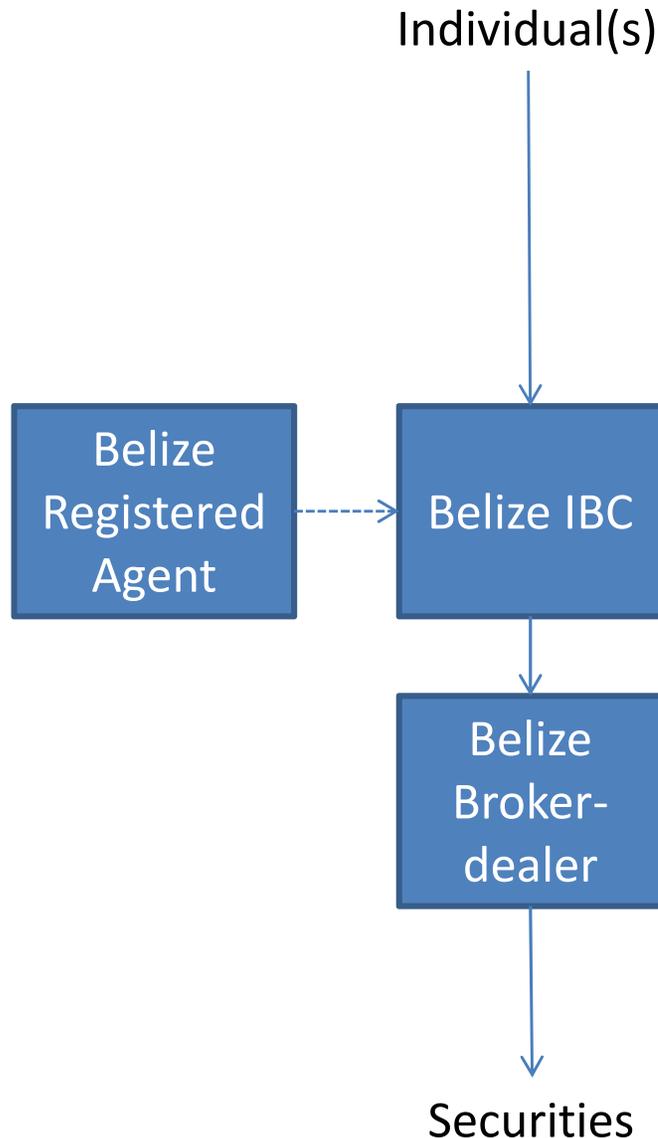


Application—IBCs *cont'd*



Belize Broker-dealer

- Belize Broker-dealer is an FFI because it is a custodial institution.
- If Belize Broker-dealer were a non-participating FFI (i.e., it were to take no action to achieve a FATCA-compliant status), a U.S. withholding agent would be required to withhold 30% from each withholdable payment (and Belize Broker-dealer would have issues maintaining good working relationships).
- To avoid such withholding, Belize Broker-dealer must (i) determine whether it meets any category of “deemed-compliant FFI” or (ii) become a participating FFI.

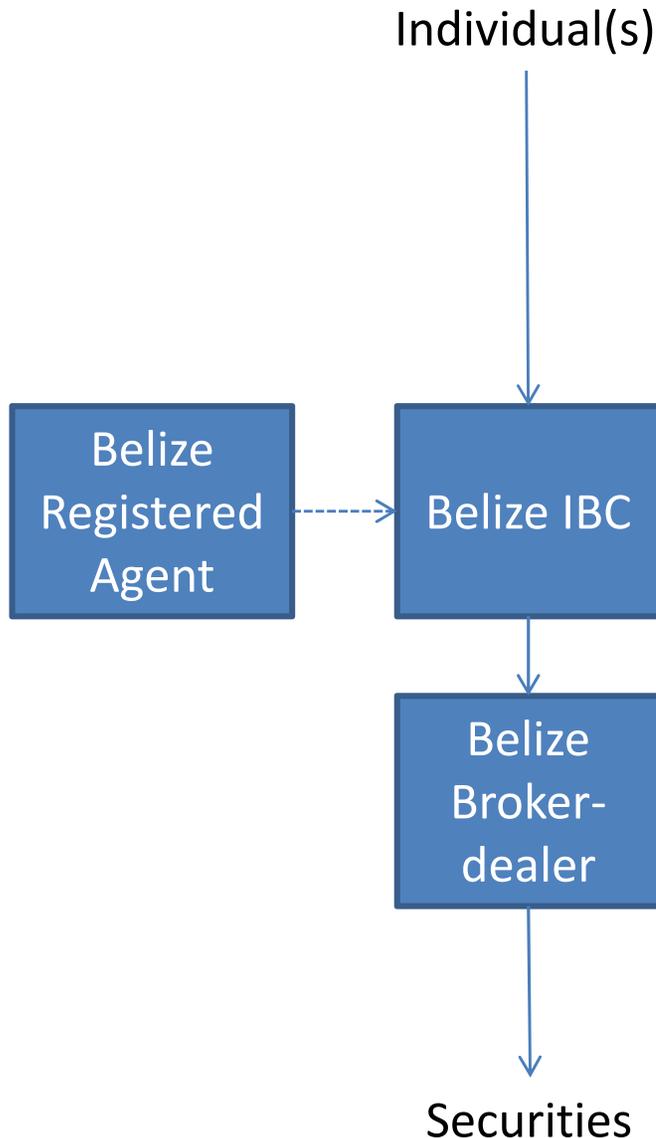


Application—IBCs *cont'd*



Belize Registered Agent

- Belize Registered Agent is not an FFI and does not receive withholdable payments under this structure.
- Belize Registered Agent therefore has no obligations under FATCA as far as this structure is concerned.

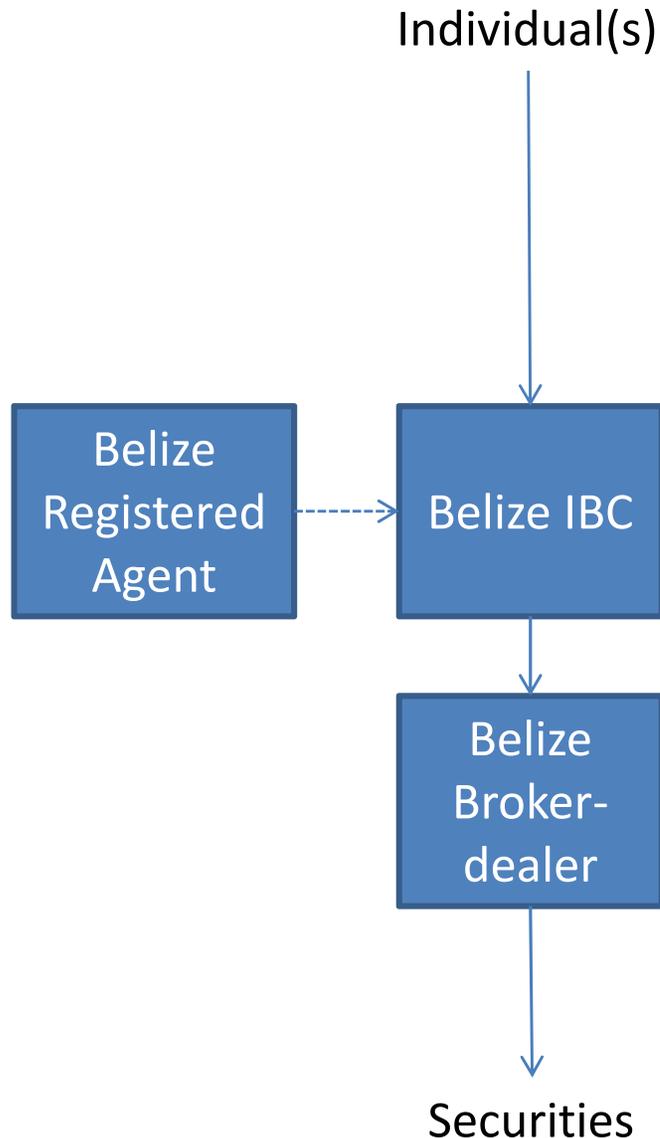


Application—IBCs *cont'd*



Belize IBC

- Belize IBC is treated as either (i) an FFI if its assets are professionally managed or (ii) an NFFE otherwise.
- Although the exact contours are unclear, Belize IBC's assets would be treated as professionally managed where another entity has discretionary authority over investment of a substantial portion of the assets.
- Simply having a nominee director or nominee shareholder should not cause Belize IBC to be treated as having professionally managed assets.

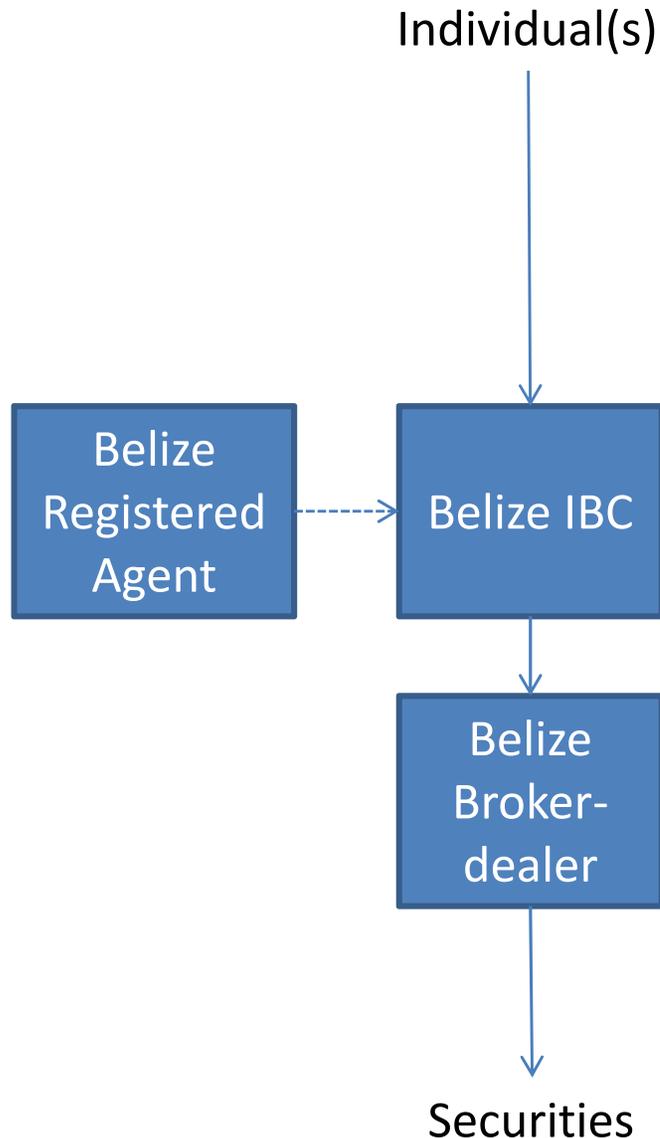


Application—IBCs *cont'd*

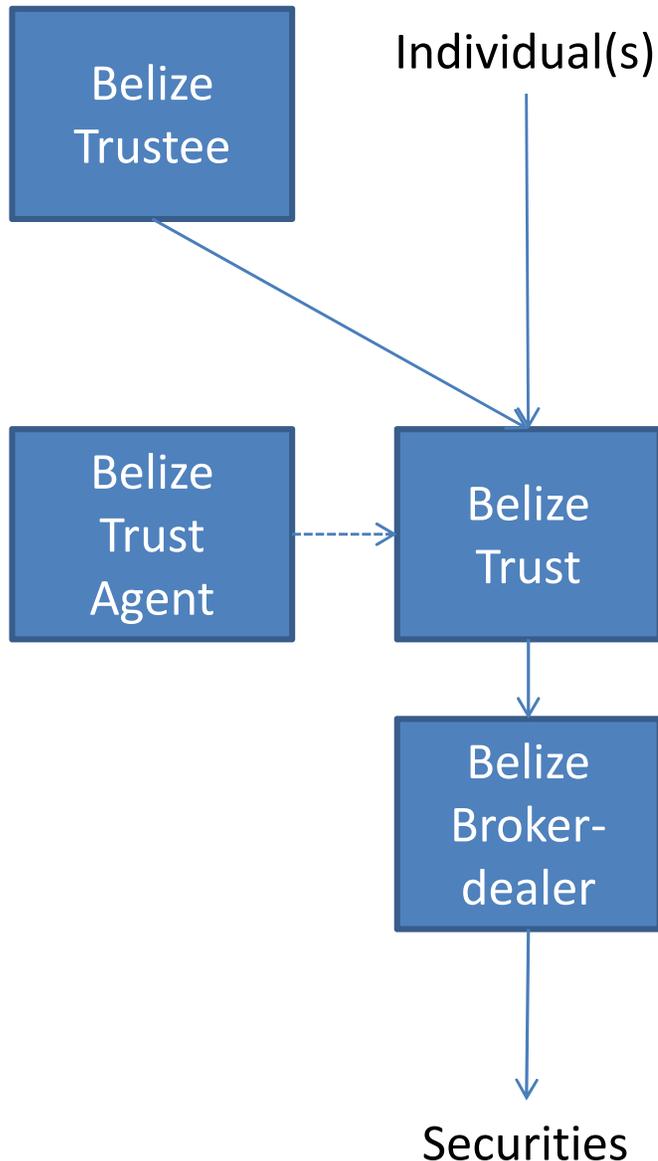


Belize IBC *cont'd*

- If Belize IBC is an FFI, it can avoid FATCA withholding through proper structuring and/or obtaining the proper FATCA status. The specific steps depend on the facts and the preference(s) of its owner(s).
- If Belize IBC is an NFFE, it can avoid FATCA withholding simply by providing a properly completed IRS Form W-8BEN-E.
- The IRS Form W-8BEN-E would need to either (i) certify that Belize IBC engages in an active business or (ii) if that is not the case, either (a) provide information about its 10% U.S. owners or (b) certify that it has no 10% U.S. owners.



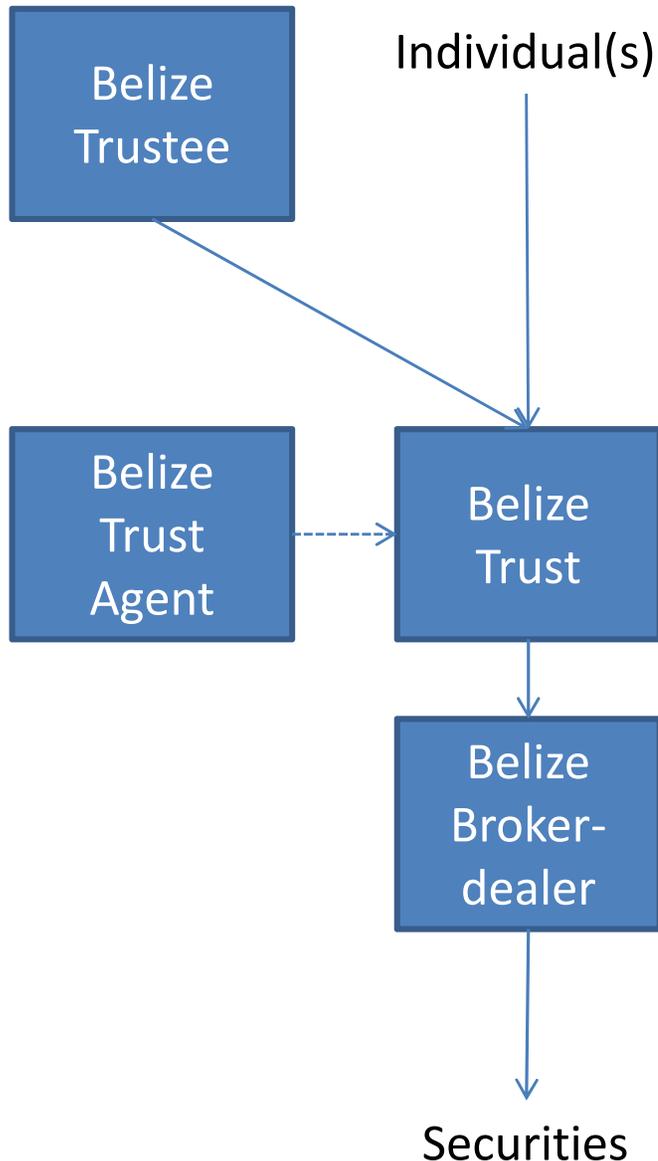
Application—Trusts



Example Structure

- One or more individuals settle Belize Trust.
- Individual(s) (and Belize Trust's beneficiaries) could be U.S. or non-U.S.
- Belize Trust's only activity is to hold an account with Belize Broker-dealer, through which it holds securities.
- Belize Trustee is the trustee of Belize Trust, and Belize Trust Agent is the trust agent for Belize Trust.
- The securities could be U.S. or non-U.S.

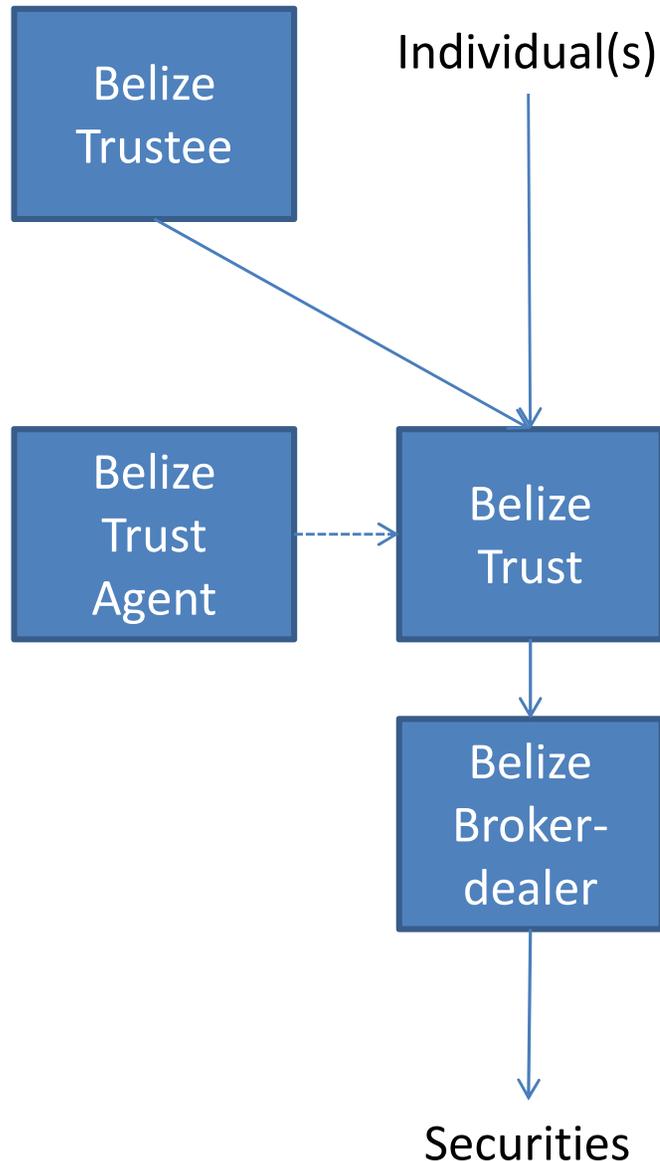
Application—Trusts *cont'd*



General Treatment

- For Belize Broker-dealer, this structure has the same general consequences as the previous structure.
- Belize Trust Agent is not an FFI because it does not manage or administer assets on behalf of customers.
- Belize Trustee may be an FFI depending on its facts. However, if Belize Trustee is an FFI:
 - it would typically be a deemed-compliant FFI because it does not “maintain financial accounts” and
 - its status as an FFI is not relevant for this structure because it does not receive withholdable payments (rather, the trust does).

Application—Trusts *cont'd*



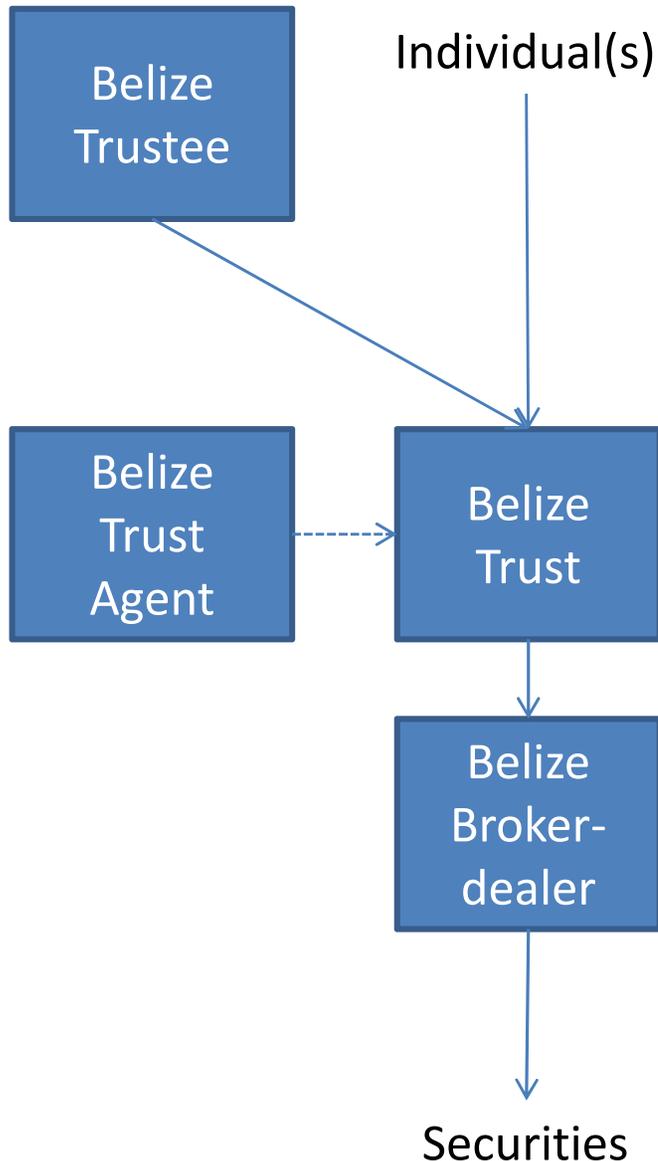
Belize Trust

- Belize Trust is an FFI because
 - it derives more than 50% of its income from investing in securities and
 - it is professionally managed (by Belize Trustee).
- Therefore, Belize Trust must achieve a FATCA-compliant status or it will be treated as a non-participating FFI.
- If Belize Trust fails to achieve a FATCA-compliant status, then
 - it will be withheld upon with respect to payments on U.S. securities and
 - Belize Broker-dealer may close its account (to avoid the complication of dealing with a non-participating FFI).

Application—Trusts *cont'd*



Belize Trust *cont'd*



- The easiest path to FATCA compliance is for Belize Trustee to sponsor Belize Trust. Sponsorship allows Belize Trust to be FATCA compliant without the expense of becoming a participating FFI.
- To sponsor Belize Trust, Belize Trustee must:
 - Register with the IRS as a sponsoring entity;
 - Register Belize Trust with the IRS as a sponsored entity;
 - Provide the proper withholding forms for Belize Trust to Belize Broker-dealer; and
 - Agree to fulfill certain due diligence, withholding, reporting, and other requirements.