

March 6, 2017

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***Re: Comments of the Investment Industry Association of Canada (IIAC) with respect to renewal of Qualified Intermediary (QI) Agreements and application for QI and Qualified Derivatives Dealer (QDD) status***

The Investment Industry Association of Canada (IIAC)<sup>1</sup> is writing to respectfully request that the IRS consider providing an extension of time for financial institutions to renew and/or apply for QI and QDD status, beyond the current March 31, 2017 application/renewal deadline, for this initial application/renewal period. Many of the IIAC's members are existing QIs, some of which belong to financial groups whose members may also be applying for QI and/or QDD status through the Qualified Intermediary (QI), Withholding Foreign Partnership (WP), and Withholding Foreign

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<sup>1</sup> The Investment Industry Association of Canada (IIAC) is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 130 IIROC-regulated investment dealer Member firms in the Canadian securities industry. These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations.

Trust (WT) Application and Account Management System (the “System”). We are making this request based on a number of factors and issues that have been identified by our members.

- (1) On December 30, 2016 (one day before its effective date of January 1, 2017), the revised QI Agreement was published as part of Revenue Procedure 2017-15. On January 19, 2017, final, temporary and proposed regulations under Internal Revenue Code section 871(m) were published. Both of these publications significantly altered the provisions relating to the QDD regime, impacting the analysis and decision of FIs to apply for QI/QDD status. For example, additional guidance provided with respect to securities lending and sale-repurchase transactions, and determining when the FI is acting as an intermediary or acting as a principal, potentially could have changed the decisions made by some FIs to apply for QDD status. The late publication of this critical guidance means that some FIs would likely not have been able to analyze and make final decisions about the QDD application until well into January 2017, eroding the already short window of time for application.
- (2) The System was not available until December 30, 2016, and although a revised version of Form 14345 was published briefly by the IRS earlier in 2016, it was unclear at that time if the information requested on that Form would be similar to the information that existing QIs would be required to provide on the System once it became available. Regardless, the Form was removed from the IRS website before many FIs were able to review it, and it was generally assumed that it was removed from the IRS website because it would be subject to further revision, causing FIs to question whether they should rely on the questions contained on that version of the Form. Now that additional FAQs have been published to supplement the System and the System User Guide, it has become clear that the information requested, in particular for QDD status application, will be difficult for FIs to obtain or estimate within the weeks that remain until the March 31 deadline.
- (3) Existing QIs initially provided feedback that the System requires much more information for QI agreement renewal in Part 2 than originally anticipated, and indicated that, as a result, the time and resources necessary to complete the renewal application would be similar to that for a new QI application. For example, fields for renewing QIs are not pre-populated in the System, and it appears that a renewing QI must enter the information as though it is applying for QI status for the first time. On February 28, 2017, the IRS distributed an edition of “Qualified Intermediary News”, highlighting that “the System had been recently updated”, but without describing those updates in detail. We now assume that these updates correspond to reports from our members accessing the System, that renewing QIs are now instructed to click on question mark icons located next to certain fields marked with an asterisk (which usually indicates that the field is required). When the icon is clicked, additional information is conveyed to the user that the particular field may not in fact be required for renewal. However, we are not aware of any official

guidance from the IRS to this effect, nor of any changes to the System User Guide. If the IRS is changing the required fields for renewing QIs, this should be clearly indicated in an FAQ or other published statement. Relying on System users to manually reveal this important information is creating confusion among renewing QIs, and the uneven distribution of information with respect to System changes could result in many renewing QIs completing (or attempting to complete) portions of the application that are not required. This may be particularly problematic for users whose first language is not English, and who may be relying on the well-established principle that an asterisk means that a field is required to be completed.

- (4) As mentioned above, FAQs were published by the IRS on February 14-15, 2017, approximately six weeks prior to the application/renewal deadline. The publication of the FAQs, while necessary to understand the IRS' expectations, has not only clarified how much due diligence would be required by the FI to complete some of the application questions, but also seems to have created additional unanticipated concerns. For example, QI FAQ Q10 appears to create a new process that must be followed for each separate branch of a QI. Q12 asks QIs to "describe the entire account opening process", which seems like an overly broad request that would potentially yield information of little value to the IRS, and could be complicated if the QI has multiple account opening processes, depending upon the line of business. However, on the other hand, the FAQs published do not address questions about the completion of Part 3 for QDD applicants, including clarification with respect to which types of transactions should be included (or excluded) in the approximate values requested, or the IRS' expectations with respect to broadly drafted questions, such as those asking potential QDDs to "describe" section 871(m) transactions and hedging activities, and its system or procedures for testing, tracking and reporting transactions, some of which are not yet in place. If the IRS has particular expectations with respect to these questions, they should be communicated to the industry as part of a published FAQ, or amendments to the System User Guide.

For these reasons, and to enhance the likelihood of a smoother process for QI/QDD renewal and application for both FIs and the IRS, we would greatly appreciate an extension of time of at least ***three months*** for existing and prospective QIs/QDDs to complete their registration through the System. This would allow the necessary IRS guidance or FAQs to be published and understood by all QIs/QDDs internationally. If a formal extension of an application/renewal is not possible because of technical limitations of the System, an alternative approach would be for the IRS to provide a "best efforts" period and approach through published guidance or FAQ, allowing QIs/QDDs acting in good faith to complete the general provisions of the QI/QDD renewal/application by March 31, and to provide additional information after the initial renewal/application is submitted, where applicable and available.

We greatly appreciate the ongoing work and dialogue with the industry on all QI-related matters. If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at [ataylor@iiac.ca](mailto:ataylor@iiac.ca) or 416-364-2754.

Yours sincerely,

*“Andrea Taylor”*

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