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Submitted via Email

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Re: Request for extensions of the Responsible Officer (“RO”) Certification for Qualified Intermediaries (“QIs”) with: a December 31, 2020 due date, a July 1, 2021 due date, a 2020 periodic review year; and going forward where the third year of the Certification period is chosen for the periodic review

Dear Sirs and Mesdames:

The Investment Industry Association of Canada¹ (the “IIAC”) requests a six month extension of the RO Certification date for QIs who have their certification due December 31, 2020, and due July 1, 2021. In addition, we request an extension of the RO Certification date for QIs where 2020 is selected as the periodic review year. We request the current deadline of December 31, 2021 be extended to July 1, 2022. This extension is necessary due to the timing of QIs finalizing their reporting for the 2020 year which is required in order to provide the final population for the periodic review. This timing is further exacerbated by additional constraints caused by the global pandemic COVID-19.

¹ The IIAC is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 120 IIROC-regulated investment dealer members in the Canadian securities industry. These dealer firms are the key intermediaries in the Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in the public and private markets for government and corporations. For more information visit, <http://www.iiac.ca>

Further, the IIAC had previously requested revisions to section 10.03 of the Qualified Intermediary Agreement² (the “QI Agreement”) to provide sufficient time for those QIs selecting the third year in the certification period for a periodic review to submit their RO Certifications³. We continue to support our request for permanent changes to the certification date for QIs selecting the third year for the periodic review.

I. Extension for RO Certifications due December 31, 2020 and July 1, 2021

The IIAC appreciates the blanket relief provided by the IRS for QIs who had RO Certifications due July 1, 2020 in recognition of the challenges resulting from the global pandemic COVID-19. We are requesting similar relief for those QIs with a RO Certification deadline of December 31, 2020 or July 1, 2021. We believe a six month extension is warranted in both circumstances. For those QIs with a December 31, 2020 due date, there is concern that there is insufficient time for QIs to correct any errors identified during their periodic review, which could result in the QI having a material failure. In addition, QIs that are unable to amend their Form 1042-S or 1099 filings by December 4, 2020 would have to file a Qualified Certification. The IRS efilings portal is expected to be shut down for approximately 30 days beginning December 4, 2020 and this further impacts QIs ability to complete their RO Certifications by the December 31, 2020 deadline.

For QIs with a July 1, 2021 due date, their periodic review year was 2019. While QIs note that the time provided between the periodic review year and RO Certification due date in general is sufficient, as a result of COVID-19 it has been more challenging to conduct the external audit in 2020. Many QIs have had challenges with their on premise audits and obtaining materials that are only available physically at certain locations as a result of lockdowns and restrictions from COVID-19. The delays in external audits will result in a reduced amount of time for QIs to correct any errors identified. QIs are concerned they could have material failures as a result or have to file a Qualified Certification.

II. Background re third year periodic review extension request

Currently, most QIs that have a certification period ending December 31, 2020 will generally be selecting the third year (2020) in the certification period for their periodic review and will have an RO Certification deadline of December 31, 2021. For a QI that chooses the first or second year of the certification period for its periodic review, or a QI that obtains a waiver of the periodic review requirement, the certification is due on or before July 1 of the year following the

² Revenue Procedure 2017-15

³ https://iiac.ca/wp-content/uploads/IIAC-requests-from-IRS-revisions-to-QI-Agreement-providing-an-extended-deadline-for-RO-Certification_December-9-2019.pdf

certification period. So, for a certification period including 2018, 2019 and 2020, if a QI selects 2018 or 2019 for the Periodic Review, the Certification deadline would be July 1, 2021.

IIAC Members welcomed the two-month extension for RO Certifications provided by the IRS for QIs that selected 2017 as the periodic review year. We appreciated the IRS responsiveness to QI concerns regarding the initial deadline for the new RO Certification obligation. However, many of the challenge's firms faced with respect to the initial RO Certification will continue and the extension provided was temporary and only applied to that specific certification period. For the reasons discussed below in Part III, IIAC believes the December 31 deadline for QIs selecting the third year of the certification period for the periodic review will not provide sufficient time for QIs to complete the necessary elements of the periodic review prior to submitting the RO Certification. We believe a deadline of July 1 of the second year following the certification period will provide a realistic timeframe for QIs to complete the periodic review procedures and subsequently complete the RO Certification.

III. Challenges to meet the current deadline with a 2020 periodic review year

In order to certify compliance, a QI must have had an internal or external reviewer conduct an independent periodic review. A QI can only begin to conduct its periodic review once it has finalized the account population and completed the required filings, otherwise, a QI could have a Material Failure under section 10.03(B) the QI Agreement. A QI is dependent on other parties, including clearing houses, to complete their own tax reporting in order for the QI to complete or potentially amend its own filings.

In particular, there have been a number of challenges for QIs to complete their filings as a result of the timing of when QIs receive Forms 1042-S from their upstream custodians or clearing organizations and the corresponding reconciliation and amendments that will need to occur once the forms are received. While Form 1042 is required to be filed by March 15 with the IRS, it is common practice for QIs to apply for the six-month extension resulting in most Form 1042s being filed by September 15. The extension is generally necessary in order to provide adequate time to manage amended Forms 1042-S received from upstream payors later in the calendar year.

While Forms 1042-S are normally due March 15 as well, payors can apply for a 30-day extension. Due to the number of firms that request this extension, many QIs receive their 1042-S slips from primary upstream custodians or clearing organizations on or immediately prior to April 15 each year. If the QI is part of a chain of upstream withholding agents, this may also delay receipt of the final amended 1042-S. As already noted, it is common practice for the same upstream payors to issue amended slips up to (and sometimes after) September 15.

This results in QIs having to adjust their own reconciliations, revise reporting and submit amended 1042-S slips (which may need to be amended each time an upstream custodian or

clearing organization gives the QI an amended Form 1042-S). This occurs up until (and often after) the September extended due date of the Form 1042. As a result, it is rare for a QI to have produced a reliable and accurate reconciliation and final Forms 1042 and 1042-S prior to September 15 following any calendar year.

Consequently, the earliest start date for most QIs to begin their periodic review would be September 15 of the year following their selected period. The account population for the external reviewer would not be finalized until the final Forms 1042 and 1042-S are filed. Once the final population is determined, the QI can begin pulling documentation and reporting samples for the chosen accounts. Only then would the documentation for samples collected be provided to the reviewer, and the reviewer would finally be able to begin their process of reviewing the samples. The RO can only submit their attestation once the periodic review is completed.

The current deadline of December 31 effectively truncates the timeline for completing both the periodic review and the Certification to only 3 and a half months for QIs selecting the third year for the periodic review. We do not believe it is feasible for many QIs, or their external reviewers, to conduct the extensive type of review required in such a short time period.

For those QIs that elect to be part of a consolidated compliance program, the above time constrictions are amplified due to the requirement that the consolidated group sample must be approved by the IRS before the review can begin. This approval process takes some time, further reducing the QI's ability to meet the December 31 deadline. The IRS has indicated in an FAQ that QIs who apply for a consolidated compliance program are also ineligible to select year one for the periodic review. In effect, these firms do not have the flexibility intended under the program.

IV. Impact of COVID -19 on deadlines

RO Certifications require coordination among numerous personnel and for those firms conducting a periodic review, an evaluation based on a sampling of accounts via field work performed by an independent internal or external reviewer. The in-person nature of external reviews due to privacy concerns and related travel requirements is likely to be problematic (and not possible in some cases) given the current travel restrictions and directives from government to work remotely and avoid non-essential travel.

V. Recommended Extension

We request a six month extension for those QIs with a RO Certification deadline of December 31, 2020 and July 1, 2021

We recommend that for those QIs that have selected 2020 as their periodic review year, the December 31, 2021 date be extended to July 1, 2022. Further, we recommend that the upcoming QI Agreement be revised to allow firms selecting the third year for the periodic review to have

up to June 30 of the second year following the certification period. For example, where 2020 is chosen for the periodic review, the RO Certification would be due on July 1, 2022, instead of December 31, 2021. We request the extension until July rather than March (as provided in the previous IRS extension) due to the tax preparation season which runs from January through April and requires many of the same personnel resources.

VI. Conclusion

We appreciate your consideration of our concerns. In addition, IIAC Members welcome the opportunity to further discuss the operational challenges they face related to completing the RO Certification under the current deadline.

Please do not hesitate to contact the undersigned for any clarifications or additional questions regarding this submission. Thank you.

Yours Sincerely,

“Adrian Warath”

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