

August 11, 2020

Submitted via Email

Mr. Ernest J. Leonardini
Senior Revenue Agent
Internal Revenue Service
LB&I - Foreign Payments Practice
290 Broadway, 12th Floor
New York, NY 10007

Re: Request Revision to Canadian QI Attachment to reflect amended AML Requirements

The Investment Industry Association of Canada (the “IIAC”) is requesting revisions to the current Qualified Intermediary Agreement (“QI Agreement”), Attachment for Canada to reflect legislative amendments made to the Canadian Proceeds of Crime (Money Laundering) and Terrorist Financing Act (“PCMLTFA”) in 2019. The IIAC is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 115 IIROC-regulated investment dealer members in the Canadian securities industry.¹

Revisions to the Canadian PCMLTFA

The current QI Agreement’s Attachment for Canada² was developed to reflect the know-your-customer requirements acceptable in Canada under the version of the PCMLTFA in force at the time. On July 10, 2019, the Canadian government published final amendments to the PCMLTFA regulations, containing extensive changes, including to the requirements related to the method reporting entities can utilize to gather documents when verifying customer identity³. The changes reflect the evolving business models for reporting entities and the need for guidance on how to securely identify clients in a non-face-to-face electronic environment. The government identification verification requirement has been amended from requiring a document that was “original, valid and current” to “valid, authentic and current”. This means

¹ For more information visit, <http://www.iiac.ca>

² See Schedule B for current Canadian Attachment

³ Full amendments can be found here - <http://www.gazette.gc.ca/rp-pr/p2/2019/2019-07-10/html/sor-dors240-eng.html>

that now a financial institution (“FI”) can have government identification presented via electronic means rather than requiring the FI to view the document personally, if the FI has the technology to authentic the document. This amendment came into effect June 25, 2019. The relevant sections of the amendments to the PCMLTFA are included as Schedule A.

Further, this amendment repealed a former express prohibition on the use of electronic images for the documents allowed in the dual-process method to verify the identity of an individual. The dual-process method requires reporting entities to verify identity by referring to information from two reliable sources to verify either name and address, name and date of birth or name and existence of a financial account. This change regarding the use of electronic images does not require changes to the Attachment for Canada as the use of copies is allowed if laws and regulations permit it, specifically under 5(ii).

These amendments can enable FIs to explore financial technology that can improve the client on-boarding experience while also improving the FIs ability to authentic the client identity and reduce incidences of fraud. For example, a Canadian passport that could be presented in-person can now also be presented electronically. That passport is equipped with a bar code, detailed holograms and even RFID chips in some cases, and it can be authenticated during that onboarding in the online environment. The Canadian government believes these changes do not compromise the integrity of the know-your-customer requirements.

While the PCMLTFA rules were expanded and modernized for all Canadian FIs, FIs that are also QIs are unable to benefit from the modernization of the rules as they must comply with the older standards contained the Attachment for Canada for QI purposes. Due to the increase in demand from clients for electronic platforms for investing and streamlined onboarding, the gap between the requirements applicable to Canadian QIs and the updated PCMLTFA rules applicable to all other Canadian reporting entities could place Canadian QIs at a significant disadvantage in the financial marketplace. It would also likely result in the need for large financial groups to develop and maintain multiple policies and procedures based on the QI/non-QI status of its various entities. We believe that the PCMLTFA rules and Guidance under FINTRAC serves as a high standard that the Internal Revenue Service (the “IRS”) should be able to rely on for QIs to use as identification purposes under the QI Agreement.

Consequently, we believe modifying the Attachment for Canada to allow for non-face-to-face verification of identification in coordination with the Canadian legislative requirements is appropriate. We have included potential amended language to Section 5 of the Attachment for Canada in Schedule C.

Developments in other jurisdictions

We note that there is precedent in terms of the IRS amending the respective QI Attachment to reflect a country’s updated anti-money laundering legislation. The Attachment for Austria was approved by the IRS and updated in 2018 and the Attachment for Liechtenstein was similarly approved and updated. Austria’s revised Attachment specifically includes language on how QIs can identify individuals in a non-face-to-face environment. The IIAC’s suggested amendments would be comparable to Austria’s revisions, however reflecting the exact requirements in Canada.

As noted above, we believe these proposed amendments to the Attachment for Canada will enable QIs to continue to maintain high standards for customer identification while providing the flexibility to adapt to new technological developments.

We appreciate your consideration of our concerns. Please do not hesitate to contact myself at awalrath@iiac.ca or (416)687-5472. Thank you.

Respectfully submitted,

“Adrian Walrath”

Adrian Walrath
Director
Investment Industry Association of Canada

CC: Ms. Kimberly A. Schoenbacher, Director, LB&I - Field Operations Foreign Payments Practice Area,
Internal Revenue Service

Mr. Yuen Chan, Senior Manager, LB&I - FPP Program Office, Internal Revenue Service

SCHEDULE A**RELEVANT SECTIONS OF THE AMENDMENTS TO PCMLTFA**

Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2019: SOR/2019-240

Canada Gazette, Part II, Volume 153, Number 14

Registration

SOR/2019-240 June 25, 2019

Previous 39 Subsection 64(1.4) of the PCMLTFA:

“(1.4) If a document is used to ascertain identity under subsection (1), it must be original, valid and current. Other information that is used for that purpose must be valid and current and must not include an electronic image of a document.”

39 Subsection 64(1.4) of the Regulations is replaced by the following:

(1.4) If a document is used to ascertain identity under subsection (1), it must be authentic, valid and current. Other information that is used for that purpose must be valid and current.

SCHEDULE B**COPY OF THE CURRENT ATTACHMENT FOR CANADA**

1. QI is subject to the following laws and regulations of Canada governing the requirements of QI to obtain documentation confirming the identity of QI's account holders:

- i. *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- ii. *The Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*;
- iii. For its members, the Investment Industry Regulatory Organization of Canada (IIROC) (formerly the Investment Dealers Association of Canada) Dealer Member Rules, Rule 1300 and Rule 2500;
- iv. *The Income Tax Act (Canada)*.

2. QI represents that the laws identified above are enforced by the following enforcement bodies and QI shall provide the IRS with an English translation of any reports or other documentation issued by these enforcement bodies that are relevant to QI's functions as a qualified intermediary:

- i. Financial Transactions and Reports Analysis Centre (FINTRAC) of Canada;
- ii. For its members, IIROC; and
- iii. The Canadian Minister of National Revenue.

3. QI represents that the following penalties apply to failure to obtain, maintain, and evaluate documentation obtained under the laws and regulations identified in item 1 above:

- i. Items 1(i) and (ii): an Administrative Monetary Penalty not exceeding C\$1,000 in the case of a minor violation; a penalty not exceeding C\$100,000 in the case of a serious violation; a penalty not exceeding C\$500,000 in the case of a very serious violation; or
- ii. Item 1(iii): monetary penalties not exceeding C\$1,000,000 for an employee of a dealer and C\$5,000,000 for a dealer per offence, disgorgement, reprimand, restrictions on trading, suspension, termination or expulsion from IIROC and individuals may be banned from the industry; or
- iii. Item 1(iv): monetary penalties for each form which is missing or does not include a valid Social Insurance Number, or for making false statements.

4. QI shall use the following specific documentary evidence (and also any specific documentation added by an amendment to this item 4 as agreed to by the IRS) to comply with section 5 of this Agreement, provided that the following specific documentary evidence satisfies the requirements of the laws and regulations identified in item 1 above. In the case of a foreign person, QI may, instead, use a Form W-8

in accordance with section 5 of this Agreement. Either QI, or a banking or securities association in Canada, may request an amendment of this item 4.

i. For natural persons:

- a) Passport;
- b) National Identity Card;
- c) Driving license;
- d) Provincial health insurance card;
- e) Birth certificate provided by an individual under the age of 21;
- f) Government-issued Age of Majority Card;
- g) Canadian citizenship card;
- h) Record of Landing (IMM1000) or Confirmation of Permanent Residence (IMM 5292) issued prior to 1/1/2004;
- i) Permanent Residence Card;
- j) Canadian Forces Identification Card issued by the Canadian Department of National Defence;
- k) A government-issued Certificate of Indian Status;
- l) Alberta Photo Identification Card;
- m) B.C. Identification Card;
- n) B.C. Driver's License and Services Card;
- o) B.C. Services Card (Photo Card);
- p) Government of Newfoundland and Labrador Photo Identification Card;
- q) Nova Scotia Photo Identification Card;
- r) Prince Edward Island Voluntary ID;
- s) Saskatchewan Mandatory Photo ID;
- t) Ontario Photo Card;

- u) Manitoba Identification Card;
- v) NEXUS Membership Card;
- w) An otherwise acceptable Form W-8 (W-8BEN/W-8ECI/W-8EXP) or a copy of same, with the penalties of perjury statement modified by replacing the words “foreign person” with the words “not a U.S. citizen or U.S. resident alien”;
- x) For accounts opened prior to January 1, 2001, a Social Insurance Number that does not indicate non-residence (i.e., a number that does not begin with the digit “9”), that has been established by the QI as valid, and that must be reported to the Canada Revenue Agency in one or more periodic filings, and the QI has no other information that suggests the person is a non-resident of Canada.

ii. For Legal Persons:

- a) Canadian Acceptable Institutions, Acceptable Counterparties and Regulated Entities, that are identified as Canadian entities on IIROC’s list of Domestic and Foreign Acceptable Institutions and Acceptable Counterparties;
- b) For registered charities and other accounts individually registered with the Canada Revenue Agency, a notation of its unique tax registration number, provided that such tax registration number is valid and is regularly confirmed with the Canada Revenue Agency;
- c) Copy of the certificate of incorporation, articles of association, trust agreement/deed/indenture or other constating documents;
- d) Copy of extracts from public registers; or
- e) An otherwise acceptable substitute Form W-8 (W-8BEN/W-8ECI/W-8EXP) or a copy of same, with the penalties of perjury statement modified by replacing the words “foreign person” with the words “not a U.S. person”.

5. QI shall follow the procedures set forth below (and also any procedures added by an amendment to this item 5 as agreed to by the IRS) to confirm the identity of account holders that do not open accounts in person or who provide new documentation for existing accounts other than in person. In the case of a foreign person, QI may, instead, use a Form W-8 in accordance with section 5 of this Agreement. Either QI, or a banking or securities association in Canada, may request an amendment to this item 5.

- i. QI shall not open an account by any means other than by establishing in person the identity of a customer through the account holder’s own identity documents, except as permitted in (ii), (iii), (iv) and (v) below.
- ii. QI may obtain by mail or otherwise a copy that is an exact reproduction of the specific documentary evidence listed in item 4 above from another person that is subject to know-your-customer rules that

have been approved by the IRS for purposes of qualified intermediary agreements, provided that the laws and regulations listed in item 1 permit QI to rely on the other person to identify the account holder.

- iii. QI may obtain a photocopy of the specific documentary evidence listed in item 4 by mail or otherwise remotely from the account holder or a person acting on behalf of the account holder, provided that the photocopy can be associated with a valid Social Insurance Number of the account holder on file that does not begin with "9" or the photocopy has been certified as a true and correct copy by a person whose authority to make such certification appears on the photocopy, and provided that the laws and regulations listed in Item 1 permit QI to rely on the certified photocopy to identify the account holder.
- iv. a) QI may obtain by mail or otherwise a copy that is an exact reproduction of the specific documentary evidence listed in Item 4 from an affiliate of QI or a correspondent bank of QI, provided that the affiliate or correspondent bank has established in person the identity of the account holder and the laws and regulations listed in Item 1 permit QI to rely on documentation provided by that affiliate or correspondent bank to identify the account holder.

b) For accounts opened prior to January 1, 2001, if QI was not required under its know-your-customer rules to maintain originals or copies of documentation, QI may rely on its account information if it has complied with all other aspects of its know-your-customer rules regarding establishment of an account holder's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of QI, an employee of an affiliate of QI, a correspondent bank of QI, in accordance with the know-your-customer rules, and it has no information in its possession that would require QI to treat the documentation as invalid under the rules of section 5.10(B) of this Agreement.
- v. Where pursuant to a contractual relationship, a third party is acting as agent for QI, QI may rely on documentation (as defined in section 2.13 of this Agreement) obtained and retained by the third party in accordance with section 5 of this Agreement. The acts of such a third party agent of a QI will be imputed to the QI. The QI shall remain fully liable for the acts of such agent and QI shall not be permitted to assert any of the defenses that may otherwise be available, including under common law principles of agency, in order to avoid tax liability under the Internal Revenue Code.

SCHEDULE C**BLACKLINE OF THE ATTACHMENT FOR CANADA SHOWING PROPOSED AMENDMENTS**

ATTACHMENT FOR CANADA

1. QI is subject to the following laws and regulations of Canada governing the requirements of QI to obtain documentation confirming the identity of QI's account holders:

- v. *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- vi. *The Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*;
- vii. For its members, the Investment Industry Regulatory Organization of Canada (IIROC) (formerly the Investment Dealers Association of Canada) Dealer Member Rules, Rule 1300 and Rule 2500;
- viii. *The Income Tax Act (Canada)*.

2. QI represents that the laws identified above are enforced by the following enforcement bodies and QI shall provide the IRS with an English translation of any reports or other documentation issued by these enforcement bodies that are relevant to QI's functions as a qualified intermediary:

- iv. Financial Transactions and Reports Analysis Centre (FINTRAC) of Canada;
- v. For its members, IIROC; and
- vi. The Canadian Minister of National Revenue.

3. QI represents that the following penalties apply to failure to obtain, maintain, and evaluate documentation obtained under the laws and regulations identified in item 1 above:

- iv. Items 1(i) and (ii): an Administrative Monetary Penalty not exceeding C\$1,000 in the case of a minor violation; a penalty not exceeding C\$100,000 in the case of a serious violation; a penalty not exceeding C\$500,000 in the case of a very serious violation; or
- v. Item 1(iii): monetary penalties not exceeding C\$1,000,000 for an employee of a dealer and C\$5,000,000 for a dealer per offence, disgorgement, reprimand, restrictions on trading, suspension, termination or expulsion from IIROC and individuals may be banned from the industry; or
- vi. Item 1(iv): monetary penalties for each form which is missing or does not include a valid Social Insurance Number, or for making false statements.

4. QI shall use the following specific documentary evidence (and also any specific documentation added by an amendment to this item 4 as agreed to by the IRS) to comply with section 5 of this Agreement, provided that the following specific documentary evidence satisfies the requirements of the laws and

regulations identified in item 1 above. In the case of a foreign person, QI may, instead, use a Form W-8 in accordance with section 5 of this Agreement. Either QI, or a banking or securities association in Canada, may request an amendment of this item 4.

i. For natural persons:

- a) Passport;
- b) National Identity Card;
- c) Driving license;
- d) Provincial health insurance card;
- e) Birth certificate provided by an individual under the age of 21;
- f) Government-issued Age of Majority Card;
- g) Canadian citizenship card;
- h) Record of Landing (IMM1000) or Confirmation of Permanent Residence (IMM 5292) issued prior to 1/1/2004;
- i) Permanent Residence Card;
- j) Canadian Forces Identification Card issued by the Canadian Department of National Defence;
- k) A government-issued Certificate of Indian Status;
- l) Alberta Photo Identification Card;
- m) B.C. Identification Card;
- n) B.C. Driver's License and Services Card;
- o) B.C. Services Card (Photo Card);
- p) Government of Newfoundland and Labrador Photo Identification Card;
- q) Nova Scotia Photo Identification Card;
- r) Prince Edward Island Voluntary ID;
- s) Saskatchewan Mandatory Photo ID;
- t) Ontario Photo Card;

- u) Manitoba Identification Card;
- v) NEXUS Membership Card;
- w) An otherwise acceptable Form W-8 (W-8BEN/W-8ECI/W-8EXP) or a copy of same, with the penalties of perjury statement modified by replacing the words “foreign person” with the words “not a U.S. citizen or U.S. resident alien”;
- x) For accounts opened prior to January 1, 2001, a Social Insurance Number that does not indicate non-residence (i.e., a number that does not begin with the digit “9”), that has been established by the QI as valid, and that must be reported to the Canada Revenue Agency in one or more periodic filings, and the QI has no other information that suggests the person is a non-resident of Canada.

ii. For Legal Persons:

- a) Canadian Acceptable Institutions, Acceptable Counterparties and Regulated Entities, that are identified as Canadian entities on IIROC’s list of Domestic and Foreign Acceptable Institutions and Acceptable Counterparties;
- b) For registered charities and other accounts individually registered with the Canada Revenue Agency, a notation of its unique tax registration number, provided that such tax registration number is valid and is regularly confirmed with the Canada Revenue Agency;
- c) Copy of the certificate of incorporation, articles of association, trust agreement/deed/indenture or other constating documents;
- d) Copy of extracts from public registers; or
- e) An otherwise acceptable substitute Form W-8 (W-8BEN/W-8ECI/W-8EXP) or a copy of same, with the penalties of perjury statement modified by replacing the words “foreign person” with the words “not a U.S. person”.

5. QI shall follow the procedures set forth below (and also any procedures added by an amendment to this item 5 as agreed to by the IRS) to confirm the identity of account holders that do not open accounts in person or who provide new documentation for existing accounts other than in person. In the case of a foreign person, QI may, instead, use a Form W-8 in accordance with section 5 of this Agreement. Either QI, or a banking or securities association in Canada, may request an amendment to this item 5.

- i. QI shall not open an account by any means other than by establishing in person the identity of a customer through the account holder’s own identity documents, except as permitted in (ii), (iii), (iv) ~~and (v)~~, and (vi) below.
- ii. QI may obtain by mail or otherwise a copy that is an exact reproduction of the specific documentary evidence listed in item 4 above from another person that is subject to know-your-

customer rules that have been approved by the IRS for purposes of qualified intermediary agreements, provided that the laws and regulations listed in item 1 permit QI to rely on the other person to identify the account holder.

- iii. QI may obtain a photocopy of the specific documentary evidence listed in item 4 by mail or otherwise remotely from the account holder or a person acting on behalf of the account holder, provided that the photocopy can be associated with a valid Social Insurance Number of the account holder on file that does not begin with "9" or the photocopy has been certified as a true and correct copy by a person whose authority to make such certification appears on the photocopy, and provided that the laws and regulations listed in Item 1 permit QI to rely on the certified photocopy to identify the account holder.
- iv.
 - a) QI may obtain by mail or otherwise a copy that is an exact reproduction of the specific documentary evidence listed in Item 4 from an affiliate of QI or a correspondent bank of QI, provided that the affiliate or correspondent bank has established in person the identity of the account holder and the laws and regulations listed in Item 1 permit QI to rely on documentation provided by that affiliate or correspondent bank to identify the account holder.
 - b) For accounts opened prior to January 1, 2001, if QI was not required under its know-your-customer rules to maintain originals or copies of documentation, QI may rely on its account information if it has complied with all other aspects of its know-your-customer rules regarding establishment of an account holder's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of QI, an employee of an affiliate of QI, a correspondent bank of QI, in accordance with the know-your-customer rules, and it has no information in its possession that would require QI to treat the documentation as invalid under the rules of section 5.10(B) of this Agreement.
- v. Where pursuant to a contractual relationship, a third party is acting as agent for QI, QI may rely on documentation (as defined in section 2.13 of this Agreement) obtained and retained by the third party in accordance with section 5 of this Agreement. The acts of such a third party agent of a QI will be imputed to the QI. The QI shall remain fully liable for the acts of such agent and QI shall not be permitted to assert any of the defenses that may otherwise be available, including under common law principles of agency, in order to avoid tax liability under the Internal Revenue Code.
- vi. (vi) QI shall comply with the following due diligence obligations pursuant to FINTRAC Guidance on the Know Your Client Requirements under The Proceeds of Crime (Money Laundering) and Terrorist Financing Act:

"QI may determine the authenticity of a government-issued photo identification document by using a technology capable of assessing the document's authenticity if an individual is **not physically present**. For example:

 - an individual could be asked to scan their government-issued photo identification document using the camera on their mobile phone or electronic device; and

- a technology would then be used by the QI, to compare the features of the government-issued photo identification document against known characteristics (for example, size, texture, character spacing, raised lettering, format, design), security features (for example, holograms, barcodes, magnetic strips, watermarks, embedded electronic chips) or markers (for example, logos, symbols) to be satisfied that it is an authentic document as issued by the competent authority (federal, provincial, territorial government).

When an individual **is not physically present**, the QI must still determine if the individual presenting the government-issued photo identification document matches the name and photo of the person in the authenticated document provided. For example:

- An individual could participate in a live video chat session and the QI, would then be able to compare the name and the features of the live video image to the name and photo on the authentic government-issued photo identification document; or
- An individual could be asked to take a "selfie" photo using the camera on their mobile phone or electronic device, and an application used by the QI, would apply facial recognition technology to compare the features of that "selfie" to the photo on the authentic government-issued photo identification document. A process would have to exist to also compare the name on the government-issued photo identification document with the name provided to the QI, by the individual."