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Submitted via Email

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Re: Request revisions to the QI Agreement providing an extended deadline for RO Certification for QIs selecting the third year for periodic review

Dear Sirs and Mesdames:

The Investment Industry Association of Canada¹ (the “IIAC”) requests that section 10.03 of the Qualified Intermediary Agreement² (the “QI Agreement”) be amended to provide sufficient time for those Qualified Intermediaries (“QIs”) selecting the third year in the certification period for a periodic review to submit their Responsible Officer (“RO”) Certifications.

I. Background

Currently, a QI that selects the third year in the certification period for its periodic review will have an RO Certification deadline of up to or on December 31 of the year following the certification period. For a QI that uses the first or second year of the certification period for its

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>

² Revenue Procedure 2017-15

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 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. If a QI with the same certification period selects 2020 for the periodic review, the Certification would be due no later than December 31, 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 applied to the first certification period. For the reasons discussed below, 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 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 Certification.

II. Challenges to meet the current deadline

In order to certify compliance, the 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 they have finalized the account population and completed their 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 various tax forms in order for the QI to complete or potentially amend their own filings.

In particular, there have been a number of challenges for QIs to complete their filings as a result of the timing for when QIs receive Forms 1042-S from their upstream custodians or clearing organizations and the corresponding reconciliation and amendments that may 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 most 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. 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, then QI can begin pulling documentation and reporting samples for the chosen accounts. Only then are samples collected, and the reviewer can finally begin their process of reviewing the samples. The RO can only begin 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 as due to the requirement that the consolidated group sample be approved by the IRS before the review can begin. This approval process takes some time, further reducing the QIs 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.

III. Recommended Extension

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 June 30, 2022, instead of December 31, 2021. We request the extension until June 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.

IV. Conclusion

We appreciate your consideration of our concerns. In addition, IAC 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,



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