DRAFT Guidance on Enhanced Financial Account Information Reporting – Part XVIII of the Income Tax Act

Application

This guidance is released in draft to financial industry associations for comment in the context of a targeted consultation and is not for distribution to the broader public. Final guidance will be published on the website of the Canada Revenue Agency (CRA) subsequent to this consultation.

Legislative changes are required to implement the "Agreement between the Government of the United States of America and the Government of Canada to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital", signed on February 5, 2014. On that day, the Department of Finance also published legislative proposals for comment and the guidance being offered is dependent on legislation being approved by Parliament in its proposed form.

Industry associations are asked to provide feedback on this draft guidance by April 4, 2014 to CA-LPD.AC-DPL@cra-arc.gc.ca.

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Chapter 1 – Introduction

The purpose of this guidance

1.1 This guidance is to assist financial institutions, their advisers and Canada Revenue Agency (CRA) officials with the due diligence and reporting obligations relating to the Canada-United States Enhanced Tax Information Exchange Agreement, signed on February 5, 2014 (the "Agreement"). The Agreement is proposed to be implemented by the *Canada-United States Enhanced Tax Information Agreement Implementation Act* together with the addition of Part XVIII and other amendments to the *Income Tax Act* (ITA). The Government's legislative proposals in connection with the Agreement are available on the Department of Finance website.

1.2 Canada's implementation of the Agreement will also be of interest to customers of Canadian financial institutions. Individuals with an existing account or opening a new account at a Canadian financial institution may be asked to certify or clarify their U.S. tax status, produce documents or both for any representations they make. Canadian financial institutions need this information to satisfy their obligations under Canadian law for enhanced tax reporting to the CRA. Similar but slightly more detailed information may also be required from corporations and other entities with financial accounts. Information to assist individuals and entity account holders to respond to such information requests is available on the Canada Revenue Agency website.

Scope of guidance

1.3 This guidance describes the due diligence and reporting obligations that arise under the ITA by virtue of the implementation of the Agreement in Canada. Part XVIII has been added to the ITA and a few other changes have been made elsewhere in the ITA to implement the Agreement in Canada. The guidance refers to U.S. law and procedural rules only to the extent that doing so helps the reader to better understand requirements in Canada.

1.4 A Canadian financial institution that is in compliance with Part XVIII will not be subject to any U.S. withholding tax on its U.S. source income under section 1471 of the U.S. Internal Revenue Code (IRC). However, the Agreement requires that procedures be followed by Canadian financial institutions that seek to secure that outcome.

International context

1.5 The Agreement is consistent with Canada’s support for the recent G-8 and G-20 commitments to develop a global standard for the automatic exchange of tax information. This guidance has been developed with the international context in mind and may, if appropriate, be updated to ensure proper alignment with an international consensus that may emerge.

Chapter 2 – Definitions and glossary

The meaning of certain terms

2.1 The Agreement defines many terms, such as “account holder”, “financial institution”, and “U.S. person”. In Part XVIII of the ITA (“Part XVIII”), any term has the meaning that is defined in the Agreement unless the term is defined in that Part. The table below provides references for many of those defined terms. To the extent that those terms are used in this guidance, their meanings are drawn from those legal instruments, as the context requires and unless otherwise indicated.

Term	Agreement	Income Tax Act
Account holder	Article 1(1)(dd)	
Active NFFE	Annex I (VI)(B)(4)	
Agreement (*Agreement between the Government of the United States of America and the Government of Canada to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention between the United States of America and Canada with Respect to Taxes on Income and Capital*)	Article 1(1)	ss. 263(1)
Annuity contract	Article 1(1)(x)	
AML/KYC Procedures	Annex I (VI)(B)(1)	
Canadian financial institution	Article 1(1)(l)	ss. 263(2)
Canadian reportable account	Article 1(1)(bb)	

Cash value	Article 1(1)(z)	
Cash value insurance contract	Article 1(1)(y)	
Controlling persons	Article 1(1)(mm)	
Custodial account	Article 1(1)(u)	
Custodial institution	Article 1(1)(h)	
Competent authority	Article 1(1)(f)	
Depository account	Article 1(1)(t)	
Depository institution	Article 1(1)(i)	
Documentary evidence	Annex I (VI)(D)	
Electronic filing		ss. 263(1)
Entity	Article 1(1)(gg)	
Equity interest	Article 1(1)(v)	
Financial account	Article 1(1)(s)	ss. 263(3)
Financial institution	Article 1(1)(g)	
High value account	Annex I (II)(D)	
IRS (Internal Revenue Service)	Article 1(1)(c)	
Insurance contract	Article 1(1)(w)	
Investment entity	Article 1(1)(j)	
Lower value account	Annex I (II)(B)	
New individual account	Annex I (III)	
New entity account	Annex I (V)	
Non-Financial Foreign Entity (NFFE)	Annex I (VI)(B)(2)	
Nonparticipating Financial Institution (NPFI)	Article 1(1)(r)	
Non-Reporting Canadian Financial Institution (NRCFI)	Article 1(1)(q)	ss. 263(1) & (2)
Non-U.S. entity	Article 1(1)(hh)	
Passive NFFE	Annex I (VI)(B)(3)	

Partner jurisdiction	Article 1(1)(e)	
Partner jurisdiction financial institution	Article 1(1)(m)	
Preexisting account	Annex I (VI)(B)(5)	
Preexisting individual account	Annex I (II)	
Preexisting entity account	Annex I (IV)	
Related entity	Article 1(1)(jj)	
Reportable account	Article 1(1)(aa)	
Reporting financial institution	Article 1(1)(n)	
Reporting Canadian financial institution	Article 1(1)(o)	ss. 263(2)
Reporting U.S. financial institution	Article 1(1)(p)	
Specified insurance company	Article 1(1)(k)	
Specified U.S. person	Article 1(1)(ff)	
U.S. indicia	Annex I (II)(B)(1)	
U.S. person	Article 1(1)(ee)	
U.S. reportable account	Article 1(1)(cc)	ss. 263(1)
U.S. source withholdable payment	Article 1(1)(ii)	
U.S. or Canadian TIN (Tax Identification Number)	Article 1(1)(kk) and (ll), respectively	ss. 263(4)

2.2 Certain short-hand terms and acronyms are also used throughout this guidance. The table below provides a longer-form description and/or appropriate reference point for many of them.

Term	Refers to
AML	Anti-Money Laundering
CRA	Canada Revenue Agency
Deemed-compliant FFI	Deemed-compliant foreign financial institution – A Financial Institution that is identified in Section III of Annex II of the Agreement as a “non-reporting Canadian financial institution.” A “non-reporting Canadian financial institution” is defined in Article 1(1)(q) of the Agreement (see Chapter 3 of this guidance).
FFI	Foreign financial institution – a term that appears in the Agreement and that is labelled from the perspective of the U.S. (i.e., a Canadian Chartered Bank is a non-U.S. financial institution).
Local FFI	Local foreign financial institution –a particular type of deemed-compliant FFI identified in Section III of Annex II of the Agreement that is relevant to understanding the meaning of the term “non-reporting Canadian financial institution” in the Agreement. (see Chapter 3 of this guidance)
FATF Recommendations	Financial Action Task Force Recommendations
GIIN	Global Intermediary Identification Number – a number assigned to financial institutions by the U.S. Internal Revenue Service
Intergovernmental Agreement	An agreement concluded by the U.S. and another jurisdiction that is largely based on Model

	Agreements published by the U.S. Treasury
IRS	U.S. Internal Revenue Service
IRC	U.S. Internal Revenue Code and related U.S. Treasury Regulations
ITA	*Income Tax Act* (Canada)
KYC	Know Your Client
NAICS	North American Industry Classification System (see Chapter 10 of this guidance)
PCMLTFA	*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*
Qualified intermediary attachment	Canada's attachment to the Qualified Intermediary Agreement (see Annex I (II)(F) of the Agreement)
Part XVIII	Part XVIII of the ITA
Part XVIII Information Return	Part XVIII Information Return - International Exchange of Information on Financial Accounts
Relationship manager	See Chapter 8 of this guidance on who is a relationship manager
SIC	Standard Industrial Code (see Chapter 10 of this guidance)

Coordination of definitions with U.S. Treasury Regulations

2.3 Paragraph 7 of Article 4 of the Agreement provides that Canada may use, and may permit Canadian financial institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in the Agreement, provided that such application does not frustrate the purposes of the Agreement and is not inconsistent with Canadian legislation and this guidance.

2.4 If a financial institution is of the view that this guidance does not reflect an approach that results in outcomes equally favourable as would be obtained if definitions were fully coordinated with U.S. Treasury Regulations then it may contact the CRA. If the CRA is of the view that increased coordination is warranted, updated guidance will be issued and will serve to notify all financial institutions of the change. This approach will ensure transparency and fairness to all financial institutions.

2.5 Where this guidance permits the use of a definition in the U.S. Treasury Regulations, the permission is limited to using the definition as it read on February 5, 2014 (the date of signature of the Agreement).

Chapter 3 – Financial institutions subject to reporting

3.1 Reporting associated with the Agreement is required under Part XVIII.

3.2 The reporting obligation applies only to a legal person or legal arrangement, such as a corporation, trust or partnership (referred to as “entity” or “entities”). To determine whether an entity has a potential reporting obligation in Canada, you must determine whether the entity is a:

- financial institution;
- If so, whether it is a Canadian financial institution;
- If so, whether it is a reporting Canadian financial institution.

Financial institutions

3.3 Canadian financial institutions must obtain and report information for certain accounts. Under the Agreement and for the purposes of Part XVIII, an entity is a financial institution if it is a:

- depository institution;
- custodial institution;
- investment entity; or
- specified insurance company.

An entity can be more than one type of financial institution.

Depository institution

3.4 A depository institution is defined in subparagraph 1(i) of Article 1 of the Agreement as an entity that accept deposits in the ordinary course of a banking or similar business. Entities that fall within this definition include entities regulated in Canada as a bank, trust and loan company, credit society, savings and credit union, or caisse populaire.

Custodial institution

3.5 A custodial institution is defined in subparagraph 1(h) of Article 1 of the Agreement as any entity that holds, as a substantial portion of its business, financial assets for the account of others. A substantial portion means where 20% or more of the entity's gross income from the shorter of its last three fiscal periods, or the period since it commenced business, arises from the holding of financial assets on behalf of others and from "related financial services".

3.6 "Related financial services" are any ancillary service which is directly related to the holding of assets by the institution on behalf of others, such as fees for providing financial advice.

Investment entity

3.7 An investment entity is defined in subparagraph 1(j) of Article 1 of the Agreement. To be an investment entity, an entity must primarily conduct as a business (or be managed by an entity that primarily conducts as a business) one or more of the following activities for, or on behalf of, a customer:

- trading in money market instruments (such as cheques, bills, certificates of deposit, and derivatives);
- foreign exchange;
- exchange, interest rate and index instruments;
- transferable securities and commodity futures trading;
- individual and collective portfolio management; and
- otherwise investing, administering or managing funds or money on behalf of other persons.

3.8 An entity whose assets consist only of non-debt direct interests in real or immovable property (even if managed by another investment entity) will not be an investment entity.

3.9 The Agreement provides that the term “investment entity” must be interpreted in a manner consistent with the definition of “financial institution” in the Financial Action Task Force Recommendations. Part XVIII takes this into account by ensuring that an entity will not be considered to be a Canadian financial institution unless it is included in the definition of the term “financial institution” in subsection 263(2) of the ITA, which references a subset of financial institutions which are reporting entities under the PCMLTFA and related regulations.

Specified insurance company

3.10 The term “specified insurance company” is defined in subparagraph 1(k) of Article 1 of the Agreement as an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a product classified as a cash value insurance contract or annuity contract.

3.11 Insurance companies that provide only general insurance or term life insurance and reinsurance companies that provide only indemnity reinsurance contracts are not covered under this definition.

3.12 A specified insurance company can include both an insurance company and its holding company. However the holding company itself will be a specified insurance company only if it issues or is obligated to make payments with respect to cash value insurance contracts or annuity contracts.

3.13 As only certain persons are permitted to provide insurance contracts or annuity contracts, it is very unlikely that an insurance holding company in Canada will, in itself, issue or be obligated to make payments with respect to cash value insurance or annuity contracts.

3.14 An insurance advisor, agent or broker will not be classified as a specified insurance company since they are not obligated to make payments under the terms of a cash value insurance contract or annuity contract.

Canadian financial institution

3.15 A financial institution must be a Canadian financial institution under Part XVIII for it to have potential reporting obligations in Canada under that Part.

3.16 Two conditions must be met for an entity to be a Canadian financial institution under Part XVIII – it must be a Canadian financial institution under the Agreement and it must be:

- an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada, or a bank to which that Act applies;
- a cooperative credit society, a savings and credit union or a caisse populaire regulated by a provincial Act;
- an association regulated by the *Cooperative Credit Associations Act*;
- a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial Act other than one enacted by the legislature of Quebec;
- a financial services cooperative regulated by *An Act respecting financial services cooperatives*, R.S.Q., c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c. 77;
- a life company or a foreign life company to which the *Insurance Companies Act* applies or a life insurance company regulated by a provincial Act;
- a company to which the *Trust and Loan Companies Act* applies;

- a trust company regulated by a provincial Act;
- a loan company regulated by a provincial Act;
- a person or an entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services; or
- a department or an agent of Her Majesty in right of Canada or of a province that is engaged in the business of accepting deposit liabilities.

Condition 1 – Reference to the Agreement

3.17 The term "Canadian financial institution" is defined in subparagraph 1(l) of Article 1 of the Agreement. A financial institution will be a Canadian financial institution if it is a resident in Canada, but excludes any of its branches located outside of Canada. A financial institution that is a factual or deemed resident in Canada for purposes of the *Income Tax Act* is considered to be resident in Canada for the purposes of the Agreement. If the control and management of the business of a partnership takes place in Canada, the partnership is resident in Canada under the Agreement.

3.18 Under the Agreement, a Canadian financial institution also includes a branch in Canada of a financial institution that is not resident in Canada.

3.19 Entity classification elections (known as "check the box" elections) made to the IRS are irrelevant for determining whether an entity is a Canadian financial institution. Therefore, Canadian subsidiaries of a U.S. parent entity that have elected for U.S. tax purposes to be classified as disregarded entities, but which are carrying on financial activities in Canada, and that meet the definition of financial institution in the Agreement are to be treated as Canadian financial institutions for purposes of the Agreement, separate from the U.S. parent.

Example A

ABC Bank, located in Toronto, has within its group the following:

- a subsidiary (S) located in Vancouver;
- a foreign subsidiary (D) resident in partner jurisdiction 1;
- a foreign branch (F) located in partner jurisdiction 2;
- a foreign branch (X) located in a country without an agreement with the U.S.; and
- a foreign branch (Y) located in New York.

Under the terms of the Agreement:

- ABC Bank in Toronto and its subsidiary S will be Canadian financial institutions and will report to the CRA;
- D and F will be classified under the Agreement as partner jurisdiction financial institutions and will report in accordance with the rules in their respective jurisdictions;
- X will be a nonparticipating financial institution unless it undertakes the obligations required under the U.S. Treasury Regulations; and
- Y is not a Canadian financial institution but will be subject to reporting requirements in the U.S.

Example B

Oceania Bank of Australia has a branch Z located in Montreal.
By virtue of its location in Canada, branch Z is considered a Canadian financial institution for the purposes of the Agreement.

Condition 2 – Reference to Part XVIII

3.20 Subsection 263(2) of the ITA identifies the entities that have reporting obligations under Part XVIII. An entity can be sure that it does not have reporting obligations under Part XVIII if it is not described in subparagraphs (1) to (11) of the definition of the term “financial institution” as it appears in subsection 263(2) of the ITA.

Example C

Peter establishes a Canadian resident trust for family estate planning purposes in Canada. Peter knows that the definition of the term "financial institution" under the Agreement includes an investment entity but he is unsure whether the trust is such an entity. However, Peter knows that because the trust is not described in the definition of the term "financial institution" as it appears in subsection 263(2) of the ITA, the trust is not a Canadian financial institution for the purposes of Part XVIII.

Reporting v. non-reporting Canadian financial institution

3.21 For the purposes of Part XVIII, a Canadian financial institution will be either a reporting Canadian financial institution or a non-reporting Canadian financial institution. The distinction is important since Part XVIII obligations generally apply only to reporting Canadian financial institutions.

(Note – There is a few scenarios in which a non-reporting Canadian financial institution must report to the CRA. That is where an entity has that status because it is a financial institution with a local client base under paragraph A of Section III of Annex II of the Agreement.)

3.22 The term "non-reporting Canadian financial institution" (NRCFI) is defined in subparagraph 1(q) of Article 1 of the Agreement and in subsection 263(1) of the ITA.

3.23 A NRCFI includes a Canadian financial institution identified as a non-reporting Canadian financial institution in Sections II and III of Annex II of the Agreement. A NRCFI also includes a Canadian financial institution that qualifies as a deemed-compliant FFI or an exempt beneficial owner as those terms are defined under sections 1.1471-5(f) and 1.1471-6 of the U.S. Treasury Regulations, respectively, in effect on February 5, 2014 (the date of signature of the Agreement). Paragraphs (b) and (d) of the definition of NRCFI in subsection 263(1) provide that a Canadian financial institution may determine whether:

- it is described in any of paragraphs A, B, E or F of Section III of Annex II of the Agreement; or
- it qualifies as a deemed-compliant FFI under relevant U.S. Treasury Regulations.

3.24 If the financial institution decides not to make the determination, it will not be a NRCFI unless it has that status under paragraphs C, D or G to J of Section III of Annex II or is an exempt beneficial owner. (Note – It is believed that most of the deemed compliant FFI categories described in U.S. Treasury Regulations will be of limited interest to Canadian financial institutions in view of the equivalent categories that are provided for in Section III of Annex II of the Agreement.)

3.25 Any Canadian financial institution that is not a non-reporting Canadian financial institution will be a reporting Canadian financial institution. A reporting Canadian financial institution will be required to report information to the CRA beginning in 2015.

Annex II – Entities treated as non-reporting Canadian financial institutions

3.26 Annex II of the Agreement treats the following entities as non-reporting Canadian financial institutions that do not have reporting obligations in relation to any financial account that they maintain:

- Section II – Entities listed as exempt beneficial owners:
  - The Bank of Canada;
  - A Canadian office of an international organization as defined under subsection 2(1) of the *Foreign Missions and International Organizations Act*;

- Any plan or arrangement established in Canada described in paragraph 3 of Article XVIII of the *Convention between Canada and the United States with Respect to Taxes on Income and on Capital*. (See paragraph 3.35 for a list of plans or arrangements covered under this exemption);
- An entity that is a Canadian financial institution solely because it is an investment entity, provided that each direct holder of an equity interest in the entity is an exempt beneficial owner, and each direct holder of a debt interest in such entity is either a depository institution (with respect to a loan made to such entity) or an exempt beneficial owner.

- Section III – Entities under the heading of deemed compliant financial institutions:
  - Financial institutions with a local client base;
  - Local bank;
  - Financial institutions with only low value accounts;
  - Sponsored investment entity and controlled foreign corporation;
  - Sponsored, closely held investment vehicle;
  - Restricted fund;
  - Labour-sponsored venture capital corporations prescribed under section 6701 of the *Income Tax Regulations*;
  - Any central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act* and whose accounts are maintained for member financial institutions;
  - Any entity described in paragraph 3 of Article XXI of the *Convention between Canada and the United States with Respect to Taxes on Income and on Capital*. See paragraph 3.36 for a description of the entities that are covered under this exemption;
  - An investment entity established in Canada that is regulated as a collective investment vehicle (CIV), provided that all of the interests in the CIV (including debt interests above US$50,000)

are held by or through one or more exempt beneficial owners, active NFFEs, U.S. persons that are not specified U.S. persons, or financial institutions that are not nonparticipating financial institutions. For these purposes, entities that are considered to be regulated as CIVs in Canada include regulated investment funds.

U.S. Treasury Regulations – Entities identified as non-reporting Canadian financial institutions

3.27 A Canadian financial institution is also a non-reporting Canadian financial institution if it is an exempt beneficial owner or determines that it qualifies as a deemed-compliant FFI under relevant U.S. Treasury Regulations in effect on February 5, 2014 (the date of signature of the Agreement). This ensures that a Canadian financial institution will not be at a disadvantage under the Canadian legislation implementing the Agreement as compared to the position that it would have been in if applying the U.S. Treasury Regulations.

3.28 By virtue of the categories of deemed compliant financial institutions in Section III of Annex II of the Agreement, the deemed compliant FFI categories described in relevant U.S. Treasury Regulations are expected to be of interest to very few Canadian financial institutions.

Deemed-compliant FFI

3.29 Section 1.1471-5(f) of the U.S. Treasury Regulations sets out that a “deemed-compliant FFI” includes a “registered deemed-compliant FFI”, a “certified-deemed compliant FFI” and, in certain cases, an “owner-documented FFI”.

3.30 A Canadian financial institution is not required to determine whether it qualifies as a deemed-compliant FFI under relevant U.S. Treasury Regulations.

3.31 Registered deemed-compliant FFIs include:

- local FFIs, section 1.1471-5(f)(1)(i)(A);
- nonreporting members of participating FFI groups, section 1.1471-5(f)(1)(i)(B);
- qualified collective investment vehicles, section 1.1471-5(f)(1)(i)(C);
- restricted funds, section 1.1471-5(f)(1)(i)(D);
- qualified credit card issuers, section 1.1471-5(f)(1)(i)(E); and
- sponsored investment entities and controlled foreign corporations, section 1.1471-5(f)(1)(i)(F).

3.32 Certified deemed-compliant FFIs include:

- nonregistering local banks, section 1.1471-5(f)(2)(i);
- financial institutions with only low value (i.e., less than US$50,000) accounts, section 1.1471-5(f)(2)(ii); and
- sponsored, closely held investment vehicles, section 1.1471-5(f)(2)(iii).

Exempt beneficial owner

3.33 A Canadian financial institution is a non-reporting Canadian financial institution if it is an exempt beneficial owner under section 1.1471-6(b) to (g) of the U.S. Treasury Regulations. (Note – The possibility of having this status is independent from the possibility of being an exempt beneficial owner by virtue of Section II of Annex II of the Agreement.) Exempt beneficial owner status is generally designed to offer relief in respect of governments, international organizations, central banks, and certain retirement funds.

3.34 The Government of Canada, provincial and territorial governments in Canada, and municipal-level governments in Canada are treated as non-reporting Canadian financial institutions. An agency or instrumentality of any such government is also treated as non-reporting Canadian financial institution unless it is described in subparagraph 263(2)(g)(11) of the ITA.

Entities under Articles XVIII(3) and XXI(3) of the Canada-U.S. Tax Convention

3.35 Plans or arrangements established in Canada described in paragraph 3 of Article XVIII (Pensions and Annuities) of the *Convention between Canada and the United States with Respect to Taxes on Income and on Capital* include superannuation, pension or other retirement arrangements. As such, an exempt beneficial owner under Section II of Annex II of the Agreement includes an entity established in the form of:

- a Registered Retirement Savings Plan (RRSP);
- a Registered Retirement Income Fund (RRIF);
- a Registered Pension Plan (RPP);
- a Pooled Registered Pension Plan (PRPP);
- a Deferred Profit Sharing Plan (DPSP); or
- other superannuation, pension, or retirement arrangements.

3.36 An entity described in paragraph 3 of Article XXI (Exempt Organizations) of the *Convention between Canada and the United States with Respect to Taxes on Income and on Capital* is an exempt beneficial owner. Consequently an entity that is a trust, company, organization or other arrangement that operates exclusively to earn income for the benefit of one or more organizations that is:

- a religious, scientific, literary, educational or charitable organization exempt from tax; or
- a trust, company, organization or other arrangement that is exempt from taxation and operates exclusively to administer or provide pension, retirement or employee benefits,

is an exempt beneficial owner.

Additional details on certain deemed-compliant financial institutions under Section III of Annex II of the Agreement

Financial institution with a local client base

3.37 A NRCFI includes a financial institution that qualifies as a local FFI described in section 1.1471-5(f)(1)(i)(A) of the U.S. Treasury Regulations if subparagraphs A(1) to (3) of Section III of Annex II of the Agreement are applied instead of the relevant paragraphs in those Regulations. As such, all of the criteria listed below must be met for a financial institution to be a financial institution with a local client base under paragraph A of Section III of Annex II of the Agreement.

3.38 The criteria are:

1) The financial institution must be licensed and regulated under the laws of Canada (or the laws of a province or territory in Canada).

2) The financial institution must have no fixed place of business outside of Canada. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the financial institution performs solely administrative support functions.

3) The financial institution must not solicit customers outside of Canada. For this purpose, a financial institution is not be considered to have solicited customers outside of Canada merely because it operates a website, provided that the website does not specifically indicate that the financial institution provides accounts or services to non-residents of Canada.

A financial institution will also not be considered to have solicited customers outside of Canada if it advertises in print media or on a radio or television station and the advertisement is distributed or aired outside of Canada as long as the advertisement does not specifically indicate that the financial institution provides accounts or services to non-residents of Canada.

The issuance or distribution of a prospectus will not, in and of itself, amount to soliciting customers. Likewise, the publication of reports and other documents to satisfy regulatory requirements will not amount to soliciting customers outside of Canada.

4) The financial institution is required under Canadian law to identify Canadian resident account holders to perform information reporting (or withholding of tax) or is a reporting entity under the PCMLTFA and related regulations.

5) At least 98% of the financial accounts by value provided by the financial institution must be held by residents of Canada (whether or not they are U.S. persons). A financial institution can determine the value of all such accounts using any reasonable means, such as book value or fair market value.

   Any account treated as an “exempt product” may be treated as a financial account for the purpose of determining whether the 98% test is satisfied.

   A financial institution will need to assess whether it meets this criteria annually. The measurement can be taken at any point of the preceding calendar year for it to apply to the following year, as long as the measurement date remains the same from year to year.

6) On or before July 1, 2014 (or the date it represents itself as a deemed compliant financial institution), the financial institution must have policies and procedures, consistent with those described in Annex I of the Agreement, to prevent the financial institution from providing a financial account to a NPFI and to monitor whether it provides accounts to any:

   - specified U.S. person who is not a resident of Canada (including a U.S. person that was a resident of Canada when the account was opened but subsequently ceases to be a Canadian resident); or
   - passive NFFE with controlling persons who are U.S. persons and who are not residents of Canada.

   If any such account is discovered, the financial institution must report the account as would be required if the financial institution were a reporting Canadian financial institution or close the account.

   The financial institution is expected to follow the applicable requirements of the IRS FATCA registration website and electronically file a *Part XVIII Information Return* with the CRA under section 266 of the ITA.

7) With respect to each preexisting account held by an individual who is not a resident of Canada or by an entity, the financial institution reviews those accounts in accordance with the procedures in Annex I of the Agreement applicable to preexisting accounts to identify any financial account held by a specified U.S. person who is not a resident of Canada, by a passive NFFE with controlling persons who are U.S. residents or U.S. citizens who are not residents of Canada, or by a nonparticipating financial institution. Where such accounts are identified, the financial institution must report those accounts as would be required if it were a reporting Canadian financial institution (and follow the applicable

requirements of the IRS FATCA registration website) or close the account.

8) In the case of a financial institution that is a member of an expanded affiliated group, each financial institution in the group (other than a U.S. financial institution) is incorporated or organized in Canada and meets the requirements set out in paragraph A of Section III of Annex II of the Agreement (with the exception of a retirement plan classified as an exempt beneficial owner).

An investment entity will not be considered a member of an expanded affiliated group as a result of contribution of seed capital (i.e., an initial investment that is intended as a temporary investment) by a member of the group if the following conditions are met.

- The member of the group that provides the seed capital is in the business of providing seed capital to investment entities that it intends to sell to unrelated investors;

- The investment entity is created in the course of its business;

- Any equity interest in excess of 50% of the total value of stock of the investment entity is intended to be held for no more than three years from the date of acquisition; and

- In the case of an equity interest that has been held for over three years, its value is less than 50% of the total value of the stock of the investment entity.

Local bank

3.39 A NRCFI includes a financial institution that qualifies as a nonregistered local bank described in section 1.1471-5(f)(2)(i) of the U.S.

Treasury Regulations using the definitions provided for in paragraph B of Section III of Annex II of the Agreement.

3.40 As such, a financial institution must satisfy the following requirements to qualify:

1) The financial institution operates solely as (and is licensed and regulated under the laws of Canada) as a bank, or a credit union or similar cooperative credit organization that operates without a profit.

   Note -- the term “bank” includes any depository institution to which the *Bank Act* or the *Trust and Loan Companies Act* applies, or which is a trust or loan company regulated by a provincial Act. Note also that the term “credit union or similar cooperative arrangement that is operated without profit” includes any credit union or similar cooperative organization entitled to tax-favoured treatment with respect to distributions to its members under Canadian law (e.g., a credit union defined in subsection 137(6) of the ITA).

2) The financial institution’s business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than 5% interest in such credit union or cooperative credit organization.

3) The financial institution must not have a fixed place of business outside of Canada. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the financial institution performs solely administrative support functions.

4) The financial institution must not solicit customers outside of Canada. For this purpose, a financial institution shall not be considered to have solicited customers outside of Canada merely because it operates a website, provided that the website does not permit account openings or specifically indicate that the financial institution provides accounts or services to non-Canadian residents or otherwise targets or solicits U.S. customers. A website that permits account openings can be distinguished from a website that facilitates account openings. In the latter case, the website typically allows a prospective account holder to make an application for an account without creating the account prior to some form of human intervention.

   A financial institution will also not be considered to have solicited customers outside of Canada if it advertises in print media or on a radio or television station and the advertisement is distributed or aired outside of Canada as long as the advertisement does not indicate that the financial institution provides accounts for or provides services to non-residents of Canada.

   The issuance or distribution of a prospectus will not, in of itself, amount to soliciting customers. Likewise, the publication of reports and other documents to satisfy regulatory requirements will not amount to soliciting customers outside of Canada.

5) The financial institution does not have more than US$175 million in assets on its balance sheet and the financial institution and any related entities, taken together, do not have more than US$500 million in total assets collectively.

6) Any related entity must be incorporated or organized in Canada, and any related entity that is a financial institution (other than a retirement plan classified as an exempt beneficial owner or a

financial institution with only low value accounts described below) must satisfy these same six requirements.

Financial institutions with only low value accounts

3.41 A NRCFI includes a financial institution that satisfies the following requirements:

- The financial institution is not an investment entity;
- No financial account maintained by the financial institution (or any related entity) has a balance or value exceeding US$50,000 (applying the rules in Annex I of the Agreement for account aggregation and currency translation); and
- The financial institution does not have more than US$50 million in assets on its balance sheet as of the end of the preceding accounting year, and the financial institution and any related entities, taken together, does not have more than US$50 million in total assets on their consolidated or combined balance sheets as of the end of the preceding accounting year.

Sponsored investment entities and controlled foreign corporations

3.42 A NRCFI includes a financial institution that is described in subparagraph D(1) or D(2) of Section III of Annex II of the Agreement so long as it has a sponsoring entity that complies with the requirements in subparagraph D(3) of the same section.

Sponsored, closely held investment vehicles

3.43 A NRCFI includes a financial institution that satisfies the requirements set out in paragraph E of Section III of Annex II of the Agreement.

3.44 The following requirements must be satisfied to qualify:

- The financial institution must be an investment entity that is not a U.S. qualified intermediary, withholding foreign partnership or withholding foreign trust.

- The financial institution does not hold itself out as an investment vehicle for unrelated parties.

- The financial institution has 20 or fewer individuals that own its debt and equity interests (disregarding interests owned by participating FFIs, deemed-compliant FFIs and an equity interest owned by an entity that is 100% owner and itself a sponsored closely held investment vehicle).

- The sponsoring entity is a reporting U.S. financial institution, reporting Model 1 FFI, or a participating FFI, and is authorized to act on behalf of the financial institution (such as a professional manager or trustee).

- The sponsoring entity has registered as a sponsoring entity on the IRS FATCA registration website (it does not need to register the sponsored financial institution) and performs, on behalf of the financial institution, all the due diligence, reporting and other requirements that the financial institution would have been required to perform if it were a reporting Canadian financial institution and retains documentation collected with respect to the financial institution for a period of six years.

Restricted fund

3.45 A NRCFI includes a financial institution that qualifies as a restricted fund as described in relevant U.S. Treasury Regulations (see section 1.1471-5(f)(1)(i)(D)) applying the procedures of Annex I of the Agreement instead of the procedures required under section 1.1471-4 of the U.S. Treasury Regulations and applying references to “report(s)” instead of references to “withhold(s) and report(s)”, provided that the financial institution provides to any immediate payer the information described in subparagraph 1(e) of Article 4 of the Agreement, or fulfils the requirements described in subparagraph 1(d) of Article 4 of the Agreement, as applicable.

Chapter 4 – Important terminology and classifications

4.1 Determining whether an entity is a reporting Canadian financial institution and what obligations it has under the Agreement requires an understanding of certain terminology introduced by the reporting regime. Moreover, financial institutions need to understand various classifications into which they and their account holders, affiliates and others may fall. This chapter describes key terms and classifications to assist readers in understanding the chapters that follow.

Non-financial foreign entity (NFFE)

4.2 Any non-U.S. entity that is not a financial institution is a non-financial foreign entity (NFFE).

4.3 There are two types of NFFEs; active and passive. The distinction is important since a Canadian financial institution is required to apply a higher standard of due diligence to financial accounts held by a passive NFFE. The financial institution is required to determine whether the passive NFFE is controlled by one or more specified U.S. persons.

4.4 A passive NFFE and active NFFE are respectively defined in subparagraphs B(3) and (4) of Section VI of Annex I of the Agreement. A passive NFFE is defined as any NFFE that is not an active NFFE or a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

4.5 A withholding foreign partnership or withholding foreign trust is a non-U.S. partnership or trust that has entered into a withholding agreement with the IRS under which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners. For more information, refer to IRS Revenue Procedures 2003-64, 2004-21, and 2005-77.

4.6 An active NFFE is defined as any NFFE that meets one of the following criteria:

- Less than 50% of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income.

  Passive income is not a defined term in the Agreement and the competent authorities have not agreed to a common meaning. However, the term is understood to include income from the mere holding of property, such as interest, dividends, rents and royalties.

  Income received on assets used as capital in an insurance business is treated as active rather than passive income.

- The stock of the NFFE is regularly traded on an established securities market or the NFFE is a related entity of an entity, the stock of which is regularly traded on an established securities market (see Chapter 6 of this guidance).

- The NFFE is organized in a "U.S. territory" (as defined in subparagraph 1(b) of Article 1 of the Agreement) and all of its owners are *bona fide* residents of that U.S. territory.

- The NFFE is a non-U.S. government, a government of a U.S. territory, an international organization, a non-U.S. central bank, or an entity wholly owned by one or more of the foregoing.

- Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution, except that a NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

- The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE.

- The NFFE was not a financial institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a financial institution.

- The NFFE primarily engages in financing and hedging transactions with or for related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution.

- The NFFE is an “excepted NFFE” as described in section 1.1472-1(c)(1) of the U.S. Treasury Regulations.

- The NFFE meets all of the following requirements:
    - It is:
        - established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or
        - established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league, or an organization operated exclusively for the promotion of social welfare;

    - It is exempt from income tax in its jurisdiction of residence;

    - It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

    - The applicable laws of the entity's jurisdiction of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the entity has purchased; and

    - The applicable laws of the entity's jurisdiction of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the entity's jurisdiction of residence or any political subdivision thereof.

4.7 A general insurance company is not generally treated as a financial institution under the Agreement. It is instead classified as a NFFE unless it has financial accounts.

4.8 For details on reporting requirements related to NFFEs, see information provided in Chapters 6, 10 and 12.

Nonparticipating financial institution (NPFI)

4.9 Canadian financial institutions must report certain accounts held by nonparticipating financial institutions (NPFI). A NPFI is defined in subparagraph 1(r) of Article 1 of the Agreement as a financial institution that is not FATCA compliant. This situation will arise where:

- the financial institution is in a jurisdiction that does not have an Intergovernmental Agreement with the U.S. and the financial institution has not entered into a FATCA agreement with the IRS.
- the financial institution is listed by the IRS as being a NPFI after the procedures for significant non-compliance under an intergovernmental agreement have been followed.

4.10 No Canadian financial institution is a NPFI. Moreover, at the time of publication of this guidance, no other financial institution is known to be classified as a NPFI by virtue of significant non-compliance with an intergovernmental agreement. The IRS website will list any institution that it considers to be a NPFI.

4.11 For details on reporting requirements related to NPFIs, see information in Chapters 6, 7, 10 and 12.

Related entity

4.12 The term “related entity” is defined in subparagraph 1(jj) of Article 1 of the Agreement. An entity is considered to be related to another entity if one entity controls the other or the two entities are under common control (the “related entity group”). Control means direct or indirect ownership of more than 50 per cent of the vote and value in an entity. The reference to “vote and value” is taken from the U.S. Treasury Regulations as allowed by paragraph 7 of Article 4 of the Agreement.

Chapter 5 – Investment funds and introducing and carrying broker relationships[1]

5.1 The meaning of the term “financial account” for the purposes of Part XVIII is set out in subsection 263(3) of the ITA. That provision together with subsections 265(5) and (6) of the ITA ensures responsibilities under Part XVIII align with the structure of the investment fund industry in Canada.

Investment funds and their dealers

5.2 Canadian investment funds include conventional mutual funds, non-conventional investment funds (e.g., exchange traded funds) and specialized funds (e.g., labour-sponsored investment funds). These funds operate in diverse portions of the capital markets and rely on public offerings and private placements alike. These funds are subject to a number of regulatory requirements under provincial securities legislation and nationally-applied rules. Securities (hereinafter simply referred to as “units”) in investment funds are typically sold through dealers that must be registered in each province in which they have clients. They are subject to examinations by provincial securities commissions and self-regulatory organizations. The sales representatives and advisors of dealers are also registered and subject to account opening and know your client requirements under securities legislation, as well as client identification requirements under PCMLTFA and related regulations.

5.3 When investment fund units are sold through fund dealers, they may be issued either in the name of the beneficial owner (client-name) or recorded in the name of the dealer (nominee-name).

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[1] This chapter ought to be read in the context of knowing that drafting uncertainty exists in connection with the legislative proposals as they relate to investment funds.

Holdings in nominee-name

5.4 If a dealer holds legal title to units of an investment fund on behalf of its clients (the ultimate investors) it will be an account holder of the fund. In this circumstance, the issuance of the fund units in nominee-name separates the ultimate investors from the fund in the sense of not creating an account holder relationship between the two. As such, the fund has to understand only the status of the fund dealer that is its direct account holder. The fund has no obligation to ascertain information or perform reporting in connection with the ultimate investors.

5.5 Fund dealers are financial institutions in their own right (by virtue of being within the definition of a custodial institution or an investment entity) and have due diligence and reporting requirements in connection with the client accounts they maintain.

5.6 For the purpose of aggregating accounts to determine whether any preexisting custodial account is below a particular monetary threshold provided for in Annex I of the Agreement, a custodial institution will need to consider all the financial accounts of its clients without reference to whether the clients' underlying interests are in different funds or other investments.

Holdings in client-name

5.7 In Canada, certain investments made by individuals and other investors, even with the assistance of a dealer, are made directly with a fund such that the units are registered in the fund in client-name. Indeed, many fund dealers place their clients in mutual fund units without holding legal title to the investment or having custody over the asset.

5.8 Mutual fund dealers, exempt-market dealers and other investment dealers have due diligence and reporting obligations in connection with the financial accounts that they maintain. These accounts are inclusive of investments in fund units regardless of whether the dealer purchased units on behalf of a client in nominee or client-name. This outcome is supported by the definition of “financial account” in subsection 263(3) of the ITA and is consistent with the Canadian fund industry’s “Allocated Compliance Model” (as contemplated under section 62(1)(b)(i) of the regulations to the PCMLTFA) and the responsibilities that industry participants have for client identification under Canada’s AML regime.

5.9 An investment fund unit held in client-name will be a financial account maintained by the fund for the purposes of the Agreement even if that unit is also contained in an account maintained by a fund dealer. However, in view of overlap with responsibilities that exist at the dealer-level, a fund is relieved under subsection 265(6) of the ITA of having to perform due diligence under the Agreement in connection with a unit held in client-name that is also contained in an account maintained by a dealer that is a financial institution unless the fund reasonably concludes that the dealer is in significant non-compliance with its due diligence obligations in connection with the unit.

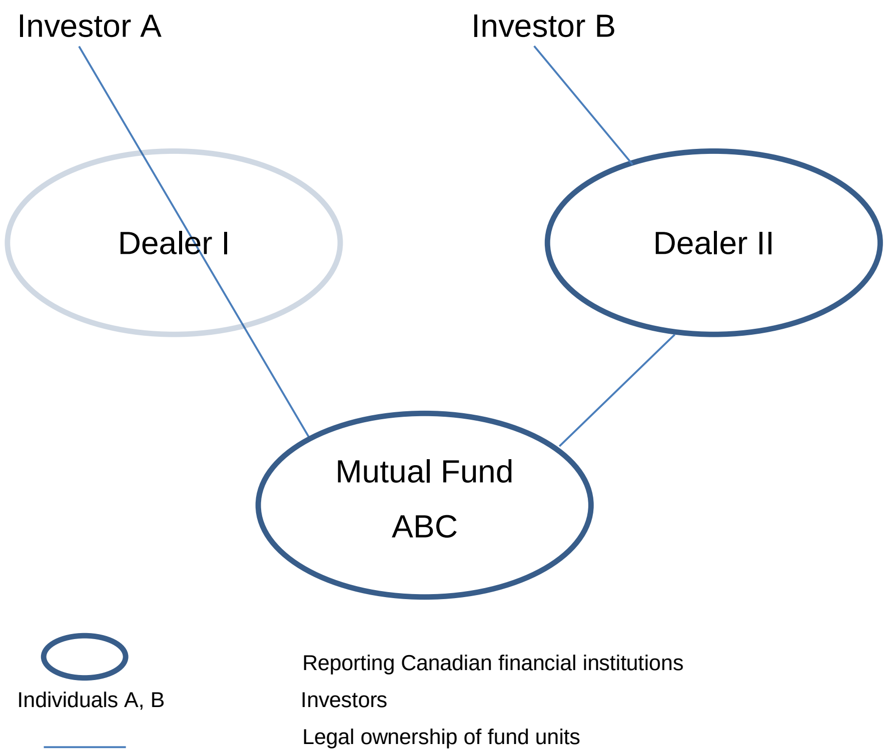
5.10 Consultations with investment funds and fund dealers reveal that dealers that maintain financial accounts by reason of having placed their clients in fund units in client-name may be desirous of making arrangements with funds to perform information reporting on their behalf. Canada’s implementation of the Agreement contemplates cooperation in this regard. If a fund dealer that maintains a financial account by virtue of having placed a client in a fund unit in client-name communicates in a timely fashion its determination of the account holder’s status to the fund (i.e., its initial assessment together with any update related to a change in circumstances of whether the account is a U.S. reportable account), the fund shall rely on that determination to complete its reporting obligations.

5.11 If an investment fund dealer has arrangements in place with a fund to communicate its determination of an account holder’s status to the fund on a timely basis, the dealer is not required to take separate steps to ensure that the *Part XVIII Information Return* is filed with the CRA in connection with any financial account of the account holder that exists by reason alone of it having placed its client in the fund in client-name. This approach avoids duplicative reporting where a dealer has taken the necessary steps to position the fund to fulfil its reporting obligations (if any) in connection with the unit.

5.12 Rather than communicate its determination of the account holder's status, a fund dealer may choose to perform the reporting obligations in respect of a unit. In that case, the dealer is to file any required *Part XVIII Information Return* with the CRA, in respect of the unit. The fund is not required to supplement the dealer's reporting by filing a separate return in respect of the unit unless the fund reasonably concludes that the dealer has failed to comply with its reporting obligations.

5.13 To the extent that a fund relies on due diligence performed at the dealer-level in respect of a financial account, the mutual fund is not entitled to apply any monetary threshold, or rely on any status as a deemed-compliant FFI that would cause it to be a non-reporting Canadian financial institution under Annex II of the Agreement to avoid having to perform any required reporting in connection with the account. Designations made under subsection 264(1) of the ITA (i.e., the application of thresholds) and reliance on deemed-compliant financial institution status may be used only at the dealer-level.

> **Example – Identification and reporting on an interest in a fund**
> Two U.S. residents, Investor A and Investor B, seek to invest in Mutual Fund ABC (the "Fund"). Investor A invests in the Fund through Dealer I. Dealer I acquires units in the Fund in the client-name of Investor A. Investor B invests in the Fund through Dealer II and it acquires units in the Fund in nominee-name on behalf of Investor B. Dealer I, Dealer II and the Fund are reporting Canadian financial institutions.



Dealer I and II have as account holders Investor A and Investor B, respectively, and both have Part XVIII responsibilities in connection with the financial accounts that they maintain. This is the case irrespective of whether the fund units are held in client-name or nominee-name.

The Fund maintains financial account for each of Investor A and Dealer II by virtue of the fund units they hold. The Fund has Part XVIII responsibilities in respect of its account holders that are Investor A and Dealer II. However, the Fund need not perform its own independent due diligence on Investor A so long as it is informed by Dealer I of the outcome of its due diligence review of Investor A. If Dealer I communicates its determination of Investor A's status to the Fund, Dealer I is not required to file with the CRA a separate *Part XVIII Information Return* to report Investor A's interest in the fund.

Carrying and introducing broker relationships

5.14 Investment dealer members of the Investment Industry Association of Canada (IIAC) act as intermediaries in Canadian capital markets and are subject to regulation by the Investment Industry Regulatory Organization of Canada (IIROC). Within the industry, an IIAC member firm (the “introducing broker” or “IB”) may enter into an agreement with another member firm (the “carrying broker” or “CB”) to allow it to use the back office of the carrying broker to perform certain trading related functions on its behalf.

5.15 IIROC Rule 35 details four types of permissible IB/CB arrangements. The four types of arrangements allow firms the flexibility to use the back office capacity of other firms. The carrying broker is relied on most heavily to perform trading related functions on behalf of the introducing broker under a Type 1 Arrangement and progressively less heavily under a Type 2, Type 3 or Type 4 Arrangement.

5.16 IIROC-regulated investment dealers are financial institutions in their own right and have due diligence and reporting obligations in connection with the financial accounts that they maintain. The implementation and administration of the Agreement is understood within the context of the IB-CB relationships that exist in Canada.

Financial accounts of the introducing broker/carrying broker

5.17 The definition of “financial account” in the Agreement includes the accounts that an introducing broker maintains for its clients. An introducing broker is considered to maintain an account even if it has introduced the holder of the account to a carrying broker pursuant to Type 2, 3 or 4 Arrangement. Where an introducing broker has so introduced a client to a carrying broker, the arrangement does not result in the carrying broker being considered to maintain an account for the client.

5.18 A Type 1 Arrangement is distinguished from the other types of IIROC IB/CB arrangements in view of the degree to which the carrying broker is required to administer client accounts. In a Type 1 context, the carrying broker generally carries out all account supervision and the back office functions in respect of the introducing broker's clients, including ascertaining the client's identity for purposes of the AML/KYC Procedures. As such, where an introducing broker has introduced a client to a carrying broker for whom the carrying broker has opened an account governed by a Type 1 Arrangement, the introducing broker is not considered to maintain the account it keeps for such client if all assets recorded within it are conveyed to the carrying broker. In such circumstances, the introducing broker is considered to have relinquished the account maintenance role to the carrying broker to such a degree that the carrying broker is viewed as maintaining the financial account held by the client introduced to it.

5.19 It is understood that introducing brokers may contractually agree to use the services of a carrying broker to fulfil its reporting obligations.

Chapter 6 – Financial accounts and account holders

6.1 Under the Agreement, a reporting Canadian financial institution must report information to the CRA on an annual basis regarding financial accounts that are U.S. reportable accounts. To report properly, reporting Canadian financial institutions must also be able to determine certain categories into which financial accounts fall.

Financial accounts

6.2 For the purposes of the Agreement, the term "financial account" is defined as an account maintained by a financial institution. The definition also lists as being within its scope certain cash value insurance contracts and annuity contracts together with certain equity and debt interests in financial institutions. Subsection 263(3) of the ITA makes clear that a financial account includes a client-name account maintained by a person or entity that is authorized under provincial law to engage in the business of dealing in securities or any other financial instrument or to provide portfolio management or investment advising services. This clarification is considered most applicable to mutual fund dealers and introducing brokers that cause their clients to be invested in client-name with other financial institutions (see Chapter 5 of this guidance).

6.3 However, certain accounts are excluded from the definition of a financial account and are not financial accounts for the purposes of the Agreement. For example, accounts in the form of a Registered Retirement Savings Plan, Registered Retirement Income Fund, or Tax-Free Savings Account are not treated as financial accounts (and not subject to any reporting) under the Agreement.

6.4 A financial institution may maintain more than one type of financial account. For example, a depository institution may maintain a custodial account as well as a depository account.

Products that are not financial accounts

6.5 The definition of financial account does not include any account, product, or arrangement identified as excluded from the definition of financial account in Annex II of the Agreement. The following accounts are listed in Annex II and are not to be treated as financial accounts:

- Registered Retirement Savings Plans (RRSPs) – as defined in subsection 146(1) of the ITA;
- Registered Retirement Income Funds (RRIFs) – as defined in subsection 146.3(1) of the ITA;
- Pooled Registered Pension Plans (PRPPs) – as defined in subsection 147.5(1) of the ITA;
- Registered Pension Plans (RPPs) – as defined in subsection 248(1) of the ITA;
- Tax-Free Savings Accounts (TFSAs) – as defined in subsection 146.2(1) of the ITA;
- Registered Disability Savings Plans (RDSPs) – as defined in subsection 146.4(1) of the ITA;
- Registered Education Savings Plans (RESPs) – as defined in subsection 146.1(1) of the ITA;
- Deferred Profit Sharing Plans (DPSPs) – as defined in subsection 147(1) of the ITA;
- AgriInvest accounts – as defined under “NISA Fund No. 2” and “net income stabilization account” in subsection 248(1) of the ITA including Quebec’s Agri-Quebec program as prescribed in section 5503 of the *Income Tax Regulations*;
- Eligible funeral arrangements – as defined under section 148.1 of the ITA;

- Escrow accounts - an account maintained in Canada established in connection with any of the following:
  - A court order or judgment;
  - A sale, exchange, or lease of real or immovable property or of personal or movable property, provided that the account satisfies the following requirements:
    - The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
    - The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
    - The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
    - The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
    - The account is not associated with a credit card account.
  - An obligation of a financial institution servicing a loan secured by real or immovable property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real or immovable property at a later time;

    - An obligation of a financial institution solely to facilitate the payment of taxes at a later time.
- An account maintained in Canada and excluded from the definition of financial account under an agreement between the U.S. and another partner jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other partner jurisdiction as if such account were established in that partner jurisdiction and maintained by a partner jurisdiction financial institution in that partner jurisdiction.

6.6 Annex II has not been modified by any mutual agreement entered into by the competent authorities of Canada and the U.S. Notice of any competent authority agreement that modifies Annex II of the Agreement would be posted on the CRA website.

6.7 Where a financial account held by a non-financial intermediary (e.g., a law firm) that does not meet the conditions set out in Annex II to not be a financial account but is an account holding, on a pooled basis, the funds of underlying clients of the non-financial intermediary where:

- the only person listed or identified on the financial account with the financial institution is the non-financial intermediary; and

- the disclosure or passing by the non-financial intermediary of its underlying clients' information to the financial institution contravenes provincial/territorial law in Canada,

then the financial institution is required to undertake the due diligence procedures only in respect of the non-financial intermediary.

Maintaining a financial account

6.8 To be a financial account the account must be maintained by a financial institution.

6.9 Determining whether a financial account is a depository account, a custodial account or other type of account will assist in understanding whether it is maintained by a financial institution and will allow the financial institution to distinguish account types for reporting purposes.

6.10 For example, a financial account may be in the form of a:

- depository account
- custodial account
- cash value insurance contract
- annuity contract
- equity or debt interest
- client-name account (see subsection. 263(3) of the ITA)

6.11 A depository account is maintained by a financial institution if it is obligated to make payments with respect to the account even if an agent performs administrative functions in connection with the account on behalf of the institution. The agent, itself, is not considered to be maintaining the account regardless of whether such agent is a financial institution under the Agreement.

6.12 A custodial account is maintained by the financial institution that holds custody over the assets in the account (including a financial institution that holds assets in “nominee name” for an account holder).

6.13 An insurance contract or an annuity contract is maintained by the financial institution that is obligated to make payments with respect to the contract.

6.14 Any equity or debt interest in a financial institution referred to in clauses (1) and (2) of the definition of the term “financial account” in subparagraph 1(s) of Article 1 of the Agreement is treated as being maintained by that financial institution.

6.15 A client-name account is considered to be maintained by a financial institution whenever the activities of the financial institution reasonably cause their clients to believe they hold an account at the financial institution (e.g., account statements with the financial institution’s name or mark identified.)

6.16 Where a financial institution is acting as a broker and simply executing trading instructions, or receiving and transmitting such instructions to another person, the financial institution is not required to treat the facilities established for the purposes of executing a trading instruction, or receiving and transmitting such instructions, as a financial account under the Agreement (e.g., so-called delivery versus payment (DVP) accounts benefit from this understanding). The financial institution acting as custodian will be responsible for performing due diligence procedures and reporting where necessary.

Reportable accounts

6.17 Not all financial accounts maintained by a Canadian financial institution give rise to reporting requirements. Only U.S. reportable accounts are covered.

6.18 A financial account is a U.S. reportable account where it is held by one or more specified U.S. persons or by a passive NFFE with one or more controlling persons that are specified U.S. persons. If a reporting Canadian financial institution maintains no such accounts, it will have no reporting obligations (unless it makes a payment to an NPFI in 2015 or 2016).

6.19 The due diligence procedures that must be followed to identify U.S. reportable accounts are discussed starting at Chapter 7.

Account types in more detail

Depository account

6.20 A depository account is any commercial current account, savings account, or an account that is evidenced by a certificate of deposit, investment certificate, certificate of indebtedness, or other similar instrument where cash is placed on deposit with an entity engaged in a banking or similar business.

6.21 For the purposes of the Agreement, a depository account includes:

- an account the principle purpose of which is lending, such as a credit card account, and which has a credit balance. However, a credit card account (or other revolving credit facility) will not be considered a depository account (or other form of financial account) where the financial institution maintaining the account has policies and procedures in place to prevent an account balance owed to the account holder that exceeds US$50,000. That test can be met if a financial institution ensures that any balance in excess of US$50,000 is refunded to the account holder within 60 days of that limit having been exceeded;
- a reloadable payment card; and
- an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

6.22 The account does not have to be an interest bearing account.

6.23 Amounts held by an insurance company awaiting payment in relation to a cash value insurance contract where the term has ended will not constitute a depository account.

Custodial account

6.24 A custodial account is an account (other than an insurance contract or annuity contract) for the benefit of another person that holds any financial instrument or contract held for investment.

6.25 Financial instruments/contracts which can be held in such accounts can include, but are not limited to:

- a share or stock in a corporation;
- fund units;
- a note, bond, debenture, or other evidence of indebtedness;
- a currency or commodity transaction;
- a credit default swap;
- a swap based upon a nonfinancial index;
- a notional principal contract (In general, contracts that provide for the payment of amounts by one party to another at specified intervals. These are calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts);
- an Insurance contract or annuity contract; and
- any option or other derivative instrument.

6.26 Insurance contracts and annuity contracts are not considered to be custodial accounts. However, such contracts could be assets that are held in a custodial account. Where they are assets in a custodial account, it suffices for the insurer to perform any due diligence and reporting required under Part XVIII.

6.27 A custodial account does not exist by reason alone of a financial institution holding shares in a corporation for eventual issue in connection with its administration of the corporation's (or related corporation's) employee stock purchase plan.

Cash value insurance contract

6.28 An insurance contract is a contract, other than an annuity contract, under which the issuer agrees to make payments upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

6.29 A cash value insurance contract is an insurance contract where the cash surrender or termination value (determined without reduction of any surrender charges or policy loan) or the amount the policyholder can borrow under (or with regard to) the contract, is greater than US$50,000. The definition excludes:

- indemnity reinsurance contracts between two insurance companies; and
- term life and pure protection insurance contracts, including any refund of any policy premium due to cancellation or termination of the policy, a reduction in amount insured, or a correction of an error in relation to the premium due and any policyholder bonus.

6.30 The cash value of a cash value insurance contract does not include an amount payable on the death of an individual insured under a life insurance contract.

6.31 When a policy becomes subject to a claim and an amount is payable this does not create a new account. It is still the same policy if the policy has not altogether terminated.

Annuity contract

6.32 An annuity contract is a contract under which the financial institution agrees to make payments for a period of time, determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulations, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

6.33 The following are not considered to be an annuity contract:

- annuities that are, or are held within exempt products under Annex II;
- structured settlements that qualify for treatment as such under the ITA or annuities issued to fund such structured settlements;
- a contract of reinsurance between two insurance companies in respect of one or more annuity contracts.

6.34 An annuity contract purchased under an RRSP, RRIF, RPP, PRPP, DPSP or the Saskatchewan Pension Plan for the benefit of an individual under circumstances in which the ITA provides a tax deferred rollover to an individual do not have to be reviewed or reported.

Equity or debt interests

6.35 A financial account includes certain equity and debt interests in financial institutions that maintain accounts.

6.36 The term “equity interest” is defined in subparagraph 1(v) of Article 1 of the Agreement.

6.37 In the case of a partnership that is a financial institution, the equity interest means either a capital or profits interest in the partnership. This means that a financial institution that is a partnership will be required to identify and where necessary report on the capital or profits interest of any of the partners who are: specified U.S. persons, passive NFFEs, or NPFIs.

6.38 In the case of a trust that is a financial institution, an equity interest means either an interest held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.

6.39 A specified U.S. person shall be treated as being a beneficiary of a trust if such person has the right to receive, directly or indirectly, a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

Equity or debt interests in an investment entity

6.40 Where an entity is a financial institution solely because it is an investment entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the entity will constitute a financial account. This is by virtue of the definition of the term "financial account" in subparagraph 1(s) of Article 1 of the Agreement. For the purpose of that definition, an interest in a financial institution is not considered to be "regularly traded" and is considered a financial account if the holder of the interest (other than a financial institution acting as an intermediary) is registered on the books of the financial institution. However, this treatment only applies to interests first registered on the books of any such financial institution after June 30, 2014 and no such interest is required to be reported until the 2016 reporting year.

6.41 An exchange traded fund (ETF) is a fund composed of a group of stocks that track a specific market index, sector group or commodity. Unlike a traditional mutual fund, units of ETFs trade like individual stocks on stock exchanges.

6.42 If an investment dealer or other financial institution intermediates the purchase for a client of a unit in an ETF that regularly trades on an established securities market and the unit is registered in nominee-name on the books of the ETF, the ETF would not be considered to maintain a financial account. If, however, a purchase results in a unit being first registered in client-name on the books of an ETF on or after July 1, 2014, the ETF would be considered to maintain a financial account held by the unit holder (but only in respect of the 2016 reporting year and subsequent years). Since an ETF will have outcomes similar to a traditional mutual fund beginning in 2016 in connection with units held in client-name, the guidance on coordination between funds and the fund dealers set out in paragraphs 5.7 to 5.13 may be of interest.

Equity or debt interests in other cases

6.43 Under the Agreement, where an entity is a financial institution other than solely because it is an investment entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the entity will constitute a financial account if:

- the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. source withholdable payments, and
- the class of interests was established with a purpose of avoiding reporting or withholding in accordance with the Agreement.

6.44 The term "U.S. source withholdable payment" is defined in subparagraph 1(ii) of Article 1 of the Agreement.

Established securities market

6.45 The definition of "financial account" treats equity or debt interest in a financial institution as a financial account unless the interest is "regularly traded on an established securities market". An interest is considered “regularly traded” if there is a meaningful volume of trading on an ongoing basis.

6.46 An “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. The term includes, but is not limited to, exchanges that are “designated stock exchanges” under the ITA.

Account holders

6.47 To identify the account holder, a financial institution must consider the type of account and the capacity in which it is held.

6.48 In most cases, the identification of the holder of a financial account by a financial institution will be straightforward. Normally, the account holder is the person listed or identified as the holder of the financial account by the financial institution that maintains the account.

6.49 However, if a person (other than a financial institution) holds an account for the benefit of another person (e.g., as agent, nominee), the first-mentioned person will not be treated as holding the account. Instead, the person on whose behalf the account is held is the account holder. (This treatment is to be followed in connection with accounts commonly known as “in trust for” accounts where a trust is not settled.)

Example

Where a parent in the absence of any formal trust arrangement opens an account for a child in the child’s name, the child is the account holder.

Accounts held by partnerships

6.50 Where a financial account is held in the name of the partnership it will be the partnership that is the account holder rather than the partners in the partnership.

Accounts held by trusts and estates

6.51 Where a trust (or estate) is listed as the holder of a financial account, it is to be treated as the account holder, rather than any beneficiary or other person.

6.52 An account of a deceased person will continue to be treated as an account held by an individual until such time as the financial institution that maintains the account receives and is in possession of formal notification of the account holder's death (e.g., a copy of the deceased's death certificate or will). Once such notification is received, an account that is held solely for the estate will not be considered a financial account.

Joint accounts

6.53 Where an account is jointly held, each of the joint holders is considered an account holder for the purposes of the Agreement. Moreover, the balance or value in the account is to be attributed in full to each holder of the account. This will apply for both aggregation and reporting purposes.

6.54 If an account is jointly held by an individual and an entity, the financial institution will need to apply both the individual and entity due diligence requirements in relation to that account.

Holders of cash value insurance contracts and annuity contracts

6.55 An insurance or annuity contract is held by each person entitled to access the contract's value (e.g., through a loan, withdrawal, surrender, or otherwise) or with the ability to change a beneficiary under the contract.

6.56 Where no person can access the contract's value or change a beneficiary, the account holder is any person named in the contract as an owner and any person who is entitled to receive a future payment under the terms of the contract. When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder.

Chapter 7 – Due diligence general requirements

Due diligence general requirements

7.1 Reporting Canadian financial institutions must comply with verification and due diligence procedures in connection with the accounts that they maintain. The due diligence responsibilities of Canadian financial institutions arise under Part XVIII. Part XVIII implements the due diligence procedures set out in Annex I of the Agreement. The required procedures are, in many respects, determined by reference to whether a particular account is:

- an individual or entity account;
- a preexisting or new account; or
- a lower value or high value account (see paragraphs 8.20 and 8.38, respectively).

7.2 The due diligence is required to be undertaken to identify U.S. reportable accounts and payments to NPFIs. Financial institutions are required to take certain actions, such as collecting information and/or reviewing information in their possession to determine whether to treat an account as a U.S. reportable account. These requirements result in a financial institution having to:

- search for certain defined U.S. indicia linked to an account holder; and/or
- request that account holders self-certify their status.

7.3 This chapter discusses certain common concepts that underpin the due diligence and identification processes that are covered in additional detail in Chapters 8, 9 and 10.

Obligations rest with financial institutions

7.4 A financial institution can rely on service providers to fulfil its obligations under the Agreement; however, the due diligence and information reporting obligations remain the responsibility of the financial institution. The mere provision of service by a third party does not cause it to maintain a financial account for the purposes of the Agreement, even if it is a financial institution in its own right.

Record keeping

7.5 Every financial institution must keep records that were obtained or created in connection with its Part XVIII obligations, such as self-certifications and documentary evidence. A financial institution must also keep records of its policies and procedures that establish its governance and due diligence processes, including procedures for regular relationship manager enquiries. (Note - Documentation can be shared and used in relation to more than one financial account.)

7.6 Section 265 of the ITA sets out that a reporting Canadian financial institution must establish, maintain and document the due diligence procedures it uses to identify U.S. reportable accounts. Section 267 of the ITA provides rules in respect of record keeping.

7.7 A Canadian financial institution must retain records used to support an account holder’s status for at least six years following the end of the year in which the status was established; except that a self-certification must be retained for a minimum of 6 years from the date that the last financial account to which it relates was closed.

7.8 The records can be retained as originals or photocopies and can exist in paper or in an electronic format. Records that are retained electronically must be retained in an electronically readable format. Records must be retained at the financial institution's place of business or at any other place so long as they are equally accessible and as secure as they would be if maintained at its place of business.

7.9 Where for AML/KYC Procedures in Canada, financial institution can rely on notations of records or documents reviewed, it will be treated as having retained a record of such documentation if it retains in its files:

- The date the documentation was reviewed;
- A description of the document (e.g., Canadian passport, provincial driver's license);
- The document's identification number where present (e.g., passport number); and
- Whether any U.S. indicium was identified.

(Notations cannot be relied upon in the case of a self-certification form.)

Form of self-certification

7.10 Under the Agreement, Canadian financial institutions are, under certain circumstances, required to obtain self-certifications to establish whether an account holder is a U.S. person or to clarify the status of particular entities. No forms have been prescribed for these purposes. While forms issued by the IRS (such as the W-8 and W-9 series) may be used in connection with establishing an account holder's status, there is no requirement to use them. (Some industry participants may rely on W-8 forms to ensure that their clients can receive U.S. tax treaty benefits provided for under the *Convention between Canada and the United States with Respect to Taxes on Income and on Capital*.)

7.11 No matter the type of self-certification used, there must be an element to it that allows the account holder to positively acknowledge, by signature or other means, that the certification is correct.

7.12 More information on acceptable self-certification procedures is found in Chapters 8 to 10.

Confirming the reasonableness of self-certifications

7.13 A self-certification or documentary evidence cannot be relied upon if a financial institution knows or has reason to know that it is incorrect or unreliable.

7.14 In assessing whether reliance can be placed on a self-certification, a financial institution must consider other information that it has obtained concerning the account holder, including any information that an account holder voluntarily provides to it.

Example 1

A financial institution has received a new account opening instruction from an individual which includes a self-certification regarding the account holder's residence status. The financial institution has performed AML/KYC Procedures by checking the identity of the individual (name, address and date of birth) against the records of a credit reference agency. The check confirmed the identity of the individual.

The financial institution can accept the self-certification so long as information in the account opening instruction or other information that is otherwise readily at-hand does not discredit its validity.

Example 2

A financial institution has received new account opening documentation from an individual who has been advised by a financial advisor. The financial institution is unaware of any previous contact with the individual and has not contractually arranged to have the financial advisor carry out the due diligence procedures on its behalf. The financial institution relies on the financial advisor to perform the necessary AML checks to identify the individual and is provided with a confirmation by the financial advisor that it has done so.

In this case, the financial institution must still identify the individual's status for purposes of the Agreement. At account opening, it receives information about the individual (e.g., name, address, date of birth, contact details including telephone number and email address), and a self-certification that the individual is not a U.S. person.

The financial institution can accept the self-certification so long as information contained in the account opening instruction or that is otherwise readily at-hand does not discredit its validity. The financial institution is not considered to have seen any documentation the financial advisor has seen.

Example 3

Same as example 2 except that the financial institution has contractually arranged to have the financial advisor perform the due diligence procedures required under the Agreement on its behalf.

The advisor carries out the AML checks and obtains a self-certification from the individual confirming tax residency status. The financial institution can rely on the information provided by the advisor unless it has reason to know that the information is incorrect or unreliable. (However, if the advisor fails to perform adequate due diligence as required by Part XVIII, the liability for the failure lies with the financial institution.)

Aggregation

7.15 To determine whether accounts are reportable, a financial institution may be required to aggregate accounts held by individuals and entities.

When do the aggregation rules apply to lower value accounts?

7.16 Aggregation will be required if a financial institution decides to use the monetary thresholds set out in Annex I of the Agreement that relieve a financial institution of having to review, identify and report certain accounts. The authority for a financial institution to use the monetary thresholds is provided for in section 264 of the ITA.

7.17 The Agreement contemplates accounts being aggregated in the context of a computerized process but only where the financial institution's current computerized systems link the accounts by reference to a data element (e.g., a customer number, taxpayer identification number, etc.) and allow account balances to be aggregated. Subsection 263(4) of the ITA makes clear that a social insurance number can be used for this purpose.

(Note – Accounts are not considered linked by reason alone of being connected as part of a broader account grouping, such as household or family relationships.)

7.18 If the system can link accounts by a common identifier, but does not provide details of the balance or value of the accounts, then a financial institution is not required to undertake the aggregation requirements.

7.19 Where a system can link accounts by a data element and details of the balances are provided (e.g., the system is able to display all balances of a suite of accounts held by an individual), the system will be considered to allow the account balances to be aggregated if the system is capable of performing the aggregation. There is no requirement to aggregate separate account balances linked to an account holder if the system does not aggregate them and cannot be made to do so with minor modifications carried out at modest expense.

Exempt products

7.20 If a product is exempt from being treated as a financial account, it does not need to be included for the purposes of aggregation. Consequently, if an individual holds an RRSP as well as several depository accounts with the same financial institution and their information technology systems allow all these holdings to be linked, then the depository accounts are aggregated, but not the RRSP.

Related entities

7.21 Where a computer system links accounts across related entities, the financial institution is required to aggregate the accounts in considering whether any of the reporting thresholds apply. However, once it has considered the thresholds, the financial institution will only be responsible for reporting on the accounts it holds.

Aggregation of preexisting individual accounts

7.22 The following examples illustrate the outcomes that result from the aggregation rules. Unless otherwise stated, all balances or values referred to in the following examples are balances or values as at June 30, 2014.

Example 1 – Application of the US$50,000 threshold

Bank A in Canada is applying the relevant thresholds in Annex I of the Agreement as authorized under subsection 264(1) of the ITA. It can link and aggregate the following accounts of an individual account holder by a social insurance number:

- A depository account with a balance of US$45,000

- A depository account with a balance of US$7,000

The aggregation rules in Section VI(C)(1) of the Agreement apply for the purposes of determining whether the balance of each preexisting individual account exceeds US$50,000 in subparagraph A(4) of Section II of Annex I of the Agreement. As the aggregated balance of the two accounts is US$52,000, neither account can benefit from the exemption provided by the threshold.

Example 2 – Application of the US$50,000 threshold

The same facts as example 1, except the account balances of the account holder are:

- A depository account with a balance of US$25,000
- A custodial account with a balance of US$20,000

The aggregated total is below US$50,000. Both accounts can benefit from the exemption provided by the threshold.

Example 3 – Application of the US$50,000 threshold

The same facts as example 1, except the account balances of the account holder are:

- A depository account with a balance of US$45,000
- A custodial account with a balance of US$7,000

The aggregation rules in Section VI(C)(1) of the Agreement apply for the purposes of determining whether a balance or value of a preexisting individual account exceeds US$50,000 in subparagraph A(1) of Section II of Annex I of the Agreement. As the aggregated balance of the two accounts is US$52,000, the accounts are potentially reportable.

However, a depository account with a balance of US$50,000 or less is exempt from reporting under subparagraph A(4) of Section II of Annex I of the Agreement. No similar exemption is available to other types of financial accounts. As such, the depository account is not reportable but the custodial account must be reviewed to determine if the account holder is a specified U.S. person.

Example 4 – Application of the US$250,000 cash value insurance contract threshold

Company B is a Canadian financial institution that applies the relevant thresholds in Annex I of the Agreement as authorized under subsection 264(1) of the ITA. It can link and aggregate the following accounts of an account holder by a client number:

- A cash value insurance contract with a value of US$230,000
- A custodial account with a balance of US$30,000

The aggregated balance or value indicates the financial accounts are potentially reportable. However, for the purposes of determining whether the cash value insurance contract is reportable, it need only be aggregated with other cash value insurance contracts or annuity contracts. As such, it remains below the US$250,000 threshold and need not be reviewed if Company B designates the account under subsection 264(1) of the ITA.

The custodial account must be reviewed to determine if the account holder is a specified U.S. person because there is no exemption for it under paragraph A of Section II of Annex I of the Agreement.

Example 5 – Aggregation involving joint accounts

Two account holders have three accounts between them, one deposit account each and a jointly-held deposit account with the following balances:

- Client A US$35,000
- Client B US$25,000
- Joint account US$30,000

A data element in the financial institution's computer system allows the joint account to be associated with both A and B. The system shows the individual balances of the accounts and permits the balances to be electronically aggregated.

The balance of the joint account is attributable in full to each of the account holders. The aggregate balance for account holder A is US$65,000 and for account holder B US$55,000.

As the amounts after aggregation exceed the thresholds of US$50,000 described in each of subparagraphs A(4) and A(1) of Section II of Annex I of the Agreement, both account holders A and B must be reviewed to determine if either is a specified U.S. person.

Example 6 – Aggregation of negative balances

Two account holders have three depository accounts between them, one account each and a jointly held account, all with the same financial institution with the following balances:

- Client A US$53,000
- Client B US$49,000
- Joint account (US$8,000) – treated as nil

The accounts can be linked and therefore must be aggregated, but for the purposes of aggregation the negative balance is treated as nil. In this example, after applying the threshold of US$50,000 described in subparagraph A(4) of Section II of Annex I of the Agreement, Client A's account must be reviewed but Client B does not need to be reviewed.

Reporting

7.23 If the aggregation rules result in two or more accounts being subject to review and the review determines that the accounts are reportable, the accounts must be reported on individually. A financial institution is not to consolidate the accounts for reporting purposes.

Example 7 – Separate account reporting

Person Y holds three depository accounts with bank Z. The balances are as follows:

- Account 0001 US$ 3,000
- Account 0002 US$32,000
- Account 0003 US$25,000

The aggregated balance totals US$60,000 causing all three accounts to be reviewed. The review determines that Person Y is a specified U.S. person. Thus all three accounts are reportable. Bank Z must report each account individually and not consolidate the information into a single entry for reporting purposes.

Aggregation of preexisting entity accounts

7.24 For purposes of determining the aggregate balance or value of accounts held by an entity, all accounts held by the entity will need to be aggregated where the financial institution applies the thresholds set out in Annex I of the Agreement and the financial institution's computerized system can link the accounts by reference to a common data element and allow account balances to be aggregated.

Example 8 – Aggregation of preexisting entity accounts

Entity Y has two depository accounts with Bank X. The balances are as follows:

- Depository account US$150,000
- Depository account US$110,000

Bank X applies the relevant thresholds in Annex I of the Agreement as authorized under subsection 264(1) of the ITA and its computer system allows the account balances to be aggregated.

The accounts must be reviewed. The review determines that Entity Y is a specified U.S. person. The accounts are reportable since the aggregated balance exceeds the applicable threshold of US$250,000 for an entity.

Example 9 – Aggregation of preexisting entity accounts

Individual A has a depository account with Bank X. Individual A also controls 100% of entity Y and 50% of entity Z both of which also have a depository account with Bank X. None of the accounts are managed by a relationship manager. The balances are as follows:

- Individual A depository account US$ 35,000
- Entity Y depository account US$130,000
- Entity Z depository account US$110,000

Bank X applies the relevant thresholds in Annex I of the Agreement and its computer system allows the account balances to be aggregated.

An account held by a person cannot be aggregated with another account unless that person holds both accounts. In this example, no account is reportable since the aggregation rules do not operate to cause any account to exceed the relevant thresholds that triggers review.

Individual accounts are not aggregated with entity accounts. Entity account aggregation occurs at the level of the entity or entities, not of the entities' controlling persons.

Aggregation of sponsored funds

7.25 In the context of a family of funds, accounts may be linked for purposes of centralized statement preparation. However, if no fund controls another fund and none of the funds are under common control from an ownership perspective, aggregation of unit holdings outside of a particular fund is not required unless the fund is sponsored by a sponsoring entity.

7.26 The sponsor (typically a fund manager) of a family of funds acts on behalf of the funds and stands in their place in relation to meeting the obligations of the funds under the Agreement.

7.27 Aggregation is required across the family of funds within the same sponsoring group where the fund manager or its service provider uses the same computerized systems to link the accounts.

7.28 A fund manager may use a service provider to manage the client relationships of the account holders (the investors in the funds). Where different service providers are used by the same fund manager, the systems might not link account information across service providers and aggregation is required only at the level of the service provider.

7.29 For example, where a fund manager manages all the client relationships through a single transfer agent, aggregation is performed at the level of the fund manager (to the extent that the system links accounts).

7.30 Where a fund manager has two fund families each using a different transfer agent, it is appreciated that, in practice, aggregation may be possible only at the fund family or service provider level, as this is where the client relationship is held.

Threshold limits – Currency conversion

7.31 Most accounts maintained by Canadian financial institutions are denominated in Canadian dollars.

7.32 Where accounts are denominated in a currency other than U.S. dollars then the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply. For Canadian dollar denominated accounts (or other non-U.S. dollar denominated accounts), this conversion can be done using the spot rate for the relevant date published by the Bank of Canada. However, a Canadian financial institution may treat the Canadian dollar at par with the U.S. dollar in respect of a particular year where the Canadian dollar was, at all times in that year, valued at less than the U.S. dollar.

7.33 In respect of an account in a currency for which the Bank of Canada has not published a rate, the financial institution may rely on the spot rate published by any reputable and widely-used financial service.

> **Example 1**
> The threshold to be applied to a Canadian dollar denominated preexisting individual depository account when the published Bank of Canada spot rate for December 31, 2015 is 1.0500 would be C$47,619 (US$50,000/1.0500).

7.34 Alternatively, a financial institution could convert the Canadian dollar denominated balances into U.S. dollars and then apply the U.S. dollar thresholds. Regardless of the method of conversion, the rules for determining the spot rate apply.

7.35 The method of conversion must be applied consistently.

Chapter 8 – Preexisting individual accounts

8.1 If a Canadian financial institution maintains a financial account held by an individual it must determine whether it is a U.S. reportable account. Doing so requires assessing whether a particular individual account is required to be reviewed given that certain exemptions exist, as explained below. If an individual account is required to be reviewed, the financial institution must determine whether the account holder is a U.S. resident or U.S. citizen. Where the account holder is a U.S. resident or U.S. citizen, reporting obligations to the CRA will exist in connection with the account.

8.2 This chapter covers preexisting individual accounts. New individual accounts are covered in Chapter 9 and entity accounts are discussed in Chapter 10.

Preexisting individual accounts

8.3 A preexisting individual account is an account maintained by a financial institution held by an individual as of June 30, 2014.

(Note – see paragraph 9.10 for a description of when a new individual account may be treated as a preexisting account.)

8.4 Preexisting individual accounts fall into one of four categories depending on the balance or value of the account. These are:

- accounts exempted by a monetary threshold;
- cash value insurance contracts and annuity contracts unable to be sold to U.S. residents;
- lower value accounts; and
- high value accounts.

Threshold exemptions that apply to preexisting individual accounts

8.5 Monetary threshold exemptions are set out in Section II of Annex I of the Agreement in connection with the review of preexisting individual accounts. If a financial institution wants to rely on an exemption in connection with a preexisting account, it must designate the account under paragraph 264(1)(a) of the ITA.

8.6 Where a financial institution does not rely on paragraph 264(1)(a) of the ITA to designate any accounts, it must review all of its preexisting individual accounts.

8.7 A financial institution that wants to use any threshold exemptions that may be applied to preexisting individual accounts is required to document that it has done so in its internal procedures. Doing so would result in not having to review, identify or report to the CRA the following accounts:

- A depository account with a balance or value of US$50,000 or less;
- A preexisting individual account with a balance not exceeding US$50,000 on June 30, 2014 unless the account subsequently becomes a high value account; and
- A preexisting individual account that is a cash value Insurance contract or annuity contract with a balance or value of US$250,000 or less on June 30, 2014 unless the account subsequently becomes a high value account.

8.8 The rules in paragraph C of Section VI of Annex I of the Agreement apply (e.g., aggregation rules) for the purposes of determining whether a financial account has to be reviewed, identified or reported (see subsection 264(3) of the ITA).

8.9 A financial institution may make selective use of the threshold exemption provided in paragraph 264(1)(a) of the ITA. However, in doing so, the threshold exemptions must be applied to a clearly identifiable group of accounts, such as by line of business or the location at which accounts are maintained (see subsection 264(2) of the ITA).

8.10 A financial institution is not required to advise the CRA of whether it has designated an account under paragraph 264(1)(a) of the ITA. However, it is required to record its decision, including the basis of its determination of a clearly identifiable group of accounts (if any) in respect of which it has made a designation for a calendar year.

8.11 If an account is not reportable because of the application of a threshold exemption, the financial institution that maintains the account is not required to monitor the account for U.S. indicia until the account becomes a high value account.

Preexisting cash value insurance contracts or annuity contracts

8.12 Preexisting cash value insurance contracts or annuity contracts that are effectively unable to be sold to U.S. residents by virtue of laws or regulations in Canada or the U.S. do not need to be reviewed, identified or reported.

8.13 The sale of contracts to U.S. residents will be considered effectively prevented if the issuing Specified Insurance Company (but excluding any branch located outside of Canada) is not licensed to sell insurance in any state of the U.S. and the products are not registered with the U.S. Securities and Exchange Commission (SEC). The Canadian operations of an insurer incorporated in Canada are considered to be effectively prevented from selling to U.S. residents. This is the case even though that insurer has a U.S. branch that is licenced to carry on insurance business in the U.S. or some of the products of the U.S. branch are registered with the SEC.

Assignment of preexisting insurance contracts

8.14 When ownership of a preexisting cash value insurance contract or annuity contract is assigned to another person, the contract will be treated as a new account. This is to ensure that preexisting insurance contracts assigned after June 30, 2014 to specified U.S. persons are correctly identified and reported, where necessary.

8.15 Once the Canadian insurance company becomes aware that an assignment has been made, the insurance company will need to carry out checks on the new account holder (see procedures in Chapter 9).

Reportable accounts

8.16 A preexisting account in respect of which a designation has not been made under subsection 264(1) of the ITA will be reportable if the financial institution has identified U.S. indicia (see paragraph 8.21) and those indicia have not been cured by receiving a self-certification and/or documentary evidence as required by the specific circumstances. The CRA expects that financial institutions will generally attempt to cure indicia before determining that an account is reportable.

8.17 If one or more U.S. indicium is discovered in connection with an account, reporting would not be required if the financial institution cures the indicium by following the applicable procedures in subparagraph B(4) of Section II of Annex I of the Agreement.

8.18 Once a financial account (other than a depository account) is identified as a U.S. reportable account, the account will remain reportable for all subsequent years unless the account holder ceases to be a specified U.S. person.

8.19 Whether a depository account is a reportable account is dependent on whether its balance is above the reporting threshold of US$50,000. A depository account is the only type of account where the reporting requirement can alter annually even where the account holder remains a specified U.S. person.

Example

A depository account held by a specified U.S. person with a balance of US$65,000 on June 30, 2014 will need to be reported. The balance of the account falls to US$20,000 on December 31, 2015. The account is exempt from reporting in respect of 2015 since its balance for that year is below US$50,000 as described in subparagraph C(3) of Section II of Annex I of the Agreement.

Lower value accounts

8.20 Generally, a lower value account is a preexisting individual account with a balance or value that is less than US$1,000,000 on June 30, 2014 and which is not eligible for a threshold exemption. Such an account remains a lower value account until it exceeds US$1,000,000 on December 31 of 2015 or any subsequent year.

Electronic record searches and lower value accounts

8.21 A financial institution must review its electronically searchable data for any of the following U.S. indicia:

- Identification of the account holder as a U.S. resident or citizen;
- Unambiguous indication of a U.S. place of birth;
- Current U.S. mailing or residence address (including P.O. Box);
- Current U.S. telephone number;
- Standing instructions to transfer funds to an account maintained in the U.S. (regardless of who holds the account);

- Current effective power of attorney or signatory authority granted to a person with a U.S. address; and
- An “in-care-of” address in the U.S. that is the sole address the financial institution has on file for the account holder.

8.22 Where none of the indicia listed above are discovered through an electronic search, no further action is required in respect of lower value accounts, unless there is a subsequent change of circumstance that results in one or more U.S. indicia being associated with the account. Where that happens, the account will become reportable unless further action is taken by the financial institution to cure the indicia. The CRA expects that financial institutions will generally apply subparagraph B(4) of Section II of Annex I of the Agreement with a view towards curing indicia before determining that an account is reportable.

8.23 A financial institution will not be treated as having reason to know that an account holder’s status is incorrect merely because it retains information or documentation that may conflict with its review of the account holder’s status if it was not necessary under the procedures described in this section to review that information or documentation. There is no requirement that information or documentation be reviewed beyond what is necessary under those procedures.

Example

A Canadian financial institution conducts an electronic search in connection with a lower value account and no U.S. indicia are identified. The financial institution will not have reason to know that the account holder is a specified U.S. person even if it held a copy of a U.S. passport for the account holder. This applies only if the financial institution was not required to review or had not previously reviewed that documentation or information.

Qualified intermediaries

8.24 A Canadian financial institution that has previously established an account holder's status to meet its obligations under a Qualified Intermediary, Withholding Partnership or Withholding Trust Agreement, or to fulfil its reporting obligations as a U.S. payer under chapter 61 of the IRS Code, can rely on that status for the purposes of the Agreement. The financial institution is not required to perform the electronic search in relation to those accounts. It will however have to apply the appropriate due diligence procedures to all other preexisting individual accounts it maintains.

Unambiguous U.S. place of birth

8.25 Where the indicium found is an unambiguous indication of a U.S. place of birth then the account needs to be reported unless the financial institution obtains or currently maintains a record of all of the following:

- a self-certification showing that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen;
- evidence of the account holder's citizenship in a country other than the U.S. (i.e., passport or other government-issued identification); and
- a copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of why:
  - the account holder does not have such a certificate; or
  - the account holder did not obtain U.S. citizenship at birth.

8.26 An "unambiguous indication of a U.S. place of birth" must include identification of the U.S. as the country of birth. Identification of a city and/or a state as the place of birth, without identification of the country of birth as the U.S., is not considered to be unambiguous.

Current U.S. address

8.27 Where the indicium found is a current U.S. mailing address or residence address (including a U.S. post office box), the account must be reported unless the financial institution obtains or currently maintains a record of all of the following:

- a self-certification that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen; and
- documentary evidence that establishes the account holder's non-U.S. status.

U.S. telephone numbers that are the only telephone numbers associated with the account

8.28 Where the indicium found is one or more U.S. telephone numbers and these are the only telephone numbers associated with the account, then the account must be reported unless the financial institution obtains or currently maintains a record of all of the following:

- a self-certification that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen; and
- documentary evidence that establishes the account holder's non-U.S. status.

8.29 A telephone number is not considered a U.S. telephone number unless it is clearly identifiable as a U.S. telephone number (e.g., contains a published U.S. area code). In the case of any uncertainty as to whether the telephone number is a U.S. number, it is not treated as U.S. indicia.

A U.S. telephone number where a non-U.S. telephone number is also associated with the account

8.30 Where the indicium found is one or more U.S. telephone numbers and where there is a non-U.S. telephone number also associated with the account, the account must be reported unless the financial institution obtains or currently maintains a record of one of the following:

- a self-certification that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen; or
- documentary evidence that establishes the account holder's non-U.S. status.

Standing instructions to transfer funds to an account maintained in the U.S.

8.31 Where at the time of review there are current standing instructions to transfer funds to an account maintained in the U.S., the account must be reported unless the financial institution obtains or currently maintains a record of all of the following:

- a self-certification that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen; and
- documentary evidence that establishes the account holder's non-U.S. status.

8.32 There will be a standing instruction if the account holder has mandated the financial institution to make repeat payments, without further instruction from the account holder, to another account that can clearly be identified as being an account maintained in the U.S.

8.33 Instructions to make an isolated payment will not be a standing instruction even when given significantly in advance of the payment being made.

Effective power of attorney or signatory authority

8.34 Where the indicium found is a current effective power of attorney or signatory authority granted to a person with a U.S. address, the account must be reported unless the financial institution obtains or currently maintains a record of one of the following:

- a self-certification that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen; or
- documentary evidence that establishes the account holder's non-U.S. status.

An "in-care-of" address that is the sole address identified for the account holder

8.35 Where the indicium is an "in-care-of" address in the U.S. that is the sole address identified for the account holder, the account must be reported unless the financial institution obtains or currently maintains a record of either:

- a self-certification that the account holder is neither a U.S. resident for tax purposes nor a U.S. citizen; or
- documentary evidence that establishes the account holder's non-U.S. status.

Relevance of records previously reviewed and maintained

8.36 Curing the indicia listed under the foregoing headings, requires that the financial institution obtain certain records unless it has "previously reviewed and maintained" the required documents. A document previously reviewed and maintained does not lose its reliability for the purposes of curing the indicia for reason alone of having expired between the time it was earlier reviewed and the time due diligence to cure indicia is performed (e.g., a driver's licence with an expiry date of December 31, 2013 that was reviewed by a financial institution earlier in 2013 and maintained by it since that time is not, by virtue of that expiry alone, ineligible to be relied upon by the financial institution in 2014.)

8.37 At the same time, the reliability of a previously reviewed document erodes over time. A self-certification from an account holder that declares the status of not being a U.S. person obtained a week prior to finding U.S. indicia will be significantly more reliable in curing that indicia compared to what would be the case if the certification was a year old. The time at which an earlier obtained self-certification or document becomes unreliable depends on the circumstances.

Example

In the course of performing its due diligence on preexisting accounts, a financial institution identified an account with standing instructions to transfer funds to an account maintained in the U.S. The financial institution obtains a self-certification and a Canadian passport from the account holder that together indicates the account holder is a resident of Canada and not a U.S. citizen.

Two years later, the account holder instructs the financial institution to associate a U.S. telephone number to the account. Since the institution previously reviewed and maintains the self-certification and documentary evidence, no further client contact is required to cure that U.S. indicium.

High value accounts

8.38 A high value account is a preexisting individual account with a balance or value that exceeds US$1,000,000 on June 30, 2014 or on December 31 of 2015 or any subsequent year.

8.39 The aggregation rules described in paragraph C of Section VI of Annex II of the Agreement apply to determine whether the aggregate balance or value of a financial account exceeds the US$1,000,000 threshold.

Electronic record searches and high value accounts

8.40 A financial institution must review its electronically searchable data for the U.S. indicia as is required for lower value accounts. It must also review the data it maintains for an “in-care-of” or “hold mail” address that is the sole address on file for the account holder. Any such address constitutes U.S. indicium regardless of whether the address is inside or outside the U.S.

8.41 If a financial institution has previously obtained documentation from a preexisting individual account holder to establish that person’s status to:

- meet its obligations under a Qualified Intermediary, Withholding Partnership or Withholding Trust Agreement, or
- fulfil its reporting obligations as a U.S. payer under chapter 61 of the U.S. Internal Revenue Code,

it will not have to carry out the electronic search nor the paper record search in respect of such accounts. However, it must still perform the relationship manager enquiry.

Paper record searches and high value accounts

8.42 A paper record search is not required if the financial institution can possess all of the following information from an electronic search for any U.S. indicia:

- the account holder’s residence or citizenship status;
- the account holder’s residence or mailing address currently on file;
- the account holder’s telephone number(s) currently on file;
- whether there are standing instructions to transfer funds to another account maintained in the U.S.;
- whether there is a current “in-care-of” address or “hold mail” address for the account holder; and

- whether there is any power of attorney or signatory authority for the account granted to a person with a U.S. address.

8.43 If a financial institution does not have this capacity, a paper record search for any U.S. indicia is required and it must include a review of the current customer master file and, to the extent they are not contained in the current master file the following documents associated with the account and obtained by the financial institution within the last 5 years:

- the most recent documentary evidence collected with respect to the account;
- the most recent account opening contract or documentation;
- the most recent documentation obtained by the financial institution for AML/KYC Procedures or for other regulatory purposes;
- any power of attorney or signature authority forms granted to a person with a U.S. address, currently in effect; and
- any standing instructions to transfer funds to an account maintained in the U.S. currently in effect.

8.44 A financial institution is not required to perform the paper record search for any preexisting individual account for which it has retained a self-certification and documentary evidence which establishes the account holder's non-U.S. status.

Relationship manager inquiry

8.45 The due diligence procedures outlined in the Agreement require financial institutions to make certain inquiries of relationship managers. A relationship manager has a role in connection with a financial institution's understanding of:

- Whether two or more account balances are required to be aggregated to determine whether the accounts qualify as high value accounts; and

- Whether any particular high value account assigned to the relationship manager must be treated as a U.S. reportable account.

8.46 The term “relationship manager” is not defined in the Agreement or Part XVIII. However, the term includes a person who oversees or manages the financial accounts of particular account holders on an on-going basis.

8.47 Relationship management must be more than ancillary or incidental to the job function of a person for the person to be considered a relationship manager. As such, a person whose functions do not involve direct client contact or which are of a back office, administrative or clerical nature is not considered a relationship manager.

8.48 A person that is a relationship manager is generally expected to be a part of a sales team or otherwise be outward looking towards customers. Moreover, such a person would be viewed as a relationship manager only if actions taken or advice offered in connection with an account cause that person and the account holder to communicate regularly on matters of importance pertaining to the account. For example, an investment advisor at a financial institution with a book of clients is a relationship manager in respect of each client that relies on the advisor’s expertise, advice and/or stewardship to achieve investment objectives.

8.49 Relationship managers typically offer a degree of on-going care and attention towards high net worth account holders which can be distinguished from other forms of customer service which require less familiarity with an account holder’s financial affairs and overall objectives. It is appreciated that a good rapport and regular contact can exist between an account holder and an employee of a financial institution without causing the employee to be a relationship manager. For example, a person at a financial institution who is largely responsible for processing transactions/orders or *ad hoc* requests may end up knowing an account holder well. However, the person is not considered a relationship manager unless that person is ultimately charged with managing the account holder’s affairs at the institution – a responsibility that is expected to involve interfacing regularly with the account holder to report information and keep abreast of the account holder’s overall investment needs. Similarly, a financial institution employee who generally performs front-desk services for walk-in customers is not a relationship manager.

8.50 For purposes of the Agreement, it would be exceptional for the CRA to view more than one person as a relationship manager of any particular account.

8.51 A relationship manager plays a role in connection with determining whether a preexisting individual account is a high value account. A relationship manager assigned to a preexisting account held by an individual must be inquired with to determine whether he or she knows of any additional accounts at the financial institution that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same individual which, when all the accounts are considered collectively, their account balances aggregate to more than US$1,000,000. If that is the case, the financial institution must treat each account held by the individual as a high value account.

8.52 The second role of a relationship manager is to assist with the proper identification of U.S. reportable accounts. In addition to the electronic and paper record searches, the financial institution must also consider whether a relationship manager associated with the high value account has actual knowledge that identifies the account holder as a specified U.S. person.

8.53 If a relationship manager actually knows that the account holder is a specified U.S. person, the high value account (and any other financial account aggregated with the high value account) must be reported.

8.54 A financial institution must have appropriate communication channels and procedures in place to capture any change of circumstance in relation to a high value account that is made known to the relationship manager in respect of the account holder’s status. Annual verifications suffice without there being a requirement for a relationship manager to give a negative confirmation. The financial institution is required to establish and maintain a record of its procedures.

Effects of finding U.S. indicia

8.55 Where one or more indicia are discovered through the enhanced review procedures (the electronic and paper record searches and relationship manager enquiry), a financial institution is encouraged to apply subparagraph B(4) of Section II of Annex I of the Agreement (with the understanding that the cure for “hold mail” indicium is the same as for an “in-care-of” address) and limit the extent to which reporting is required. If no cure can be applied, the financial institution must treat the account as a U.S. reportable account for the current and all subsequent years unless the account holder ceases to be a specified U.S. person (or the account is a depository account and its balance or value falls under the US$50,000 threshold in the case of a financial institution that has designated the account under paragraph 264(1)(a) of the ITA).

8.56 Where no indicia are discovered in the electronic search, the paper record search or by making enquiries of the relationship manager, no further action is required unless there is a subsequent change in circumstances.

8.57 A financial institution that finds U.S. indicia ought to have ample time to attempt to contact an account holder to verify or cure the indicia on or before the reporting deadline of May 1. However, it is appreciated that attempts to reach out to an account holder may not solicit a response. If no information is forthcoming to position the financial institution to cure the indicia before it is required to submit the information to the CRA, it is expected that the financial institution will report the account based on the information in its possession.

Form of self-certification

8.58 Earlier sections of this chapter describe various situations in which a financial institution may seek to obtain a self-certification.

8.59 Self-certifications must result in a clear declaration from account holders as to whether they are U.S. persons. There is no prescribed form for the certification. Financial institutions can choose the form. The form can be designed to receive a declaration specific to the account holder's status for U.S. tax purposes or it may ask the account holder to declare their residency for tax purposes more broadly. The approach adopted by a particular financial institution should address directly the question of U.S. citizenship or clearly indicate that a U.S. citizen is a U.S. person. Examples of the type of questions and instructions that are expected are provided in Chapter 9.

8.60 While there is no requirement for a financial institution to report U.S. TIN (e.g., a social security number, employer identification number) for preexisting accounts prior to 2017, having a U.S. person furnish the U.S. TIN at the time of their self-certification may be a desirable approach considering that the number is information that is required for preexisting accounts for the 2017 and subsequent reporting periods. It should be noted that after 2016 an account holder that fails to provide on request their U.S. TIN is liable to a penalty for each failure under subsection 162(6) of the ITA, as amended.

8.61 Regardless of the type of form used, there must be an element that allows the account holder to positively acknowledge by signature or other means, that the certification is correct.

8.62 Chapter 9 set out examples of elements that may be incorporated in a form used for the purposes of obtaining self-certifications from preexisting or new individual account holders.

8.63 Any self-certification obtained in the context of a preexisting account must be retained for at least 6 years after the account is closed. Where the form is electronic in nature, the information must be retained in an electronically readable format.

Determination of whether an individual is a U.S. citizen

8.64 An account holder may be unsure whether he or she is a U.S. citizen and may ask a financial institution for clarification about the rules for U.S. citizenship. These rules are complex, and financial institutions are not expected to provide information on all aspects of U.S. citizenship rules. If an account holder asks for such a clarification, a financial institution should be prepared to provide the following information. In general, you should consider yourself to be a U.S. citizen if any of the following apply:

- You were born in the U.S. and have not relinquished U.S. citizenship;
- You are a naturalized U.S. citizen; or
- You hold a valid U.S. passport.

8.65 If the account holder asks about other situations, the financial institution may respond that it is not prepared to provide information beyond the above, and that it is the responsibility of the account holder to determine whether he or she is a U.S. citizen.

8.66 A financial institution should assume that an account holder is not a U.S. citizen unless the account holder self-certifies that he or she is a U.S. citizen, or provides documentation that either identifies the account holder as a U.S. citizen (e.g., a U.S. passport), or reveals an unambiguous indication of a U.S. place of birth.

Optional elements related to snowbirds and other temporary visitors to the U.S.

8.67 If a Canadian financial institution identifies an account with U.S. indicia in the form of a U.S. telephone number, address or standing instructions to transfer funds to an account maintained in the U.S., it will be required to take the steps to cure the indicia. If at the time of doing so, it understands or suspects that the U.S. indicia arises only because the account holder is a temporary visitor to the U.S. who makes re-occurring visits of a similar nature from year to year (e.g., retirees known as "snowbirds") it may invite the account holder to provide information beyond what is needed to cure U.S. indicia (see paragraphs 8.27 to 8.33).

8.68 The additional information is intended to relieve a Canadian financial institution of having to repeatedly cure U.S. indicia each time it reappears. For instance, the following can be inserted into the form used to obtain a self-certification:

> *Optional and only if applicable, such as in the case of certain Canadian individuals, such as retirees or "snowbirds", who spend considerable time vacationing in the U.S.*
>
> I certify that I am a resident of Canada. I further certify that any U.S. address, telephone number or standing instructions to transfer funds to an account maintained in the U.S. associated with this account only exists or will arise only in the context of temporary visits that I make to the U.S. while I remain a resident of Canada and not, at any time, a resident of the U.S. for tax purposes or a U.S. citizen. I agree to notify [name of Canadian financial institution] if events cause this certification to become false or misleading.
>
> □ (check if making this declaration)

8.69 If a Canadian financial institution receives such an optional declaration from an account holder, the CRA will consider it valid only in respect of a U.S. address, U.S. telephone number or standing instruction to transfer funds that has become associated with the account up until the end of the calendar year in which 7 years have elapsed since the declaration was made. The declaration loses its validity before that time only if the financial institution knows or has reason to know that the declaration is no longer valid, e.g., because the account holder has become a U.S. resident (such as by virtue of being informed of a permanent move to the U.S.).

Example

Mr. Smith resides only in Canada for tax purposes and is not a U.S. citizen. He is also a "snowbird" who temporarily travels to the U.S. each winter. On January 15, 2015, Mr. Smith's financial institution identified a U.S. telephone number associated with his account. Mr. Smith cures that indicium and completes the optional declaration made available to him by the financial institution on February 17, 2015.

On April 30, 2015, Mr. Smith's financial institution follows his instructions to no longer associate the U.S. telephone number with his account. On January 14, 2016, Mr. Smith instructs his financial institution to associate a different U.S. telephone number with his account. Mr. Smith's financial institution need not act to cure the new U.S. telephone number in view of already having received Mr. Smith's earlier self-certification with the optional declaration completed.

Acceptable documentary evidence

8.70 Earlier sections of this chapter refer to "documentary evidence" for use in connection with curing U.S. indicia. In respect of individuals, the term "documentary evidence" is limited to:

- A certificate of residence issued by an authorized government body (e.g., a government or agency thereof, or a municipality) of the jurisdiction in which the account holder claims to be resident;
- With respect to an individual, any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes (e.g., driver's license);
- Any financial statement, third party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report; and
- Any of the documents other than Form W-8 referenced in Canada's attachment to the U.S. Qualified Intermediary Agreement for identifying individuals.

8.71 Canadian documents in Canada's attachment to the Qualified Intermediary Agreement for individuals include:

- Passport;
- National Identity Card;
- Driving license;
- Provincial health insurance card (if not prohibited by provincial law);
- Birth certificate provided by an individual under the age of 21;
- Government-issued Age of Majority Card;
- Canadian citizenship card;
- Record of Landing (IMM1000) or Confirmation of Permanent Residence (IMM 5292) issued prior to 1/1/2004;
- Permanent Residence Card;
- Canadian Forces Identification Card;
- A government-issued Certificate of Indian Status;
- Alberta Photo Identification Card;
- B.C. Identification card;
- Government of Newfoundland and Labrador Photo Identification Card;
- Nova Scotia Photo Identification Card;

- Prince Edward Island Voluntary ID;
- Saskatchewan Mandatory Photo ID;
- Manitoba Identification Card; and
- NEXUS card.

8.72 Canada's attachment to the Qualified Intermediary Agreement can be found at IRS website.

Timing of reviews

Lower value accounts

8.73 The review of preexisting individual accounts that are lower value accounts on June 30, 2014 must be completed by June 30, 2016.

8.74 Lower value accounts that are identified as reportable are only reportable from the year in which they are identified as such.

Example 1
A financial institution completes due diligence procedures on a lower value account that is a depository account in March 2015 and determines that the account is held by a U.S. resident. On December 31, 2015, the balance of the account exceeds US$50,000. The financial institution is required to report the account with respect to 2015 on a *Part XVIII Information Return* filed with the CRA before May 2, 2016.

Example 2
Same facts as Example 1 except that the financial institution completes due diligence procedures on the account in June 2016 and the balance of the account on December 31, 2016 exceeds US$50,000. The financial institution is required to report the account

with respect to 2016 on a *Part XVIII Information Return* filed with the CRA before May 2, 2017.

High value accounts

8.75 The review of preexisting individual accounts that are high value accounts on June 30, 2014 must be completed by June 30, 2015.

8.76 If an account with a balance over US$1,000,000 on June 30, 2014 is identified as reportable before 2015, the financial institution is required to report the account with respect to 2014 on a *Part XVIII Information Return* filed with the CRA before May 2, 2015. If an account with a balance over US$1,000,000 on June 30, 2014 is not identified as reportable in 2014 but is before July 1, 2015, the financial institution is required to report the account with respect to 2015 (but not 2014) on a *Part XVIII Information Return* filed with the CRA before May 2, 2016.

8.77 Where the balance or value of an account does not exceed US$1,000,000 on June 30, 2014, but does on December 31 of 2015 or any subsequent calendar year, the financial institution must perform the enhanced review procedures described for high value accounts by June 30 of the year following the year in which the balance or value exceeded US$1,000,000. Any such account that is a reportable account is required to be reported in respect of the year in which it was identified as being reportable. Once a financial institution has performed the enhanced review procedures, it is not required to re-apply those procedures, other than a relationship manager enquiry, on the high value account in any subsequent year.

Example

The balance of a custodial account held at a financial institution was US$900,000 on each of June 30, 2014, December 31, 2015 and December 31, 2016. The financial institution completed the due diligence procedures applicable to lower value accounts in May 2016 and determined that the account was not reportable. The balance of the account was US$1,100,000 on December 31, 2017. As a result, the financial institution was required to review of the account using the due diligence procedures applicable to high value accounts by June 30, 2018. The financial institution completed its due diligence review in advance of that deadline in April 2018 and determined that the account was reportable. Consequently, it is required to report the account with respect to 2018 on a *Part XVIII Information Return* filed with the CRA before May 2, 2019. Additionally, reporting on the account is required in all subsequent years on an annual basis unless the account holder ceases to be a specified U.S. person.

Chapter 9 – New individual accounts

9.1 If a Canadian financial institution maintains a financial account held by an individual it must determine whether it is a U.S. reportable account. Doing so requires assessing whether a particular individual account is required to be reviewed given that certain exemptions exist, as explained below. If an individual account is required to be reviewed, the financial institution must determine whether the account holder is a U.S. resident or U.S. citizen. Where that is the case, reporting obligations to the CRA will exist in connection with the account.

9.2 This chapter covers new individual accounts. Chapter 8 discusses preexisting individual accounts and entity accounts are covered in Chapter 10.

New individual accounts

9.3 A new individual account is an account opened on or after July 1, 2014.

Threshold exemptions that apply to new individual accounts

9.4 A financial institution may apply the monetary threshold exemptions set out in Section II of Annex I of the Agreement in connection with the review of new individual accounts. More specifically, a financial institution may rely on paragraph 264(1)(b) of the ITA to designate accounts for a calendar year in relation to which it wants to apply the thresholds.

9.5 A financial institution may apply paragraph 264(1)(b) of the ITA to trigger the threshold exemption to all new individual financial accounts or to a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained.

9.6 If a financial institution does not apply paragraph 264(1)(b) of the ITA with respect to any account, it will be required to review all new individual accounts.

9.7 A financial institution that applies paragraph 264(1)(b) of the ITA to a group of accounts is not required to review, identify or report to the CRA the following accounts that fall within that group:

- Depository accounts unless the account balance or value exceeds US$50,000 on December 31 of 2015 or any subsequent year thereafter.
- Cash value insurance contracts unless the cash value exceeds US$50,000 on December 31 of 2015 or any subsequent year thereafter.

9.8 A financial institution is not required to advise the CRA of whether it has applied a threshold exemption in paragraph 264(1)(b) of the ITA. However, it will be required to document the group of accounts (if any) in respect of which it has selected to apply the thresholds.

9.9 If an account is not reportable because of a designation under paragraph 264(1)(b) of the ITA, the financial institution that maintains the account is not required to monitor the account for U.S. indicia.

New account for holders of preexisting accounts

9.10 Where a holder of a preexisting individual account opens a new account with the same financial institution, there is no need to re-document the account holder as long as:

- The appropriate due diligence requirements have been carried out, or are in the process of being carried out, for the preexisting individual account; and
- Where a threshold has been applied in connection with the preexisting individual account, the financial institution’s computerized systems are able to link the new account to the preexisting individual account held by the account holder and allow the account balances or values to be aggregated.

Example

An individual holds a preexisting individual account with a balance that was US$35,000 on June 30, 2014. The individual opens a new account at the same financial institution. The institution applies the US$50,000 threshold and is able to link the new account to the preexisting account. The new account may be treated as a continuation of the preexisting account and can continue to be treated as exempt until such time as the aggregate balance or value of the accounts exceeds US$1,000,000.

9.11 Where the financial institution has reason to know that the account holder’s status is inaccurate in relation to one account, it is considered to know that same concern exists in connection with other accounts held by the account holder.

Reportable accounts

9.12 In respect of a financial account that is opened after June 30, 2014 (and that is not exempt from due diligence by virtue of a designation or other exclusion), a financial institution must determine the account holder’s status using the self-certification procedures or the documentary evidence procedures described below. (Note – an account that was properly designated under paragraph 264(1)(b) of the ITA so as to avoid treatment as a U.S. reportable account in a calendar year is subject to review in the first year it is not so designated, or eligible under that paragraph by virtue of a balance or value that exceeds the applicable threshold.)

Self-certification procedures

9.13 Due diligence can be carried out by obtaining a self-certification that allows the financial institution to determine whether the account holder is a U.S. person. If a financial institution adopts this approach, it must also confirm the reasonableness of the self-certification based on information it obtains in connection with the opening of the account, including any documentation obtained for AML/KYC Procedures.

9.14 If there is an unambiguous indication that an account holder was born in the U.S. but the individual declares in a self-certification that he or she is not a U.S. person, the certification can be confirmed as reasonable if the financial institution receives the documentation that is relevant to cure the indicia as if the account had been a preexisting account (see paragraph 8.25).

9.15 In the case of U.S. indicia other than a U.S. place of birth appearing at the time of an account opening (except where the account holder is known to be a U.S. resident or citizen) the documentation required for AML/KYC Procedures that is of non-U.S. issue is normally expected to position a financial institution to confirm the reasonableness of a self-certification of non-U.S. status.

9.16 A financial institution is required to make reasonable efforts to obtain a self-certification in connection with the account opening process from an account holder who opens a new financial account that is required to be reviewed. If a self-certification is not provided by an account holder or the reasonableness of a self-certification cannot be confirmed, the account is reportable.

9.17 The implementation of the Agreement in no way requires or encourages financial institutions to refuse to open an account or to otherwise deny service.

9.18 The guidance provided in paragraphs 8.58 to 8.63 apply equally to self-certifications for new accounts except that the requirement to report a U.S. TIN applies from the outset.

Documentary evidence procedures

9.19 Instead of relying on the self-certification approach described above, subparagraph 265(2)(c)(ii) of the ITA permits a Canadian financial institution to rely on the due diligence procedures that apply to preexisting individual accounts outlined in Annex I of the Agreement. This alternative means that the financial institution need not obtain a self-certification at account opening.

9.20 As provided for in subparagraph 265(2)(c)(ii) of the ITA, this alternative approach must be applied in connection with all new individual accounts, or separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained). For these purposes, accounts held by individuals that refuse to self-certify cannot be made to constitute a group.

9.21 If the information provided during the account opening process contains any U.S. indicia (as described in paragraph 8.21), the account will become reportable unless further action is taken by the financial institution to cure the indicia following the procedures described in subparagraph B(4) of Section II of Annex I of the Agreement (see paragraphs 8.25 to 8.35).

9.22 The identification of accounts with U.S. indicia should be completed at the time the account is opened or as soon as is practicable thereafter. An account holder should also be given a reasonable opportunity to provide the required documentation to cure any U.S. indicia.

Format of self-certifications

9.23 Financial institutions may permit individuals to open accounts in various ways. For example, individuals can initiate account openings by telephone, on-line or at a branch location.

9.24 Self-certifications can be obtained regardless of the account opening method. The following guidance illustrates how the self-certification procedures may operate in various scenarios.

In-person account openings

9.25 A Canadian financial institution must have procedures in place to secure a self-certification from their account holders. There is no prescribed form for the certification. Financial institutions can use any form as long as it requests the required information. A form will be considered sufficient in this regard if it requires account holders to indicate:

- whether they are U.S. persons and clearly indicates that a U.S. citizen is such as person;
- their residency or residencies for tax purposes and clearly indicates that a U.S. citizen is considered to be resident of the U.S. for tax purposes even if that person is also a tax resident of another country; or
- the country or countries that they reside in for tax purposes and whether they are a U.S. citizen.

9.26 The self-certification can be a stand-alone document or form part of a more comprehensive document used by a financial institution in connection with the account opening.

9.27 The following examples reveal components that a financial institution may embed within a form to obtain a self-certification from an account holder.

Example 1:

Are you a United States (U.S.) person for U.S. tax purposes? (*Note – A U.S. person includes a U.S. resident or citizen)*

□ no

□ yes

If "yes", provide your *U.S. TIN*: ____________________

I declare that the information I have provided on this form is, to the best of my knowledge and belief, correct and complete.

Name: ___________ Signature: _____________

Date: ___________

Example 2:

Where do you reside for tax purposes: *(Check all boxes that apply and provide details requested)*

□ Canada

□ U.S. ____________ *(U.S. TIN)*

□ other ____________ ____________ *(TIN, if any)*

(*country name)*

If you do not reside in the U.S., are you a U.S. citizen?

□ no

□ yes _____________ *(U.S. TIN)*

I declare that the information I have provided on this form is, to the best of my knowledge and belief, correct and complete.

Name: ___________ Signature: _____________

Date: ___________

Example 3:

Are you a U.S. resident for U.S. tax purposes or a U.S. citizen? □ no □ yes

If you answered "yes", provide your U.S. tax identification number.

U.S. TIN: _________________________

I declare that the information I have provided on this form is, to the best of my knowledge and belief, correct and complete.

Name: ___________ Signature: _____________

Date: ___________

9.28 The examples above ask the account holder to provide a foreign tax identification number (TIN). While there is no requirement to secure such information at the time of the self-certification, having account holders furnish foreign TINs at the time of their self-certification may be a desirable approach considering that the U.S. TIN is a mandatory reporting element in connection with any new account that is a U.S. reportable account. Subsection 162(6) of the ITA requires an account holder to provide his U.S. TIN upon request. If the account holder is a U.S. resident or citizen and does not have a U.S. TIN, the account holder must apply to the U.S. government for a U.S. TIN within 90 days after the request and provide it to the financial institution upon receipt.

9.29 If a financial institution wants to provide more instructions in connection with the question of where the individual resides for tax purposes, it may explain that a U.S. citizen is, in all cases, a U.S. person even if that individual also resides in Canada or another country. Non-U.S. citizens may take into account the application of any relevant tax convention in answering the question of where they reside for tax purposes.

9.30 The due diligence expected under this guidance cannot be satisfied by an unaltered NR301 Form (*Declaration of Eligibility for Benefits under a Tax Treaty for a Non-Resident Taxpayer*) since it considers tax residency only in a limited context. A financial institution may create a comprehensive form that incorporates all the information from Form NR301 and captures the self-certification required to satisfy the due diligence requirements referenced in this guidance.

Telephone account openings

9.31 In the context of an account opening arranged by telephone, a financial institution is expected to provide the same instructions to, and obtain the same information from, any prospective account holder as it would in the context of an in-person account opening.

9.32 The financial institution must retain any verbal self-certification obtained by telephone for the required retention period unless it secures and appropriately retains a self-certification in an alternative form from the account holder in connection with the account opening by telephone (such as by way of a follow-up email confirmation), or informs the account holder in writing (whether in paper or electronic form) of how it has recorded the account holder's status and instruct the account holder to notify it if its record of the declaration made by the account holder is incorrect.

On-line account applications

9.33 In the context of an account opening initiated on-line, a financial institution must secure the same information from the prospective account holder as it would be expected to acquire in the context of an in-person account opening. As such, it must secure a self-certification from the account holder. The form can be electronic in nature and the account holder must positively acknowledge, by signature or other means, that the certification is correct. If the information is electronic, the information must be in electronically readable format.

Optional due diligence related to snowbirds and other temporary visitors to the U.S.

9.34 Many Canadian residents visit the U.S. on a regular basis without becoming or having the status of being a U.S. person. This group includes Canadians attending university in the U.S., and "snowbirds" – Canadian residents who spend part of the winter each year in the southern U.S. As a result, a financial institution may want to add additional elements in the self-certification it uses (such as the optional declaration in paragraph 8.68) in connection with new account openings. If it does so, it is to have procedures in place to ensure that self-certifications that contain these additional elements are not abused. If this approach is taken it may reduce the number of occurrences of where it would otherwise treat the appearance of a U.S. indicium as a change in circumstances that causes it to know, or have reason to know, that an original self-certification is incorrect or unreliable.

Chapter 10 – Entity accounts

Introduction

10.1 A reporting Canadian financial institution has reporting obligations with respect to:

- an account held by an entity that is a U.S. reportable account; and
- payments made to an entity that is a nonparticipating financial institution (NPFI).

U.S. reportable accounts

10.2 If a reporting Canadian financial institution maintains a financial account held by an entity, it must determine whether the account is a U.S. reportable account. In other words, it must determine whether the account holder is a specified U.S. person, or a passive NFFE with one or more controlling persons who are individuals that are U.S. residents or citizens. If the account holder has either status, reporting obligations to the CRA will exist in connection with the account.

10.3 No review is required of an account if the account is exempt by virtue of a threshold exemption that has been applied by a financial institution that has been made under subsection 264(1) of the ITA.

10.4 An account will not be a U.S. reportable account if the account holder is:

- a U.S. person other than a specified U.S. person,
- a Canadian financial institution or partner jurisdiction financial institution,
- a participating FFI, deemed-compliant FFI, or an exempt beneficial owner,

- an active NFFE,
- a passive NFFE where none of the controlling persons are U.S. residents for tax purposes or U.S. citizens.

Payments to NPFIs

10.5 For each of 2015 and 2016, a reporting Canadian financial institution must determine if it makes payments to NPFIs. It must report the name and address of each NPFI and the aggregate amount of payments made in the particular year to each NPFI.

Preexisting and new entity accounts

10.6 A preexisting entity account is an account held by an entity on June 30, 2014.

10.7 A new entity account is an account opened by an entity after June 30, 2014.

10.8 Due diligence procedures must be applied to determine the status of an account. In certain cases, the procedures differ depending on whether the account under review is a new or preexisting entity account.

Determining whether an account holder is a specified U.S. person

Preexisting entity accounts

10.9 In the case of a preexisting entity account, a Canadian financial institution must review information that it maintains for regulatory and customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the account holder is a U.S. person. Information indicating that an account holder is a U.S. person includes:

- a U.S. address;
- a U.S. place of incorporation or organization; and
- a classification of the account holder as a U.S. resident in current customer files.

10.10 If it is believed or information indicates that the entity account holder is a U.S. person, the account must be treated as a U.S. reportable account unless the financial institution reasonably determines that the entity is not a specified U.S. person. That determination must be made by obtaining a self-certification from the account holder unless reasonable reliance can be placed on information in the possession of, or that is publicly available to, the financial institution.

10.11 If the financial institution knows that the account holder has a Global Intermediary Identification Number (GIIN), it will have reasonably determined that the account holder is not a specified U.S. person. The financial institution can verify whether the account holder has been issued a GIIN by referring to the IRS FFI list.

New entity accounts

10.12 A Canadian financial institution must determine whether a new entity account holder is a specified U.S. person.

10.13 A specified U.S. person does not include an active NFFE, a Canadian financial institution or a partner jurisdiction financial institution. If a financial institution reasonably determines that the account holder is an active NFFE or financial institution based on a review of public information or information in its possession, it will be considered to have determined that the account holder is not a specified U.S. person. A financial institution that verifies that an account holder has been issued a GIIN (by referring to the IRS FFI list) will have made a reasonable determination that the account holder is not a specified U.S. person.

10.14 In all other cases, the financial institution must obtain a self-certification from the entity account holder to determine whether the entity is a specified U.S. person. If the entity account holder fails to provide a self-certification, the account must be treated as a U.S. reportable account.

Determining whether an account holder is a passive NFFE

Preexisting entity accounts

10.15 A Canadian financial institution must determine whether an entity account holder that it has not identified as either a U.S. person or a financial institution is a passive NFFE. It is required to obtain a self-certification from the entity account holder to make that determination unless it reasonably determines based on a review of public information or information in its possession that the account holder is an active NFFE. A Canadian financial institution can be accepting of a self-certification from an entity account holder unless it knows or has reason to know it is unreliable or incorrect.

10.16 If it is determined that the entity account holder is a passive NFFE, the financial institution must identify its controlling persons and determine whether any such individual is a U.S. resident for tax purposes or a U.S. citizen.

10.17 A financial institution may rely on publicly-available information (e.g., such as a public registry) or on information collected and maintained pursuant to AML/KYC Procedures in determining the controlling persons. Those same procedures may also be used to determine whether any such individual is a U.S. resident for tax purposes or a U.S. citizen in a case of where the account has a balance or value that does not exceed US$1,000,000 on June 30, 2014. If the balance or value of the account exceeds US$1,000,000 on

June 30, 2014, the financial institution must obtain a self-certification from the entity account holder or from each controlling person to determine whether such individuals are U.S. residents or U.S. citizens. A financial institution must obtain a reliable self-certification.

10.18 If any controlling person of a passive NFFE is a U.S. resident or citizen, the account is a U.S. reportable account.

New entity accounts

10.19 A Canadian financial institution must determine whether a new entity account holder is a passive NFFE unless it has earlier determined that the account holder is an active NFFE, a Canadian financial institution or a partner jurisdiction financial institution.

10.20 The Canadian financial institution may determine that the account holder is an active NFFE, a Canadian financial institution or a partner jurisdiction financial institution based on information in its possession or that is publicly available if reliance on the information offers reasonable assurances of a proper determination. Knowledge that an entity account holder has a Global Intermediary Identification Number (GIIN) may assist a financial institution determine that an account holder is a Canadian financial institution or a partner jurisdiction financial institution. The financial institution may verify whether the account holder has been issued a GIIN by referring to the IRS FFI list.

10.21 A Canadian financial institution may receive a self-certification from an entity that is not resident in Canada that it is a financial institution. The self-certification should not be considered as unreliable or incorrect by reason alone of the entity's declared status being unsupported under Canadian law unless the financial institution knows the self-certification is inconsistent with how the entity is classified in its country of residence for purposes of tax cooperation with the United States. For example, a non-resident personal trust that is professionally managed by an investment entity self-certifies that it is a financial institution. A Canadian financial institution should not treat the self-certification as unreliable or incorrect by reason alone that the trust would be viewed as a passive NFFE under Canadian law.

10.22 If a Canadian financial institution has not determined that a new entity account holder is an active NFFE, a Canadian financial institution or a partner jurisdiction financial institution, it is required to obtain a self-certification from the entity account holder to establish its status.

10.23 If it is determined that the entity account holder is a passive NFFE, the financial institution must identify its controlling persons and determine whether any such individual is a U.S. resident for tax purposes or a U.S. citizen. A Canadian financial institution may rely on information collected and maintained pursuant to AML/KYC Procedures to determine the controlling persons of an entity. However, a Canadian financial institution must obtain a self-certification from the entity account holder or from each controlling person to determine whether any such individual is a U.S. resident for tax purposes or a U.S. citizen.

10.24 If any controlling person of a passive NFFE is a U.S. resident or citizen, the account is a U.S. reportable account.

Determining whether an account holder is a financial institution that is an NPFI

Preexisting entity accounts

10.25 A Canadian financial institution must determine whether an entity account holder is a financial institution. It may do so by reviewing information maintained for regulatory or customer relations purposes (including information collected pursuant to AML/KYC Procedures). If the information indicates that the account holder is a financial institution, the Canadian financial institution that maintains the account must further determine whether the account holder is a NPFI.

10.26 A financial institution can determine that an account holder is not an NPFI by verifying that the account holder has a Global Intermediary Identification Number (GIIN). The financial institution can verify whether the account holder has been issued a GIIN by referring to the IRS FFI list.

10.27 A financial institution can also determine that an account holder is not an NPFI if it has reasonably determined based on a review of public information or information in its possession that the entity account holder is a Canadian financial institution or partner jurisdiction financial institution (unless the IRS has publicly listed the account holder as a NPFI).

10.28 In all other cases, the financial institution must obtain a self-certification from the entity account holder that is a financial institution to determine whether it is a NPFI. If the account holder fails to provide a self-certification, the account holder is to be treated as a NPFI.

10.29 If the account holder is a NPFI, the financial institution must report the aggregate amount of payments made to it for each of 2015 and 2016.

New entity accounts

10.30 A Canadian financial institution must determine whether a new entity account holder is a NPFI. If a financial institution has reasonably determined based on information that is publicly available or in its possession that an entity account holder is an active NFFE, a Canadian financial institution, or partner jurisdiction financial institution it will be considered to have determined that the account holder is not a NPFI (unless the IRS has publicly listed the account holder as a NPFI).

10.31 In all other cases, the financial institution must obtain a self-certification from the entity account holder that is a financial institution to determine whether it is a NPFI. If the account holder fails to provide a reliable self-certification, the account holder is to be treated as a NPFI.

10.32 If the account holder is a NPFI, the financial institution must report the aggregate amount of payments made to it for each of 2015 and 2016.

Form of self-certifications

10.33 The previous section indicates that self-certifications will be required from entity account holders in many cases to determine their entity classification. In essence, the self-certifications are to reveal whether an entity account holder is a specified U.S. person, a passive NFFE with a controlling person that is a U.S. resident or citizen, or a NPFI.

10.34 There is no prescribed form. Indeed, the design of the form may take into account how Canadian financial institutions sequence and otherwise operationalize their due diligence procedures. However, it may be advisable for Canadian financial institutions to rely on a comprehensive entity self-certification form that assists with all of the potential determinations required to be made by a financial institution in connection with the Agreement. Canadian financial institutions have a broad range of customers and the profile of entity account holders may vary significantly across different parts of the financial industry. As such, the complexity of the entity self-certification form may be calibrated to the level of familiarity with entity classification concepts expected to be possessed by the targeted customer base. In all cases, however, Canadian financial institutions are expected to assist entities by presenting forms that promote proper classifications and offer help in the form of instructions.

10.35 No matter the type of self-certification used, there must be an element that allows the account holder to positively acknowledge by signature or other means, that the self-certification is correct.

10.36 The self-certification can be a stand-alone document or form part of a more comprehensive document used by a financial institution in connection with the account opening.

10.37 The following example is an approach that can be incorporated within a self-certification form to determine an entity account holder's status.

Example:

<u>Status form for entity account holders</u>

(See instructions for the meaning of terms in *italics* used in this form.)

A. Specified U.S. person

1) In the case of a corporation or partnership, indicate whether it is incorporated or organized in Canada?

□ yes □ no

If "no", indicate whether the *entity* is a *specified U.S. person*

□ no

□ yes, and if "yes" provide *U.S. TIN* ________________

2) In the case of a trust, indicate whether it is a *specified U.S. person*?

□ yes □ no

If "yes" provide *U.S. TIN* _________________________

B. Financial institution

1) Is the *entity* a *financial institution*? □ no □ yes

If "yes", indicate its status

□ *financial institution* with *valid GIIN* ____________________

□ *nonparticipating financial institution (NPFI)*

□ other – provide status <u>(e.g., deemed compliant financial institution</u>

C. Entity type/character

(Complete this section unless the *entity* is a *U.S. person* or a *financial institution*)

1) Check any that apply to the *entity*:

□ active trade or business – Less than 50% of the *entity*'s gross income is *passive income* and less than 50% of its assets produce *passive income*

□ a registered charity, or a club, association or arrangement in Canada operated exclusively for cultural, athletic or educational purposes

□ a corporation with shares that regularly trade on an established securities market

□ a government or international organization (or agency thereof)

If no category applies, see instructions and indicate whether the entity is:

□ an *active NFFE*

□ a *passive NFFE*

2) If the *entity* is a *passive NFFE*, does any individual directly or indirectly own 25% or more of the *entity*? □ yes □ no

If "yes", provide the name, address and *U.S. TIN* of each individual who directly or indirectly owns 25% or more of the *entity* and who is a *U.S. person*.

(list of individuals complete with required details)

I declare that the information provided on this form is, to the best of my knowledge and belief, correct and complete.

Name: ___________________ Title: _______________

Signature: _________________ Date: _______________

10.38 While financial institutions are at liberty of designing their own forms, they may wish to consider using the IRS form W-8BEN-E *Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities)*.

Controlling persons

10.39 Article 1 of the Agreement defines the term “controlling persons” as

> *the natural persons who exercise control over the entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “controlling person” shall be interpreted in a manner consistent with the FATF recommendations.*

10.40 Financial institutions can give effect to this definition by reference to the PCMLTFA and related regulations. As such, whether an individual is a controlling person is generally determined by reference to the 25% ownership threshold set out therein.

Threshold exemptions

10.41 A financial institution may apply the threshold exemptions set out in Section II of Annex I of the Agreement in connection with the review of entity accounts. If a financial institution wants to apply the exemptions provided for in the Agreement it can do so by designating the accounts (which will be required to form part of a clearly identifiable group of accounts) pursuant to subsection 264(1) of the ITA.

10.42 Where a financial institution does not rely on subsection 264(1) of the ITA to designate any accounts, it must review all of its entity accounts.

10.43 A financial institution is not required to advise the CRA of whether it has designated an account under subsection 264(1) of the ITA. However, it is required to record its decisions, including the basis of its determination of a clearly identifiable group of accounts (if any) in respect of which it has made a designation for a calendar year.

Preexisting entity accounts

10.44 A financial institution does not have to review an account with a balance or value that does not exceed US$250,000 on June 30, 2014 if it designates the account under paragraph 264(1)(c) of the ITA. Where that designation is made and that account later exceeds US$1,000,000 on December 31 of 2015 or any subsequent year, the financial institution will be required to review the account to determine whether the account is reportable.

10.45 A financial institution may designate all preexisting entity financial accounts or a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained.

New entity accounts

10.46 A financial institution does not have to review certain credit card accounts and other revolving credit facilities (hereinafter referred to as “credit card accounts”) opened after June 30, 2014.

10.47 A credit card account is not required to be reviewed provided that the Canadian financial institution that maintains the account:

- has policies and procedures in place to prevent a balance of more than US$50,000 being owed to an account holder for more than 60 days, and
- designates the account under paragraph 264(1)(d) of the ITA.

10.48 A financial institution may designate all credit card accounts or a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained. While the above provisions in the Agreement apply to new entity accounts, credit card accounts that are individual accounts or pre-existing entity accounts can benefit from the general threshold exemptions available to those categories of accounts.

New account for holders of preexisting accounts

10.49 Where a holder of a preexisting entity account opens a new account with the same financial institution, there will be no need to re-document the account holder at account opening as long as:

- The appropriate due diligence requirements have been carried out, or are in the process of being carried out, for the preexisting entity account; and
- Where the financial institution has relied on paragraph 264(1)(c) of the ITA to apply a threshold exemption to a preexisting entity account, the financial institution’s computerized systems are able to link the new account to preexisting accounts held by the entity account holder and allow the account balances or values to be aggregated.

10.50 Where the financial institution has reason to know that the account holder’s status is inaccurate in relation to one account, it is considered to know that same concern exists in connection with other accounts held by the entity account holder.

Timing of reviews

10.51 Under the Agreement, the review of a preexisting entity account with an account balance or value that exceeds US$250,000 on June 30, 2014 must be completed by June 30, 2016.

10.52 The review of a preexisting entity account with a balance or value that did not exceed US$250,000 on June 30, 2014, but exceeds US$1,000,000 on December 31 of 2015 or any subsequent year, must be completed by June 30 of the year following the year in which the balance or value exceeded US$1,000,000.

> **Example**
> A financial institution maintains a financial account held by an entity with a balance of US$240,000 on June 30, 2014. The financial institution applies the US$250,000 monetary threshold applicable to preexisting entity accounts. The balance of the account was US$900,000 on December 31, 2015 and US$1,100,000 on December 31, 2016. The account must be reviewed by June 30, 2017 to determine whether it is a U.S. reportable account. If that is the case, the financial institution is required to report the account with respect to 2017 on a prescribed information return filed with the CRA before May 2, 2018.

10.53 The review of a new entity account is expected to be completed at the time the account is opened or as soon as is practicable thereafter. That requirement exists in view of financial institutions having to report reportable accounts with respect to a year to the CRA before May 2 of the following year.

Use of industrial codes

10.54 As discussed in paragraph 10.9, a financial institution may, in certain circumstances, rely on information it has in its possession to reasonably determine the status of an entity account holder. Standard Industrial Codes (SIC) or North American Industry Classification System (NAICS) codes may assist a financial institution in this regard with respect to preexisting entity accounts.

10.55 For preexisting entity accounts, where a financial institution has reasonably assigned any one of the following SIC or NAICS codes to an entity account holder, it may rely on that code to determine that the account holder is not a passive NFFE (and if the account holder is known not to be a specified U.S. person, that it is an active NFFE).

SIC

A – Food, Beverage and Tobacco
B – Wood and Paper
C – Energy
D – Chemicals, Chemical Products and Textiles
E – Metallic Minerals and Metal Products
F – Machinery and Equipment (Except Electrical)
G – Transportation Equipment
H – Electrical and Electronic Products
I – Construction and Related Activities
J – Transportation Services
K – Communications
M – General Services to Business
N – Government Services
O – Education, Health and Social Services
P – Accommodation, Restaurants and Recreation Services
Q – Food Retailing
R – Consumer Goods and Services

NAICS Codes

- 11 – Agriculture, forestry, fishing and hunting
- 21 – Mining, quarrying, and oil and gas extraction
- 22 – Utilities
- 23 – Construction
- 31-33 – Manufacturing
- 41 – Wholesale trade
- 44-45 – Retail trade
- 48-49 – Transportation and warehousing
- 51 – Information and cultural industries
- 53 – Real estate and rental and leasing
- 54 – Professional, scientific and technical services
- 56 – Administrative and support, waste management and remediation services
- 61 – Educational services
- 62 – Health care and social assistance
- 71 – Arts, entertainment and recreation
- 72 – Accommodation and food services
- 81 – Other services (except Public administration)
- 91 – Public administration

10.56 However, if a financial institution has information in its files to suggest that the SIC or NAICS code is known to be incorrect or misleading, the financial institution may not rely on the code to determine the account holder is not a passive NFFE.

10.57 In the context of a new entity account, the account opening presents a financial institution with the opportunity to obtain the information necessary to determine the status of an account holder without having to refer to a SIC or NAICS code, which presumably was assigned on the basis of the same or similar information. As such, the codes themselves are not thought to be particularly useful.

Chapter 11 – Special circumstances

Cash value insurance contracts and/or annuity contracts

Financial accounts held by individual beneficiaries of a cash value insurance contract

11.1 A Canadian financial institution may presume an individual beneficiary (other than the owner) who receives a death benefit under a cash value insurance contract or annuity contract is not a specified U.S. person and may treat that account as other than a U.S. reportable account unless the financial institution knows, or has reason to know, that the beneficiary is a specified U.S. person. A financial institution has reason to know if the information collected and associated with the beneficiary contains U.S. indicia. In that case, unless the U.S. indicia have been cured the financial institution must treat the account as a U.S. reportable account.

Employment-based group plans

11.2 Certain financial arrangements administered by financial institutions involve employment-based situations. The new enhanced due diligence and reporting arrangements should not unduly impact employers that offer employment-based benefits of a low-risk nature.

Financial accounts that are group cash value insurance contracts/annuity contracts

11.3 A financial institution may treat an account that is a group cash value insurance contract or group annuity contract as other than a U.S. reportable account until the date on which an amount is payable to an employee/certificate holder or beneficiary if the following requirements are met:

- The group cash value insurance contract or group annuity contract is issued to an employer and covers at least twenty-five employees/certificate holders;
- The employee/certificate holders are entitled to receive any contract value and to name beneficiaries for the benefit payable upon the employee's death; and
- The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed US$1,000,000.

Group payroll deduction savings plans

11.4 Consistent with AML/KYC Procedures in Canada, where an employer ("sponsor") contracts with a financial institution to provide a group payroll deduction savings plan ("plan") to its employees ("members") and member contributions, together with any sponsor contributions, are invested directly through an employee payroll savings plan in one or more accounts, the financial institution is not required to review or report such an account unless:

- There are U.S. indicia in the member information obtained or maintained by the financial institution associated with the account;
- A member contribution is made to the plan other than by payroll deduction; or
- Less than twenty-five employees are members of the plan (a determination that may be made based on the number of employees in the plan at the end of the calendar year preceding the calendar year for which reporting obligations are being determined.)

Account transfers

Account transfers of a single account holder

11.5 Account transfers between related entities of financial accounts will not attract due diligence procedures if the transferring financial institution has completed the due diligence procedures and the information, including the self-certification and/or documentary evidence, is fully accessible during the required retention period to the receiving financial institution. Otherwise, the account transferred is a new account to the receiving financial institution and the due diligence procedures for new accounts apply.

11.6 Account transfers between unrelated financial institutions are to be treated as new accounts to the receiving financial institution.

Mergers or bulk acquisition of accounts

11.7 Where a financial institution acquires accounts by way of a merger or bulk acquisition of accounts, it can rely on the status of account holders as determined by the predecessor reporting Model 1 financial institution or a participating financial institution provided that the predecessor financial institution has met its due diligence obligations.

11.8 A merger or bulk acquisition of accounts is considered to include the acquisition of member accounts acquired upon the transfer of a group savings plan.

11.9 The acquiring financial institution may continue to rely on the status of an account holder as long as it has no reason to know that the status is unreliable or incorrect.

11.10 The CRA expects that the acquiring financial institution to undertake a sample review of the acquired accounts to determine that the status assigned to them by the predecessor financial institution is reliable. An account holder’s status will need to be verified by the acquiring financial institution in accordance with the due diligence procedures should the acquirer have reason to know a status is incorrect or that there is a change in circumstances.

11.11 A Canadian financial institution may treat accounts acquired in a merger or bulk acquisition that takes place after June 30, 2014 as preexisting accounts for the purposes of applying the identification and documentation procedures by treating the accounts as if they had been acquired on June 30, 2014.

Mergers of investment entities

11.12 Mergers of investment entities can be different from mergers of custodial institutions or depository institutions. The financial accounts of investment entities are its equity and debt interest holders, so the merger of two investment entities creates in the surviving investment entity a series of new accounts.

11.13 Mergers of investment entities will normally involve a surviving fund taking over the assets of the merging fund in exchange for issuing shares or units to the investors of the merging fund. The shares or units in the merging fund are then extinguished. The new shares in the surviving fund will be new accounts except where both funds are sponsored by the same sponsor.

11.14 So that fund mergers are not impeded, or held up by the requirement to perform due diligence on a series of new accounts, special rules apply to the documentation of new accounts on a merger of investment entities. There are a number of potential scenarios depending on the status of the merging fund (the investors of which will create the new accounts in the surviving fund).

More than one fund sponsored by the same Canadian sponsor

11.15 Where both funds are sponsored Canadian funds with the same Canadian sponsor, no new accounts are created. This is because for sponsored financial institutions, whether a financial account is a new account is determined by reference to whether it is new to the sponsor (for example the fund manager), and not whether it is new to the sponsored financial institution (i.e., the fund).

Merging fund is a reporting financial institution

11.16 Where the merging fund is a reporting financial institution (including a sponsored financial institution, but where the funds do not share the same sponsor), a partner jurisdiction financial institution or a participating foreign financial institution, the surviving fund can rely on the account identification and documentation performed by the merging fund and will not need to undertake any further account due diligence to comply with its obligations. The surviving fund can continue to use the same account classification as the merging fund until there is a change in circumstances for the financial account.

Merging fund is not a reporting financial institution

11.17 Where the merging fund is not a reporting financial institution, a partner jurisdiction financial institution or a participating foreign financial institution (e.g., a non-reporting Canadian financial institution or a nonparticipating financial institution), the surviving fund will need to undertake account identification procedures on the new accounts. However, in these circumstances the account identification procedures may be limited to those that are required for preexisting accounts and must be carried out at the latest by December 31 following the date of the merger or December 31 of the year following the year of the merger if the merger takes place after September 30 of any calendar year.

Chapter 12 – Part XVIII – Information reporting

Information elements for U.S. reportable accounts

12.1 Each Canadian reporting financial institution with U.S. reportable accounts in a year is required to electronically file a *Part XVIII Information Return* for that year with the CRA. The CRA will release the information return and its instructions later in 2014. (These documents will be available at __.) The information below is designed to assist financial institutions in preparing for the release of that information return. The information in this chapter also applies to financial institutions that must perform limited reporting to maintain their status as non-reporting Canadian financial institutions.

Information on the reporting Canadian financial institution

12.2 Each reporting Canadian financial institution must identify itself to the CRA by providing its name, address, Business Number (BN) and Global Intermediary Identification Number (GIIN).

12.3 The GIIN is a 19-character identification number issued by the IRS that reveals that a financial institution is participating in the FATCA system.

12.4 The ability of a reporting Canadian financial institution to provide U.S. withholding agents with a GIIN is expected to facilitate their participation in U.S. markets. Reporting Canadian financial institutions that seek to secure a GIIN can do so by visiting the IRS FATCA registration site.

(Note – The FATCA registration system, administered by the IRS, introduces the concept of a Responsible Officer (RO) who accepts personal responsibility when completing FATCA registration. However, there is no RO concept contained in the Agreement and the CRA has received assurances that the RO in connection with a registration by a reporting Canadian financial institution is to be understood as simply the person that submits the registration form on behalf of the financial institution and agrees to be a "contact person" (along with others that might be identified as additional points of contact).)

Identifying and account balance information

12.5 In relation to each U.S. reportable account held by a specified U.S. person, the following identifying information must be reported:

- Name
- Address
- U.S. TIN
- Canadian TIN

12.6 Where an account held by a passive NFFE is a U.S. reportable account, the same identifying information must be provided in respect of the entity and each of its controlling persons that are specified U.S. persons.

Account information

12.7 Financial institutions must report account information in connection with the U.S. reportable account. In all cases, the account number and the account balance or value must be reported. The other information to be reported depends on the particular nature of the account.

Custodial accounts

12.8 If the account is a custodial account, the information in the first three bullets of the list below must be provided in respect of reporting for 2015. For the 2016 and subsequent reporting years, all listed elements must be furnished.

- The total gross amount of interest paid or credited to the account.
- The total gross amount of dividends paid or credited to the account.

- The total gross amount of other income generated with respect to the assets held in the account, paid or credited to the account.
- The total gross proceeds from the sale or redemption of property paid or credited to the account.

Depository accounts

12.9 If the account is a depository account, the total amount of gross interest paid or credited to the account in the year is required in respect of reporting for 2015 and subsequent years.

Other accounts

12.10 For accounts other than custodial or depository accounts the following information is required in respect of reporting for 2015 and subsequent years:

- The total gross amount paid or credited to the account holder with respect to which the reporting Canadian financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the year.

Explanatory information

Account holder address

12.11 The address to be reported is the permanent address of the specified U.S. person. If no permanent address is associated with an account holder, report the address associated with the specified U.S. person on file used for mailing or other purposes.

Canadian Taxpayer Identification Number (Canadian TIN)

12.12 A financial institution must provide the Canadian TIN (if any) of a specified U.S. person that it reports. A Canadian TIN may be in the form of a

Social Insurance Number (SIN), Business Number (BN), or Individual Tax Number (ITN).

U.S. Federal Taxpayer Identification Number (U.S. TIN)

12.13 The U.S. TIN of a specified U.S. person that is an account holder (or a person identified as a controlling person) is required to be reported. However, there is a phase-in period in connection with preexisting accounts. A U.S. TIN includes:

- Social Security Number (SSN)
- Individual Taxpayer Identification Number (ITIN)
- Employer Identification Number (EIN)

and is required to be reported for the 2014 to 2016 reportable years in connection with a preexisting account only if the U.S. TIN exists in the records of the reporting Canadian financial institution. If it does not exist, the financial institution must report the specified U.S. person's date of birth if that information is in its records.

12.14 A financial institution must make reasonable efforts to secure an account holder's U.S. TIN. If an account holder does not have a U.S. TIN, the account holder is required to apply for one and provide the number to the Canadian financial institution. If the account holder fails to provide a U.S. TIN, the account remains reportable.

12.15 There is no requirement for a financial institution to verify that any U.S. TIN provided is correct. A financial institution will not be held accountable where information supplied by an individual proves to be inaccurate and the financial institution has no reason to know such.

Account number

12.16 The account number to be reported with respect to an account is the identifying number assigned to the financial account or other number that is used to identify the financial account within the financial institution.

Account balance or value

12.17 The account balance or value as of the end of the relevant calendar year or other appropriate reporting period is required to be reported together with the currency in which the balance or value is denominated. For depository accounts, the relevant date is December 31 (unless the account is closed earlier in the year). Subject to the information below, December 31 is also anticipated to be the most relevant date for most other financial accounts.

> **Example –** In respect of a reportable depository account that exists at the end of 2015, the balance to be reported will be the account balance at December 31, 2015. This balance will be reported to the CRA before May 2, 2016.

12.18 Where it is not possible to value an account at the end of a particular year, the normal valuation point for the account that falls within the particular year that is nearest to December 31 is to be used.

> **Example –** For a reportable insurance product that is valued at the anniversary date of the opening of the policy, opened for example on June 3, 2015, will be valued on June 2, 2016. The June 2, 2016 value will be reported for the 2016 calendar year, to the CRA before May 2, 2017.

12.19 In respect of a cash value insurance contract or annuity contract, the account balance or value is the cash value or surrender value of the account.

12.20 The balance or value of a financial account is the balance or value calculated by the financial institution for purposes of reporting to the account holder. For immediate annuities (i.e., annuities under which annuity payments have begun), it is appreciated that there is often no on-going “account balance or value” reported to the account holder as the account holder has used the value that had been accumulated to purchase the right to a series of future payments. A financial institution may report the balance or value of such an account as nil if it is not performing surrender value calculations and is not reporting a value to the account holder.

12.21 The balance or value of an equity interest is the value calculated by the financial institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount.

12.22 The balance or value of the account is not to be reduced by a liability or obligation incurred by an account holder with respect to the account, and is not to be reduced by any potential future fees, penalties or other charges for which the account holder may be liable upon terminating, transferring, surrendering, liquidating, or withdrawing cash from the account.

Joint accounts

12.23 For joint accounts, the balance or value to be attributed is the entire balance or value of the account. This will be attributable to each account holder of the account.

> **Example**
> Where a joint account has a balance or value of US$100,000 and one of the individual account holders is a specified U.S. person then the amount to be attributed to the specified U.S. person is US$100,000. A report is made for the specified U.S. person; no report is made for the other account holder.

If both account holders are specified U.S. persons, each is attributed the US$100,000 and reports are made for both.

Account closures

12.24 Account closing procedures differ between institutions and between different products and accounts. In respect of an account closure, the account balance reporting requirement intends to capture the amount withdrawn from the account in connection with the closure (as opposed to the account balance at the exact point of closure).

12.25 It is acceptable for a financial institution to record the balance or value within 5 business days of when it receives instructions from the account holder to close the account. If the financial institution is unable to record the balance or value at the time of receiving instructions to close the account then it may record the most recent available balance or value that is obtainable following receipt of instructions to close the account. (This may include a balance or value that predates the instructions to close the account if this is the balance or value that is most readily available.)

Timetable for reporting

12.26 The obligation to obtain and report information with respect to U.S. reportable accounts is phased-in over a three-year period as depicted in the table below. The phase-in is provided for in Articles 2 and 3 of the Agreement.

<table>
<tr><th>Reporting Year</th><th>In respect of</th><th>Information to be reported</th><th>Reporting date to CRA</th></tr>
<tr><td>2014</td><td>each specified U.S. person, either:
holding a U.S. reportable account;
or
that is a controlling person of a passive NFFE that holds a U.S. reportable account.</td><td>Name
Address
U.S. TIN (but only required for a holder of a preexisting account for 2014 to 2016 reporting years if TIN is held in FI’s records. If not, date of birth is required if that date is held in FI’s records.)
Canadian TIN
Account number or functional equivalent
Account balance or value</td><td>before
May 2, 2015</td></tr>
<tr><td rowspan="4">2015</td><td colspan="2">As 2014, plus the following:</td><td rowspan="4">before
May 2, 2016</td></tr>
<tr><td>Custodial accounts</td><td>Total gross amount of interest,
Total gross amount of dividends,
Total gross amount of other income, paid or credited to the account during the year</td></tr>
<tr><td>Depository accounts</td><td>Total gross amount interest paid or credited to the account during the year</td></tr>
<tr><td>Other accounts</td><td>Total gross amount paid or credited to the account holder including the aggregate amount of redemption payments made to the account holder during the year</td></tr>
<tr><td rowspan="2">2016</td><td colspan="2">As 2015, plus the following:</td><td rowspan="2">before
May 2, 2017</td></tr>
<tr><td>Custodial accounts</td><td>Total gross proceeds from the sale or redemption of property paid or credited to the account during the year</td></tr>
<tr><td>2017 onwards</td><td></td><td>All of the above</td><td>before May 2 of the following calendar year</td></tr>
</table>

Reporting on NPFIs

12.27 Where a reporting Canadian financial institution makes payments to a nonparticipating financial institution (NPFI), it is required to report the name and the aggregate value of payments made to each NPFI for the years 2015 and 2016.

12.28 The payments that are to be reported are:

- non-U.S. source interest paid on a financial account held by a NPFI;
- non-U.S. source dividends paid on shares held in a financial account held by a NPFI;
- other non-US source payments paid to a financial account held by a NPFI.

12.29 The reporting Canadian financial institution need report only payments in respect of which it is the payer. It may be less onerous for a financial institution not to distinguish between U.S. source and non-U.S. source payments. For the purpose of this reporting, a financial institution may treat all payments as having a non-U.S. source to avoid having to distinguish payments based on source.

12.30 The following payments do not need to be reported:

- Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services.
- Payments where the reporting Canadian financial institution has only a passive role in the payment process such as where it has

no knowledge of the facts that give rise to the payment, no control over the payment, or no custody of the property that relates to the payment. Examples of such payments include processing a cheque, arranging the electronic transfer of funds on behalf of one of its customers, or crediting a payment to a customer's account.

12.31 Shares in a financial institution (other than certain investment entities) are generally not considered to be financial accounts in their own right and, as such, where a dividend payment is made directly to an investor that is a NPFI, the payment is not reportable.

Third party service providers

12.32 A Canadian financial institution may rely on one or more third party service providers to meet its obligations under the Agreement. However, all obligations remain the responsibility of the financial institution.

Example 1 – A Canadian financial institution may use a transfer agent to meet its due diligence obligations. However, in the event of any irregularities or failure to meet the legislative requirements the financial institution will be held liable.

Example 2 – A Canadian financial institution may use a third party service provider to file on its behalf the *Part XVIII Information Return*. The third party service provider is required to use its Business Number and must include the financial institution's Business Number in the information return. A third party service provider may also need to use its CRA Web access code. However, in the event of any irregularities or failure to meet the legislative requirements the financial institution will be held liable.

Compliance

12.33 The CRA is responsible for the administration of the Agreement in Canada and its implementing legislation. The CRA will take appropriate steps to promote compliance. The CRA will also engage in discussions with appropriate IRS officials should the IRS raise concerns in connection with the reporting of a Canadian financial institution.

Minor and administrative errors

12.34 If the IRS has questions or concerns in respect of minor or administrative errors that may have led to an incorrect or incomplete information reporting or resulted in other infringements of the Agreement, it may contact the CRA to discuss the matter. If contacted, the CRA will attempt to resolve the matter and, if necessary, contact the Canadian financial institution and apply Canadian law where appropriate.

Significant non-compliance

12.35 The IRS is also entitled to notify the CRA if it has determined significant non-compliance with the obligations under the Agreement by a particular reporting Canadian financial institution. If contacted, the CRA will attempt to resolve the matter.

12.36 The CRA will contact the financial institution and apply Canadian law where appropriate. If voluntary compliance and/or administrative action by the CRA fail to resolve the issue within 18 months of the IRS's notification of the issue, the IRS is entitled to treat the financial institution as a NPFI and trigger the adverse consequences associated with that status in the U.S.

12.37 Significant non-compliance includes:

- Repeated failure to file the *Part XIII Information Return*.

- On-going or repeated failure to supply accurate information or establish appropriate governance or due diligence processes.
- The intentional provision of substantially incorrect information.
- The deliberate or negligent omission of required information.
- Otherwise actively assisting specified U.S. persons in avoiding the reporting obligations under Part XVIII.