Guidance on the Canada-U.S. Enhanced Tax Information Exchange Agreement

Part XVIII of the Income Tax Act

August 23, 2023

Canada Revenue Agency
Agence du revenu du Canada

Canada

Summary of the revisions published on August 23, 2023:

- A financial account held by a specified U.S. person who has died is not considered a financial account in the year the Canadian financial institution is informed of the death (Chapter 5).
- Treatment of NEW First Home Savings Account (FHSA) (Chapter 5).
- A new depository account that no longer meets the threshold to be designated as a non-U.S. reportable account at the end of a calendar year, can be so designated in a subsequent year provided its balance at the end of that year meets the threshold criterion (Chapter 8).
- Information on New IRS Notice 2023-11; 2023-3 IRB 1 (Chapter 12).

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Chapter 1 – Introduction

The purpose of this guidance

1.1 This guidance is to help 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 (hereinafter referred to as the "Agreement"). The Agreement was 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).

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 can be asked to certify or clarify their tax status or to 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 can also be required from corporations and other entities with financial accounts. Information to help customers respond to such information requests is available at Information for individual and entity account holders.

1.3 Canadian financial institutions also have responsibilities under Part XIX of the ITA to review, identify and report financial accounts of persons that reside outside of Canada (other than persons that reside in the United States). For more information, please refer to Part XIX of the ITA and to the Guidance on the Common Reporting Standard – Part XIX of the Income Tax Act.

Scope of guidance

1.4 This guidance describes the due diligence and reporting obligations that arise under the ITA by virtue of the implementation of the Agreement in

Canada. This guidance refers to U.S. law and procedural rules only to the extent that doing so helps the reader understand the requirements in Canada.

1.5 This guidance applies exclusively to Part XVIII reporting. Nothing contained in this guidance modifies or is intended to modify the Part XIX Guidance or a CRA view on any other matter. A full comparison of the intergovernmental approach to the implementation of the *Foreign Account Tax Compliance Act* (FATCA) and the CRS can be found on pages 126 to 144 of the CRS Implementation Handbook. This guidance should not be relied upon in connection with any other legal or regulatory requirement or purpose in Canada or the U.S.

1.6 A Canadian financial institution that is in compliance with Part XVIII will not be subject to U.S. withholding tax on U.S. source income and gross proceeds received (both on its own investments and those held on behalf of its customers) under section 1471 of the U.S. *Internal Revenue Code* (IRC). However, the Agreement requires that procedures be followed by Canadian financial institutions seeking to secure that outcome.

International context

1.7 Part XVIII was added to the ITA while global developments in connection with the automatic exchange of information continue to develop. Since the implementation of the Agreement and Part XVIII and the development of this guidance, the Standard for Automatic Exchange of Financial Account Information for Tax Matters (referred to as the "Common Reporting Standard" or "CRS") has been completed by the Organization for Economic Co-operation and Development and endorsed by the G-20 and other international bodies. This guidance will continue to be developed with the international context in mind and may be updated, where appropriate, to ensure proper alignment with an international consensus that may emerge. Unless otherwise stated, this guidance is applicable as of the release date and changes made to the guidance will not be applied to determine compliance of any financial institution before that date.

1.8 This guidance uses plain language to explain the responsibilities under the Agreement and Part XVIII. It is provided as general information only. It is not legal advice and is not intended to replace the Agreement or the ITA.

Chapter 2 – Definitions and glossary

The meaning of certain terms

2.1 The Agreement defines many terms, such as "account holder", "financial institution", and "specified U.S. person". In Part XVIII of the ITA (hereinafter referred to as "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.

References for defined terms

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	Article 1(1)	ss. 263(1)

Canada with Respect to Taxes on Income and on Capital)		
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)	
Competent authority	Article 1(1)(f)	
Controlling persons	Article 1(1)(mm)	
Custodial account	Article 1(1)(u)	
Custodial institution	Article 1(1)(h)	
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)	
Internal Revenue Service (IRS)	Article 1(1)(c)	
Insurance contract	Article 1(1)(w)	
Investment entity	Article 1(1)(j)	
Listed financial institution		ss. 263(1)
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 tax identification number (TIN)	Article 1(1)(kk) and (ll), respectively	ss. 263(4)

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

List of certain terms and acronyms

Term	**Refers to**
AML	Anti-Money Laundering
CB	Carrying broker
CLN	Certificate of Loss of Nationality of the United States
CIV	Collective Investment Vehicle
CRA	Canada Revenue Agency
CRS	Common Reporting Standard (Standard for Automatic Exchange of Financial Account Information in Tax Matters)
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).
FATCA	*Foreign Account Tax Compliance Act*
FATF Recommendations	Financial Action Task Force Recommendations

FFI	Foreign financial institution – A term that appears in the Agreement and that is labelled from the perspective of the U.S. (for example, a Canadian chartered bank is a non-U.S. financial institution).
GIIN	Global intermediary identification number – A number assigned to financial institutions by the U.S. Internal Revenue Service
IB	Introducing broker
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*
KYC	Know Your Client
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).
NAICS	North American Industry Classification System (see Chapter 9 of this guidance)
NFFE	Non-financial foreign entity
NPFI	Nonparticipating financial institution
NRCFI	Non-reporting Canadian financial institution
Part XVIII	Part XVIII of the ITA

Part XVIII Information Return	Part XVIII Information Return – International Exchange of Information on Financial Accounts
Part XIX	Part XIX of the ITA
Part XIX Information Return	Part XIX Information Return – International Exchange of Information on Financial Accounts
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)
Relationship manager	See paragraphs 7.55 – 7.65 of this guidance
SIC	Standard Industrial Classification (see Chapter 9 of this guidance)
TIN	Taxpayer identification number

Coordination of definitions with U.S. Treasury Regulations

2.3 The CRA can permit financial institutions to use a definition in the relevant U.S. Treasury Regulations in place 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 the U.S. Treasury Regulations, it can 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 (see paragraph 1.7). This approach will ensure transparency and fairness for all financial institutions.

Chapter 3 – Financial institutions with reporting obligations in Canada

3.1 Reporting associated with the Agreement is required under Part XVIII. The reporting obligation applies only to a legal person or legal arrangement, such as a corporation, a trust, or a partnership (hereinafter 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 reporting Canadian financial institution for the purposes of Part XVIII. In making that determination, you must consider the scope of the term "financial institution" under the Agreement and how Part XVIII clarifies which entities fall within that scope.

Financial institutions

3.2 Under the Agreement, an entity is a financial institution if it is:

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

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

Depository institution

3.4 A depository institution is an entity that accepts 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, a trust and loan company, a credit society, a savings and credit union, or a caisse populaire.

3.5 An entity is not a depository institution if it:

- solely provides asset-based financial services; or

- accepts deposits from persons solely as collateral or security pursuant to a sale or lease of property, a loan secured by property, or a similar financing arrangement, between it and the person making the deposit.

3.6 For example, this might apply to a leasing, factoring or invoice discounting business or to an entity that solely lends to business enterprises using loans tied to inventory, accounts receivables, or machinery and equipment.

3.7 Facilitating money transfers by instructing agents to transmit funds (without financing the transactions) is not seen as the acceptance of a deposit and an entity will not be considered to be engaged in a banking or similar business or a depository institution because of this activity alone.

Custodial institution

3.8 A custodial institution is 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 the entity has been in existence, arises from the holding of financial assets on behalf of others and from "related financial services". Entities that safe keep financial assets for the account of others (see paragraph 4.12 for the definition of financial asset), such as investment dealers, custodian banks, brokerages, trust companies, and central securities depositories, would generally be considered custodial institutions. Entities that do not hold financial assets for the account of others, such as insurance brokers, will not be custodial institutions.

3.9 "Related financial services" are any ancillary services that are directly related to the holding of assets by an institution on behalf of others, such as fees for custody, account maintenance or providing financial advice. Income from such services can include:

- custody, account maintenance, and transfer fees;

- commissions and fees earned from executing and pricing securities transactions with respect to financial assets held in custody;
- income earned from extending credit to customers with respect to financial assets held in custody (or acquired through such extension of credit);
- income earned on the bid-ask spread of financial assets held in custody;
- fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and
- for clearance and settlement services.

3.10 Where an entity has no operating history at the time its status as a custodial institution is being assessed, it will be regarded as a custodial institution if it expects to meet the gross income threshold based on its business plans (such as the anticipated deployment of its assets and the functions of its employees). Consideration must be given to any purpose or function for which the entity is licensed or regulated (including those of any predecessor).

3.11 There can be circumstances where an entity holds financial assets for a customer where the income attributable to holding the financial assets or providing related financial services belongs to (or is otherwise paid to) a related entity. For example, the entity could hold assets for a customer of a related entity, or consideration is paid to a related entity, either as an identifiable payment or as one element of a consolidated payment. In such a case, the income should be taken into account when applying the 20% test.

Investment entity

3.12 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;
  - individual and collective portfolio management; and
  - otherwise investing, administering or managing funds or money on behalf of other persons.

Note: Such activities or operations do not include rendering non-binding investment advice to a customer that does not involve any form of portfolio management or investing, administering or managing of financial assets or money on behalf of other persons.

3.13 An entity is treated as primarily conducting as a business by conducting on one or more of the activities described in paragraph 3.12 if its gross income from conducting those activities is at least 50% of its gross income during the shorter of its last three fiscal periods, or the period since the entity has been in existence.

3.14 The term "conducting as a business" is considered to have the same meaning as the term "carries on as a business" as used in the definition of investment entity in Part XIX.

An entity that is managed by another financial institution

3.15 An entity is an investment entity if it is managed by an entity described in paragraph 3.12.

3.16 An entity is managed by another entity if the managing entity performs, either directly or through another service provider, any of the activities or operations described in paragraph 3.12 on behalf of the managed entity.

3.17 However, an entity does not manage another entity if it does not have discretionary authority to manage the entity's assets (in whole or in part).

3.18 An entity does not fail to be managed by another entity simply because the second-mentioned entity is not the sole manager of the first-mentioned entity.

Examples of entities that are considered investment entities

3.19 An entity is generally considered an investment entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leverage buyout fund or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

3.20 An entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real or immovable property (even if managed by another investment entity) on behalf of other persons, such as a type of real estate investment trust, will not be an investment entity.

3.21 The Agreement provides that the term "investment entity" must be interpreted in a manner consistent with the definition of "financial institution" in the FATF 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 "listed financial institution" in subsection 263(1) of the ITA.

Specified insurance company

3.22 A "specified insurance company" is 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 an annuity contract.

3.23 An insurance company is an entity that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the entity is doing business.

3.24 Insurance companies that provide only general insurance or term life insurance, and reinsurance companies that provide only indemnity reinsurance contracts, are not specified insurance companies.

3.25 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.

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

3.27 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 an annuity contract.

Canadian financial institution

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

3.29 Two conditions must be met for an entity to be a Canadian financial institution—the entity must be a Canadian financial institution under the Agreement and it must be a "listed financial institution" for the purposes of Part XVIII.

Condition 1 – A Canadian financial institution under the Agreement

3.30 A financial institution will be a Canadian financial institution if it is resident in Canada, but excludes any of its branches located outside of

Canada. A financial institution that resides in Canada for tax purposes is considered to be resident in Canada for the purposes of the Agreement. A Canadian financial institution can take the form of a partnership. If the place of effective management of a partnership's business is situated in Canada, the partnership is considered resident in Canada under the Agreement.

3.31 A Canadian financial institution can also take the form of a trust. A trust is considered resident in Canada for tax purposes if the effective management and control of the trust's business takes place in Canada. For reporting purposes, a trust will also be viewed as resident in Canada if one or more of its trustees are resident in Canada. However, in both cases, the trust must be a listed financial institution as described in paragraph 3.36 in order to have reporting obligation in Canada.

3.32 Under the Agreement, a Canadian financial institution also includes a branch located in Canada of a financial institution that is not resident in Canada (so long as the branch is also a listed financial institution).

3.33 A Canadian financial institution does not include any account or product described in section IV of Annex II of the Agreement no matter how any such product or account is structured.

3.34 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 the purposes of the Agreement, separate from the U.S. parent.

Condition 2 – A listed financial institution under Part XVIII

3.35 An entity can be sure that it does not have reporting obligations under Part XVIII if it is not an entity described as a "listed financial institution".

3.36 A "listed financial institution" means one of the following entities:

(a) 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;

(b) a cooperative credit society, a savings and credit union, or a caisse populaire regulated by a provincial Act;

(c) an association regulated by the *Cooperative Credit Associations Act*;

(d) 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;

(e) 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;

(f) 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;

(g) a company to which the *Trust and Loan Companies Act* applies;

(h) a trust company regulated by a provincial Act;

(i) a loan company regulated by a provincial Act;

(j) 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, investment advising, fund administration, or fund management, services;

(k) an entity that is represented or promoted to the public as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or similar investment vehicle that is established to invest or trade in financial assets and that is managed by an entity referred to in paragraph j);

(l) an entity that is a clearing house or clearing agency; or

(m) 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.

3.37 With reference to paragraph j) of the term "listed financial institution", an entity is considered to be 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, fund administration, or fund management, services if the legislation contemplates any of the above-mentioned activities and the entity can perform one or more of them in the relevant province. An entity need not be registered in any way for such an authorization to exist.

3.38 Paragraph k) of the term "listed financial institution" ensures that that term includes professionally-managed trusts and other entities that are promoted or represented to the public. Such entities typically seek to raise capital from, or become known as potential investments for, unrelated or external investors. At the same time, certain investment vehicles may not be promoted to the public if they do not seek external capital (for example, a personal trust used as a means for an individual or a family to hold investable assets). An investment vehicle is considered to be promoted or represented to the public even if marketing or other communication efforts are directed at a limited or a small group of potential investors.

3.39 For clarity, an entity that is a clearing house or clearing agency which if it was treated as an investment entity would not maintain financial accounts, other than equity or debt interests in itself or collateral or settlement accounts held in connection with carrying on business activities, is not considered a listed financial institution.

3.40 When a trust is considered a Canadian financial institution with one or more trustees resident in a partner jurisdiction, the trust may be required to report to the partner jurisdiction with respect to the accounts maintained in that other jurisdiction. In such a case, accounts maintained and reported to a partner jurisdiction are not required to be reported in Canada. However, the

Canadian trustee will have to demonstrate that all necessary reporting has been completed by the trust.

3.41 When a Canadian financial institution (other than a trust) is resident in more than one partner jurisdiction, the financial institution may be required to report to the partner jurisdiction with respect to the accounts maintained in that other jurisdiction. In such a case, accounts maintained and reported to a partner jurisdiction are not required to be reported in Canada. However, the Canadian financial institution will have to demonstrate that it complied with all reporting and due diligence obligations of the partner jurisdiction in which it maintains the financial account (see paragraphs 5.38 to 5.48).

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.

ABC Bank and subsidiary (S) are listed financial institutions.

Under the Agreement and Part XVIII:

- ABC Bank in Toronto and its subsidiary (S) will be Canadian financial institutions and will report to the CRA;
- foreign subsidiary (D) and foreign branch (F) will be classified under the Agreement as partner jurisdiction financial institutions and will report according to the rules in their respective jurisdictions;
- foreign branch (X) will be a nonparticipating financial institution unless it undertakes the obligations required under the U.S. Treasury Regulations; and

- foreign branch (Y) is not a Canadian financial institution but will be subject to reporting requirements in the U.S.

Example B

Oceania Bank is a resident of Australia and has branch (Z) located in Montréal. Oceania Bank is a listed financial institution.

By virtue of its location in Canada, branch (Z) is considered a Canadian financial institution under the Agreement and Part XVIII and will report to the CRA.

Example C

Peter establishes a Canadian resident trust as a vehicle to hold financial assets for family estate planning purposes in Canada. The trust is settled with capital provided by Peter and it is not represented or promoted to the public. The trust is not a "listed financial institution" and is not a Canadian financial institution with due diligence and reporting obligations under Part XVIII. As such, the trust cannot represent itself as a financial institution to any financial institution at which it holds an account. Instead, it must classify itself as a passive or active NFFE in accordance with the circumstances (see paragraph 4.2).

3.42 An entity resident in Canada that does not satisfy the two above-referenced conditions is a NFFE (Chapters 4 and 9 of this guidance) or, a non-reporting Canadian financial institution (see paragraph 3.45).

Reporting v non-reporting Canadian financial institution

3.43 A Canadian financial institution will be either a reporting Canadian financial institution or a non-reporting Canadian financial institution. The distinction is important because Part XVIII obligations generally apply only to reporting Canadian financial institutions.

Note: There are a few scenarios in which a non-reporting Canadian financial institution must report to the CRA. One example is when an entity that is a financial institution with a local client base under paragraph A of section III of Annex II of the Agreement identifies a U.S. reportable account. In this case, the financial institution must report the account as a U.S. reportable account (unless the account is closed in the year, in which case, no reporting is required on the account or its closure).

3.44 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.

3.45 An 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. An 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 the Agreement was signed). Paragraphs (b) and (d) of the definition of NRCFI in subsection 263(1) of the ITA provide that a Canadian financial institution can determine whether:

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

3.46 If the financial institution decides not to make the determination, it will not be an NRCFI unless it has that status under paragraph C or D or paragraphs G to J of section III of Annex II of the Agreement or is an exempt beneficial owner.

Note: It is believed that most of the deemed-compliant FFI categories described in the U.S. Treasury Regulations will be of limited interest to

Canadian financial institutions because of the equivalent categories that are provided for in section III of Annex II of the Agreement.

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

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

3.48 Annex II of the Agreement treats the following entities as non-reporting Canadian financial institutions that do not have Part XVIII reporting obligations in Canada:

- 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 3.57 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 banks
- financial institutions with only low value accounts
- sponsored investment entities and controlled foreign corporations
- sponsored, closely held investment vehicles
- restricted funds
- labour-sponsored venture capital corporations prescribed under section 6701 of the *Income Tax Regulations (*ITR*)*
- 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 3.59 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 over 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.

It is important to note that certain Canadian financial institutions that do not have obligations under Part XVIII will have obligations under Part XIX. Please refer to Part XIX of the ITA and to the CRA Guidance on the Common Reporting Standard – Part XIX of the Income Tax Act.

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

3.49 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 the relevant U.S. Treasury Regulations in effect on February 5, 2014 (the date the Agreement was signed).

3.50 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 the relevant U.S. Treasury Regulations are expected to be of interest to very few Canadian financial institutions.

Deemed-compliant FFI

3.51 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".

3.52 For the purposes of Part XVIII, a Canadian financial institution is not required to determine whether it qualifies as a deemed-compliant FFI under the relevant U.S. Treasury Regulations.

3.53 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)).

3.54 Certified deemed-compliant FFIs include:

- nonregistering local banks (section 1.1471-5(f)(2)(i));
- financial institutions with only low value (that is, 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

3.55 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.

3.56 The Government of Canada, provincial, territorial and aboriginal governments in Canada, and municipal-level governments in Canada are regarded as non-reporting Canadian financial institutions under Part XVIII by virtue of qualifying as exempt beneficial owners, as set out under paragraph (c) of the definition of "non-reporting Canadian financial institution" in subsection 263(1) of the ITA. An agency or instrumentality of any such government is only a reporting Canadian financial institution if it is described in paragraph (m) of the definition of "listed financial institution" in subsection 263(1) of the ITA. Otherwise, it is a non-reporting Canadian financial institution.

Note: It is not considered of material importance if a government, agency or instrumentality referred to in this paragraph that is not a reporting Canadian financial institution classifies itself as an active NFFE for the purpose of attesting its status to a financial institution at which it holds an account.

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

3.57 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. Therefore, an exempt beneficial owner under section II of Annex II of the Agreement includes an entity that is for the purposes of the ITA:

- 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
- another superannuation, pension, or retirement arrangement.

3.58 A retirement compensation arrangement (referred to as an "RCA") is defined in subsection 248(1) of the ITA and is generally a plan or arrangement under which an employer or former employer makes contributions to a person that holds the funds in trust with the intent of eventually distributing them to the employee, former employee or other beneficiary on, after or in contemplation of the employee's retirement, loss of office or employment, or substantial change in services rendered. An RCA that is established in Canada and that provides for the distribution of funds to the employee on the employee's retirement, and not for other reasons, is considered to be an arrangement described in paragraph 3 of Article XVIII of the Convention and an exempt beneficial owner under section II of Annex II of the Agreement.

3.59 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 has no reporting obligations under Part XVIII. An entity is described in that paragraph if it is a trust, a

company, an organization, or another 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, a company, an organization, or another arrangement that is exempt from taxation and operates exclusively to administer or provide pension, retirement, or employee benefits.

3.60 The entities described in paragraphs 3.57 to 3.59 are regarded as non-reporting Canadian financial institutions under Part XVIII. (However, it is not considered of material importance if any such entity classifies itself as an active NFFE (as described in Chapter 4 of this guidance) for the purpose of attesting their status to a financial institution at which they hold an account.)

For the purposes of Part XIX, charities, religious organizations and other types of non-profit organizations can be treated differently.

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

Financial institution with a local client base

3.61 An 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 provisions in those Regulations. Therefore, 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.

3.62 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 will 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 tax withholding) 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" can be treated as a financial account for the purpose of determining whether the 98% test is satisfied.

For the purpose of applying paragraph 3.62, a financial institution can treat an account as being held by a resident of Canada if the residence address associated with the account is in Canada.

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 an 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 who 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 it must close the account.

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

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 according to 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. When 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 it must 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, or a non-reporting Canadian financial institution referred to in section III of Annex II of the Agreement so long as its business is not the same as the first-mentioned financial institution).

   An investment entity will not be considered a member of an expanded affiliated group as a result of contributing seed capital (that is, an initial investment that is intended as a temporary investment) by a member of the group if all of 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.
- 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

3.63 An 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.

3.64 Therefore, 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 is operated without 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 (for example, 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 apply for an account without creating the account before there is 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

3.65 An NRCFI includes a financial institution that satisfies all of the following requirements:

1) The financial institution is not an investment entity.
2) 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).
3) 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, do 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

3.66 An NRCFI includes a financial institution that is described in subparagraph D(1) or D(2) of section III of Annex II of the Agreement, as 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

3.67 An NRCFI includes a financial institution that satisfies the requirements set out in paragraph E of section III of Annex II of the Agreement.

3.68 The following requirements must be satisfied to qualify:

1) The financial institution must be an investment entity that is not a U.S. qualified intermediary, a withholding foreign partnership, or a withholding foreign trust.
2) The financial institution does not hold itself out as an investment vehicle for unrelated parties.
3) 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).
4) The sponsoring entity is a reporting U.S. financial institution, a 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).
5) 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 funds

3.69 An NRCFI includes a financial institution that qualifies as a restricted fund as described in the 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 gives 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 entity classifications

4.1 Determining the proper classification of an entity and the obligations it has under Part XVIII requires an understanding of certain terminology introduced by the reporting regime. Moreover, financial institutions need to understand the various classifications into which they and their account holders, their affiliates, and others can fall. This chapter describes key terms and entity classifications to help readers understand 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). An entity resident in Canada is not a NFFE if it is a reporting Canadian financial institution or a non-reporting Canadian financial institution within the meaning of Part XVIII. (Part XVIII clarifies which financial institutions have Part XVIII obligations in Canada without modifying the definition of financial institution for any other purpose.) An entity that is not a resident of Canada is a financial institution if it is classified as such in its

jurisdiction of residence for the purposes of enhanced information exchange with the U.S.

4.3 There are two types of NFFEs: active and passive. The distinction is important since a reporting 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 is defined as any NFFE that is not an active NFFE or a withholding foreign partnership or withholding foreign trust under the 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 fiscal period is passive income and less than 50% of the assets held by the NFFE during the preceding fiscal period are assets that produce or are held for the production of passive income (see paragraph 4.9 for the definition of passive income).
- The stock of the NFFE is regularly traded on an established securities market (see paragraph 4.18 for the definition of 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.

  Note: Not all classes of shares of a NFFE are required to be regularly traded for the stock of a NFFE to be considered

"regularly traded" for the purposes of this test so long as the creation or existence of a particular class of shares did not have the principal purpose of causing the NFFE to meet this criterion.

- 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.
- All or 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, a venture capital fund, a 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, a business league, a chamber of commerce, a labour organization, an agricultural or horticultural organization, a 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 a non-charitable entity other than according to the conduct of the entity’s charitable activities, as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property that the entity has purchased.
  - 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 the information provided in Chapters 5, 9 and 12 of this guidance.

Passive income

4.9 Passive income is not defined in the Agreement or Part XVIII. The CRA views the term "passive income" will generally include income from the mere holding of property, such as:

- dividends;
- interest;
- income equivalent to interest;
- rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFFE;
- annuities;
- the excess of gains over losses from the sale or exchange of financial assets that gives rise to the passive income described previously;
- the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets;
- the excess of foreign currency gains over foreign currency losses;
- net income from swaps; and
- amounts received under cash value insurance contracts.

4.10 Passive income will not include, in the case of a NFFE that regularly acts as a dealer in financial assets, any income from any transaction entered into in the ordinary course of such dealer’s business as such a dealer.

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

Financial asset

4.12 The term "financial asset" includes:

- a security, such as:
  - a share of the capital stock of a corporation,
  - an income or capital interest in a widely held or publicly traded trust,
  - a note, bond, debenture, or other evidence of indebtedness,
- a partnership interest;
- a commodity;
- a swap, such as:
  - interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements,
- an insurance contract or annuity contract; or
- any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract.

4.13 The term "financial asset" includes any assets that can be held in an account maintained by a financial institution with the exception of a non-debt, direct interest in real or immovable property.

The term "financial asset" has the same meaning as the term "financial instruments".

Nonparticipating financial institution (NPFI)

4.14 For the 2015 and 2016 calendar years, reporting Canadian financial institutions must report certain payments made to financial accounts held by nonparticipating financial institutions (NPFIs) (see paragraphs 12.45 to 12.51). For the purposes of the Agreement and Part XVIII, an NPFI is a financial institution that is not FATCA compliant. This situation will arise when:

- 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 an FFI agreement with the IRS; or
- the financial institution is listed by the IRS as being an NPFI after the procedures for significant non-compliance under an intergovernmental agreement have been followed.

4.15 For the above calendar years, no reporting Canadian financial institution has been classified as an NPFI by the IRS as a result of significant non-compliance.

4.16 For details on reporting requirements related to NPFIs, see the information in Chapters 5, 6, 9, and 12 of this guidance.

Related entity

4.17 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:

- in the case of a corporation, more than 50% 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;
- in the case of a partnership, interest as a member of the partnership that entitles the member to more than 50% of the income or loss of the partnership, or of the assets (net of liabilities) if the partnership were to cease to exist; and
- in the case of a trust, an interest as a beneficiary with a fair market value that is greater than 50% of the fair market value of all interests as a beneficiary under the trust.

Established securities market

4.18 The term "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.

Chapter 5 – Financial accounts and account holders

5.1 Under Part XVIII, 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 categorize financial accounts.

Financial accounts

5.2 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.

5.3 In addition, the list of accounts in the definition of financial account is illustrative rather than exhaustive. For example, a financial account maintained by a financial institution includes a client account or file with an entity engaged in the business of dealing in securities or any other financial instrument, or to provide portfolio management or investment advising services.

5.4 When a financial institution is acting as a broker and simply executing trading instructions, or is 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 of receiving and transmitting such instructions, as a financial account under Part XVIII (for example, 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.

The definition of financial account in Part XVIII differs from the definition of financial account in Part XIX but the results are intended to be the same. It is therefore acceptable for a financial institution to use the definition of financial account in Part XIX for the purposes of Part XVIII.

5.5 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, or held by, an RRSP, a RRIF, or a tax-free savings account (TFSA) are not treated as financial accounts (and are not subject to any reporting) under the Agreement (see paragraph 5.6 for the list of excluded accounts).

Products that are not financial accounts

5.6 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);
- registered retirement income funds (RRIFs);
- pooled registered pension plans (PRPPs);
- registered pension plans (RPPs);
- tax-free savings accounts (TFSAs);
- registered disability savings plans (RDSPs);

- registered education savings plans (RESPs);
- deferred profit-sharing plans (DPSPs);
- 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 ITR;
- eligible funeral arrangements;
- escrow accounts – accounts 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 into 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 any amount owing 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, the seller, the lessor, or the lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or when 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; or
    - 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 it would be if it were established in that partner jurisdiction and maintained by a partner jurisdiction financial institution in that partner jurisdiction.

Important notice

Interim treatment of NEW First Home Savings Accounts (FHSA) under Part XVIII

The FHSAs are under consideration for being added to the list of the excluded accounts described in Annex II of the Agreement. These accounts do not need to be reviewed, identified or reported at this time.

5.7 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 will be posted.

5.8 When a financial account is held by an intermediary other than a financial institution (for example, a law firm) that is not described in paragraph

5.6 but is an account holding, on a pooled basis, the funds of underlying clients of the intermediary where:

- the only person listed or identified on the financial account with the financial institution is the intermediary; and
- the disclosure or passing by the intermediary of its underlying clients' information to the financial institution contravenes Canadian law,

the financial institution is required to undertake the due diligence procedures only in respect of the intermediary. The same applies in connection with any client trust account held by a lawyer in trust for a single client in connection with legal services if the above-referenced conditions are satisfied and the lawyer's actions in connection with the opening, use and management of the account are regulated by a law society in Canada.

Maintaining a financial account

5.9 To be a financial account, the account must be maintained by a financial institution.

5.10 Determining whether a financial account is a depository account, a custodial account, or another 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.

5.11 For example, a financial account can be in the form of:

- a depository account;
- a custodial account;
- a cash value insurance contract;
- an annuity contract;
- an equity or debt interest; or
- a client name account (see Chapter 10 of this guidance).

5.12 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.

5.13 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). See Chapter 10 of this guidance for more details on this relationship.

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

5.15 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.

5.16 A client name account is 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 (see Chapter 10 of this guidance).

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

Centralized facilities for the clearing, settlement and deposit of securities

5.18 In Canada, an entity designated under federal legislation to provide centralized facilities for the clearing, settlement and deposit of securities, commonly referred to as a CSD, will not be treated as maintaining financial

accounts. The participants of Canadian securities settlement systems that hold interests recorded in the CSD are either financial institutions in their own right, or they access the system through a financial institution. It is these financial institutions that maintain the accounts and it is these participants that are responsible for undertaking any reporting obligations. This treatment will also apply to a Canadian entity which is a direct or indirect subsidiary used solely to provide services ancillary to the business operated by that CSD (CSD Related Entity). The relationship between the securities settlement system and its participants is not a financial account and accordingly the CSD and any CSD related entity is not required to undertake any reporting required in connection with interests held by, or on behalf of, participants. Notwithstanding the foregoing, the CSD can report on behalf of such participants in respect of interests recorded as a service provider.

Reportable accounts

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

5.20 A financial account is a U.S. reportable account if it is identified as being held by one or more specified U.S. persons or by a passive NFFE with one or more controlling persons who is a specified U.S. person. If a financial institution maintains no such accounts, it will have no reporting obligations under Part XVIII (unless it makes certain payments to a financial account of an NPFI in 2015 or 2016) see paragraphs 12.45 to 12.51.

5.21 A specified U.S. person is defined as any U.S. person other than:

- a corporation the stock of which is regularly traded on one or more established securities markets;
- any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in the first bullet;

- the United States or any wholly owned agency or instrumentality thereof;
- any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;
- any bank as defined in section 581 of the U.S. Internal Revenue Code;
- any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;
- any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the U.S. Investment Company Act of 1940;
- any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;
- any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;
- a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State thereof;
- a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or
- any tax-exempt trust under a plan that is described in section 403(b) or section 457(b) of the U.S. Internal Revenue Code.

5.22 A U.S. person means:

- a U.S. citizen or resident individual,

- a partnership or corporation organized in the U.S. or under the laws of the U.S. or any State thereof,
- a trust if a court within the U.S. would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and one or more U.S. persons have the authority to control all substantial decisions of the trust, or
- an estate of a decedent that is a citizen or resident of the U.S.

Note: This paragraph shall be interpreted in accordance with the U.S. Internal Revenue Code.

5.23 The due diligence procedures that must be followed to identify U.S. reportable accounts are discussed starting in Chapter 6 of this guidance.

Financial account types in more detail

Depository account

5.24 A depository account is any commercial, checking, savings, or an account that is evidenced by a certificate of deposit, investment certificate, certificate of indebtedness, or another similar instrument maintained by a financial institution in the ordinary course of a banking or similar business.

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

- an account the principal 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 another form of financial account) when the financial institution maintaining the account has policies and procedures in place to prevent an account balance on the credit card 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, or other charges are made to the account (for example, as a result of additional

purchases) within 60 days of that limit having been exceeded. A credit balance does not include credit balances in relation to disputed charges but does include credit balances resulting from refunds of purchases;

- a reloadable payment card; and
- an amount held by an insurance company under a guaranteed investment contract or similar agreement to pay or credit interest thereon.

5.26 The account does not have to be an interest-bearing account to be a depository account.

5.27 Amounts held by an insurance company awaiting payment in relation to a cash value insurance contract the term of which has ended will not constitute a depository account. In addition, negotiable debt instruments that are traded on a regulated over-the-counter market and distributed and held through financial institutions are generally considered financial assets, not depository accounts.

Custodial account

5.28 A custodial account is an account (other than an insurance contract or an annuity contract) that holds one or more financial assets (see financial assets in paragraph 4.12) for the benefit of another person.

5.29 Cash value 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. When they are assets in a custodial account, the insurer will need to provide the custodian with the cash value/surrender value of the contracts for any due diligence and reporting required under Part XVIII.

5.30 A custodial account does not exist just because a financial institution holds shares in a corporation in connection with the administration of the corporation's (or related corporation's) employee stock purchase plan.

Cash value insurance contract

5.31 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.

5.32 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 the amount insured, or a correction of an error in relation to the premium due.

5.33 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.

5.34 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

5.35 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 according to 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.

5.36 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; and
- contracts of reinsurance between two insurance companies in respect of one or more annuity contracts.

5.37 An annuity contract purchased under an RRSP, a RRIF, an RPP, a PRPP, a 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 does not have to be reviewed or reported.

Equity or debt interests

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

5.39 The term "equity interest" is defined in subparagraph 1(v) of Article 1 of the Agreement.

5.40 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.

5.41 In the case of a trust that is a financial institution, an equity interest means 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.

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

Note: For these purposes, a beneficiary who receives a discretionary distribution from the trust will only be treated as a beneficiary of the trust if such person receives a distribution in the calendar year or other appropriate reporting period (for example, either the distribution has been paid or is made payable to the beneficiary). A contingent beneficiary will be treated similarly.

Equity or debt interests in an investment entity

5.43 When 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.

5.44 An exchange traded fund 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 exchange traded funds trade like individual stocks on an established securities markets.

5.45 If an investment dealer or other financial institution intermediates the purchase for a client of a unit in an exchange traded fund or a closed-end fund (in the remainder of this paragraph, the term "ETF" is used to refer to both), 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 10.10 to 10.15 may be of interest.

Equity or debt interests in other cases

5.46 Under the Agreement, when 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 to avoid reporting or withholding according to the Agreement.

5.47 The term "U.S. source withholdable payment" means a payment from a U.S. source that is subject to withholding under the relevant U.S. Treasury Regulations.

5.48 An equity or debt interest in a financial institution is treated 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 (see paragraph 4.18).

Account holders

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

5.50 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.

5.51 However, if a person (other than a financial institution) holds an account for the benefit of another person (for example, as agent or as 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. For these purposes, the financial institution can rely on information in its possession (including information collected pursuant to AML/KYC Procedures), based on which it can reasonably determine whether a person is acting for the benefit or account of another person.

Note: Where a financial account is opened by or on behalf of a child and the child is considered the account holder, the parent or the legal guardian can complete and sign the self-certification form on behalf of the child.

"In trust for" accounts

5.52 Many financial institutions open accounts under an "in trust for" (ITF) convention but there is no consistent industry approach to ITF account naming conventions. An ITF account naming convention is often used to recognize a stated intent by an account opener to commit something to another without any legal obligation to actually do so. In such cases, the person identified as the holder of the account would not be considered to be holding the account for the benefit or account of another person.

Example

A parent in the absence of any formal trust or fiduciary arrangement opens a bank account for a child without relinquishing any control over the account. The financial institution opens the account using the ITF naming convention. An ITF designation is not, in of itself, cause for the financial institution to treat the child as the account holder; the parent would be the account holder.

Accounts held by partnerships

5.53 When 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 estates

5.54 When an 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.

5.55 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 a formal notification of the account holder's death, i.e., a copy of the deceased's death certificate or will. The financial institution must treat the account of the deceased person as having the same status that it had prior to the death of the account holder until the date it obtains a formal notification. Once such notification is received, an account that is held solely by the estate of the deceased individual will not be considered a financial account in the year the notification is received or in subsequent years.

5.56 In the case where a deceased person jointly held an account with another person and upon his or her death, their entitlement automatically transfers to the surviving joint holder or holders, the account would retain its status as a financial account and be subject to due diligence and reporting obligations until the time the financial institution receives a formal notification of the death. Where the surviving account holder is a specified U.S. person, the account will remain a U.S. reportable account. However, where the surviving account holder is not a specified U.S. person, the account will not be required to be reported in the year a formal notification of the death is received.

Joint accounts

5.57 When an account is jointly held, each of the joint holders is considered an account holder for the purposes of Part XVIII. 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.

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

Holders of cash value insurance contracts and annuity contracts

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

5.60 When 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.

5.61 When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder.

Chapter 6 – General requirements

Due diligence general requirements

6.1 Reporting Canadian financial institutions must comply with verification and due diligence procedures under Part XVIII in connection with the accounts they maintain. This is the case regardless of whether the financial institution is subject to other regulatory requirements, such as having to

complete due diligence related to AML/KYC Procedures and Part XIX. The required procedures under Part XVIII are, in many respects, determined by whether a particular account is:

- an individual or an entity account;
- a preexisting or a new account; or
- a lower value or a high value account.

6.2 Due diligence is required to identify U.S. reportable accounts and certain payments to nonparticipating financial institutions (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 (see paragraph 7.24 for the list of U.S. indicia); and/or
- request that account holders self-certify their status.

6.3 An account is treated as a U.S. reportable account from the date it is identified as such pursuant to the due diligence procedures. Once a financial account is identified as a U.S. reportable account, the information relating to that account is required to be reported for the current and all subsequent years unless the account ceases to be a U.S. reportable account (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).

6.4 An account would no longer be a U.S. reportable account when:

- the account holder ceases to be a specified U.S. person;
- the account is closed or transferred to another financial institution in its entirety;
- the account becomes an exempt account; or
- the financial institution becomes a non-reporting Canadian financial institution.

6.5 A financial institution can be asked to clarify the rules for determining a U.S. person. These rules are complex, and financial institutions are not expected to provide information on all aspects of U.S. tax residency. If an account holder asks for such a clarification, a financial institution can refer the account holder to U.S. government sources, such as the IRS website or U.S. Citizenship and Immigration Services. It is the responsibility of account holders to determine whether they are U.S. persons (see paragraph 7.82).

6.6 This chapter discusses certain common concepts that support the due diligence and identification processes that are covered in more detail in Chapters 7, 8 and 9 of this guidance.

Service Providers

6.7 A financial institution can rely on one or more service providers to meet its obligations under Part XVIII; 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 Part XVIII, even if it is a financial institution in its own right.

Documentation collected by other persons

6.8 A financial institution can rely on documentation collected by an agent (including an insurance advisor, banking consultant, a fund advisor for mutual funds, pooled funds, hedge funds, or a private equity group) of the financial institution. The agent can retain the documentation as part of an information system maintained for one or more financial institutions provided that, under the system, any financial institution on behalf of which the agent retains documentation can easily access the data regarding the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself) and its validity, and must allow such financial institution to easily transmit data, either directly into an electronic system or by providing such information to the agent, regarding any facts of which it becomes aware that can affect the reliability of the documentation. Where the

agent retains the documentation as part of an information system maintained on behalf of multiple financial institutions, an account will only be a new account to the extent that it is a new account to the agent as the status of a financial account as a new account is determined by reference to whether it is new to the agent (for example, a fund manager), and not by whether it is new to the financial institution (for example, a fund managed by the fund manager).

6.9 The financial institution must be able to establish, to the extent applicable, how and when it has transmitted data regarding any facts of which it became aware that can affect the reliability of the documentation and must be able to establish that any data it has transmitted has been processed and appropriate due diligence has been exercised regarding the validity of the documentation. The agent must have a system in effect to ensure that any information it receives regarding facts that affect the reliability of the documentation or the status assigned to the account holder are provided to all financial institutions for which the agent retains the documentation. For example, where a fund manager acts as agent on behalf of the fund in respect of all general administrative functions on behalf of the fund, including account opening, documentation and due diligence procedures, the fund will be considered to have transmitted all data regarding any facts of which it became aware that can affect the reliability of the documentation and to have established that any data it has transmitted has been processed.

6.10 Under paragraphs 6.8 and 6.9 above, an investment fund can rely on documentation collected by a fund manager as agent for the fund. Further, a fund manager can retain the documentation as part of an information system maintained for multiple financial institutions as long as all the financial institutions for which the fund manager retains the documentation can easily access the data and information related to the documentation, update the data for facts that can affect the reliability of the documentation and establish how and when data has been transmitted to the fund manager. This will allow a fund manager to document the account holder once and use this information for all financial accounts maintained for the account holder by the

funds that the fund manager manages therefore avoiding duplicative effort of documenting the account holder each time it buys units in a different fund managed by the same manager.

Record keeping

6.11 A financial institution must establish, maintain, and document the due diligence procedures it uses to identify U.S. reportable accounts. Rules in respect of keeping records, including its forms and the retention period are discussed in the following paragraphs.

6.12 A financial institution must keep records that were obtained or created in connection with its reporting 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. The relationship manager enquiry is discussed in Chapter 7 of this guidance.

Note: Documentation can be shared and used in relation to more than one financial account.

6.13 A financial institution must retain records used to support an account holder's status for at least six years after the end of the year in which the status was established. A self-certification must be retained for a minimum of six years from the date that the last financial account to which it relates was closed. All other records must be retained to the end of the last calendar year in respect of which the record is relevant.

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

6.15 A financial institution can receive documentary evidence in the following manner:

- a form or document scanned and received electronically, for example, an image embedded in an e-mail;
- a portable document format (.pdf) attached to an e-mail;
- a facsimile; or
- as electronic signature;

unless it knows the document was transmitted by a person not authorized to do so or it has reason to believe it is not a true copy.

6.16 A financial institution can accept an electronic signature of the account holder (or person formally authorized to sign). A financial institution can also accept a voice recording or digital footprint as long as it is captured by the financial institution in a manner that can credibly demonstrate that the self-certification was positively acknowledged.

6.17 When for the purposes of AML/KYC Procedures in Canada a 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;
- the type of document and jurisdiction of issue (for example, a Canadian passport, a California driver's licence); and
- the document's identification number where present (for example, passport number).

Note: A notation in the record that a self-certification has been reviewed cannot be relied upon.

Form of self-certification

6.18 A financial institution is required to obtain a self-certification to establish whether an account holder is a specified U.S. person or to clarify the

status of a particular entity. This will generally be the case with respect to the opening of a new account and can apply to a preexisting account and when there is a change in circumstances to an existing account.

6.19 A self-certification is a declaration by the account holder that provides the account holder's identification details, tax residency, and any other information that may reasonably be required by the financial institution to fulfil its due diligence and reporting obligations.

6.20 A self-certification can be obtained verbally, electronically or on a stand-alone document, or it can be part of a more comprehensive document used by a financial institution in connection with the account opening as long as it includes an element allowing the account holder to positively acknowledge by signature or other means that the self-certification is valid. (For example, the self-certification can be part of the account opening documentation.)

6.21 Self-certification forms have been developed by the CRA to assist financial institutions in establishing the status of account holders under Part XVIII and Part XIX. The self-certification forms include forms that have been combined for the purposes of Part XVIII and Part XIX:

- RC518 - Declaration of Tax Residence for Individuals – Part XVIII and Part XIX of the Income Tax Act
- RC519 - Declaration of Tax Residence for Entities – Part XVIII and Part XIX of the Income Tax Act

6.22 Financial institutions that are required to perform due diligence procedures under both Part XVIII and Part XIX are encouraged to use these CRA forms in connection with establishing an account holder's status. However, there is no requirement to use them.

6.23 IRS forms (such as the W-8 and W-9 series) can also be used in connection with establishing an account holder's status, but there is no requirement to use them. (Some industry participants may already rely on W-8 forms to ensure that their clients can receive the benefits provided by the

Convention between Canada and the United States with Respect to Taxes on Income and on Capital.)

6.24 Financial institutions that develop their own forms must ensure that their forms appropriately capture all the proper attestations and information required by Part XVIII. For example, the self-certification must be designed to ask the account holder and its controlling persons where required (in the case of an entity account) to declare their tax residency. Also, regardless of the approach adopted, a financial institution must address directly the question of U.S. citizenship or clearly indicate that a U.S. citizen is a specified U.S. person. Examples of the types of questions and instructions that are acceptable are provided in the CRA self-certification forms.

6.25 As stated in paragraph 6.18, a self-certification is generally required upon opening a new account. It can also apply to a preexisting account and when there is a change in circumstances to an existing account. The opening of a new account is a process that can take different forms (see paragraphs 8.32 to 8.45). The account opening process will typically be completed when the account holder is able to transact in the account. For more information on when a self-certification is required for a preexisting account, new account and when there is a change in circumstances, see Chapters 7 to 9 of this guidance.

6.26 Where a self-certification is obtained during the account opening process but validation of the self-certification cannot be completed during that time, the self-certification should be validated as quickly as feasible, and in any case, within 90 days from when the account is opened.

6.27 There are limited instances where, due to the specificities of a business sector, it is not possible to obtain a self-certification during the account opening process, for example, where an insurance contract was assigned from one person to another, or where an investor acquires shares in an investment trust on the secondary market. In such circumstances, the self-certification should be both obtained and validated as quickly as feasible, and in any case, within 90 days from when the account is opened.

6.28 Given that obtaining and validating a self-certification is a critical aspect of ensuring that Part XVIII is effective, a financial institution must take effective measures to ensure the collection and validation of the self-certification as soon as possible. Measures that foresee the closure or freezing of the account can constitute an "effective measure".

6.29 In all cases, financial institutions must ensure that they have obtained and validated the self-certification in time to be able to meet its due diligence and reporting obligations. A financial institution that fails to obtain and validate a self-certification when required or to take effective measures to obtain and validate a self-certification is liable to a penalty of up to $2,500 for each such failure under subsection 162(7) of the ITA, as mentioned in paragraph 12.53.

6.30 More information on the validation of self-certifications is found in Chapters 7 to 9 of this guidance.

Confirming the reasonableness of self-certifications

6.31 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.

6.32 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 and its controlling persons where required (in the case of an entity account) in connection with the account opening, including any documentation obtained for purposes of the AML/KYC Procedures and any information that an account holder voluntarily provides to it.

Example

A financial institution has received a new account opening instruction from an individual which includes a self-certification regarding the account holder's tax residence status. The financial institution's AML/KYC Procedures include 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 and status of the individual.

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

6.33 The Agreement exists in the context of the U.S. having concluded similar agreements with other jurisdictions. As such, there is an interest to promote consistent applications across jurisdictions. However, jurisdictions are separately implementing such agreements into their own domestic law and this can give rise to differences in domestic implementation. Therefore, in the cross-border context, reference needs to be made to the law of the implementing jurisdiction. For example, the question can arise as to whether a particular entity that is resident in a particular partner jurisdiction that has a financial account with a Canadian financial institution meets the definition of a "financial institution". In such a case, the classification of the entity ought to be resolved under the law of the partner jurisdiction in which the entity is resident and a Canadian financial institution should not treat the self-certification as unreliable or incorrect just because a non-resident entity declares a status other than it would be if determined under Part XVIII.

Aggregation Rules

6.34 To determine whether accounts are subject to review and therefore reportable, a financial institution can be required to aggregate accounts held by individuals and entities.

When do the aggregation rules apply to lower value accounts?

6.35 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.

6.36 The Agreement contemplates accounts being aggregated in the context of a computerized process, but only when the financial institution's current computerized systems link the accounts by reference to a data element (for example, a customer number or a taxpayer identification number (TIN)) and allow account balances or values to be aggregated. Subsection 263(4) of the ITA in conjunction with paragraph C of section VI of Annex I to the Agreement makes clear that a TIN, which includes a social insurance number (SIN), a business number (BN) or a trust account number, can be used for this purpose.

Note: Accounts are not considered linked just because they are connected as part of a broader account grouping, such as a household or family relationship.

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

6.38 When a system can link accounts by a data element and details of the balances are provided (for example, 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

6.39 If a product is exempt from being treated as a financial account, it should not 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 its information technology systems allow all

these holdings to be linked, the depository accounts are aggregated, but the RRSP is not.

Related entity accounts

6.40 When a computer system links accounts across related entities, the financial institution is required to aggregate the accounts when it considers whether any of the reporting thresholds apply. However, once a financial institution has considered the thresholds, it will be responsible for reviewing and reporting only on the accounts it holds.

Aggregation of preexisting individual accounts

6.41 For the purposes of determining the aggregate balance or value of accounts held by an individual to determine whether the financial account is a high value account, all accounts held by the individual including any high value account assigned to a relationship manager must be aggregated to the extent that the financial institution's computerized system can link the accounts by reference to a data element and allow the account balances or value to be aggregated.

6.42 The following examples illustrate outcomes 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 SIN:

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

The aggregation rules apply for the purposes of determining whether the balance of each preexisting individual account exceeds

US$50,000. Since 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 accounts 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 accounts 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 apply for the purposes of determining whether a balance or value of a preexisting individual account exceeds US$50,000. Since 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. No similar exemption is available to other types of financial accounts. Therefore, the depository account is not reportable, but the custodial account must be reviewed using the relevant due diligence procedures.

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. Therefore, it remains below the US$250,000 threshold and does not have to be reviewed if Company B designates the account.

The custodial account must be reviewed to determine if the account holder is a specified U.S. person because the aggregated balance exceeds US$50,000 and there is no exemption for the custodial account.

Example 5 – Application of the US$1,000,000 threshold to high value accounts

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 depository account with a balance of US$40,000
- a custodial account with a balance of US$980,000

The aggregation rules apply for the purposes of determining whether a balance or value of a preexisting individual account exceeds

US$1,000,000. Since the aggregated total exceeds US$1,000,000, the enhanced review procedures for high value accounts, including the relationship manager enquiry, apply to the custodial account to determine if the account holder is a specified U.S. person (see paragraphs 7.50 to 7.65).

However, the balance of the depository account is less than US$50,000 and is exempt from reporting. It therefore does not have to be reviewed.

Example 6 – Aggregation involving joint accounts

Two account holders have three depository accounts between them. Each has a deposit account and they share a joint deposit account. The accounts are maintained by the same financial institution and have the following balances:

- Client A US$35,000
- Client B US$15,000
- Joint account US$30,000

A data element in the financial institution's computer system allows the joint account to be associated with both Client A and Client 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 Client A is US$65,000 and for Client B is US$45,000.

Since the amounts after aggregation exceed the thresholds of US$50,000 with respect to Client A, Client A's account must be reviewed to determine if the account holder is a specified U.S. person. And, since the aggregated amount is below those thresholds with respect to Client B, there is no requirement to review Client B.

Example 7 – Aggregation of negative balances

Two account holders have three depository accounts between them. Each has a deposit account and they share a joint deposit account. The accounts are maintained by the same financial institution and have the following balances:

- Client A US$53,000
- Client B US$49,000
- Joint account (US$8,000)

The accounts can be linked and therefore must be aggregated. But, for the purposes of aggregation, the negative balance of the joint account is treated as nil. In this example, after applying the threshold of US$50,000, Client A's account has to be reviewed but Client B's does not.

Aggregation of preexisting entity accounts

6.43 For purposes of determining the aggregate balance or value of accounts held by an entity, all accounts held by the entity must be aggregated when 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 data element and allow the account balances or values to be aggregated.

6.44 The following examples illustrate outcomes 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 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 and its computer system allows the account balances to be aggregated.

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

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

Entity Z's account has never exceeded US$1,000,000.

Bank X applies the relevant thresholds and its computer system allows the account balances to be aggregated.

Where there is no relationship manager, an account held by a person can only be aggregated with other accounts held by that person.

In this example, no account is required to be reviewed or reported since the aggregation rules do not apply to cause any account to exceed the relevant thresholds that trigger review.

Example 10 – Aggregation of preexisting entity accounts

Individual A has a custodial account with Bank X. Individual A also controls 100% of Entity Y and 50% of Entity Z. Entity Y holds a custodial account and Entity Z holds a depository account, (both

accounts are with Bank X). A relationship manager is assigned to Individual A. The balances are as follows:

- Individual A custodial account US$ 35,000
- Entity Y custodial account US$1,180,000
- Entity Z depository account US$ 110,000

Entity Z's depository account has never exceeded US$1,000,000.

Bank X must make enquiry of the relationship manager assigned to Individual A to establish whether the manager knows of any accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by Individual A.

The relationship manager knows Individual A is the controlling person of Entity Y and Entity Z and, therefore, is required to aggregate the three accounts. Since the aggregated balance of Individual A's account exceeds US$1,000,000, Individual A's account is a high value account subject to the enhanced review procedures (see paragraphs 7.50 to 7.65). The value of Entity Y's account exceeds the US$250,000 threshold and must be reviewed whereas Entity Z's account is not required to be reviewed as its balance does not exceed that threshold.

Aggregation of sponsored funds

6.45 In the context of a family of funds, accounts can 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.

6.46 A "family of funds" is not a term defined in the ITA. However, it generally means a group of mutual funds offered by one investment or fund company. Generally, the constituent funds covers a wide range of fund

categories and investment objectives, also referred to as a "mutual fund family" or simply a "fund family".

6.47 The sponsor (typically a fund manager) of a family of funds acts on behalf of the funds and stands in their place to meet the obligations of the funds under Part XVIII.

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

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

6.50 For example, when 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).

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

Separate account reporting

6.52 If the aggregation rules result in two or more accounts being subject to review and the review determines that the accounts are reportable, each account must be reported individually on a Part XVIII Information Return. A financial institution must not consolidate the accounts for reporting purposes.

Example 11 – 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. Therefore, all three accounts are reportable. Bank Z must report each account individually and not consolidate the information into a single information return for reporting purposes.

Currency conversion

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

6.54 When accounts are denominated in a currency other than U.S. dollars, the applicable monetary thresholds set out in the Agreement must be converted into the currency in which the accounts are denominated before determining whether 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 or a reputable and widely-used financial service.

Example

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 CAN$47,619 (US$50,000/1.0500).

However, a financial institution can treat the Canadian dollar at par with the U.S. dollar in respect of a particular year when the Canadian dollar was, at all times in that year, valued at less than the U.S. dollar.

6.55 In determining whether a preexisting account meets a threshold, the relevant rate to use is the spot rate on June 30, 2014 (or, in the case of an

insurance contract or an annuity contract, the most recent contract anniversary date). In determining whether a preexisting account continues to meet the threshold in subsequent years or a new account meets or continues to meet a threshold, the relevant rate to use is the spot rate on the last day of the calendar year or other appropriate period. In the case of a closed account, the relevant rate to use is the spot rate on the date the account is closed.

6.56 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.

6.57 The method of conversion must be applied consistently.

Chapter 7 – Preexisting individual accounts

Introduction

7.1 If a reporting 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 has to be reviewed given that certain exemptions exist, as explained below. If an individual account has to be reviewed, the financial institution must perform specific procedures to determine whether the account holder is a specified U.S. person. When the financial institution determines that the account holder is a specified U.S. person, reporting obligations to the CRA will exist in connection with the account.

Accounts that are not required to be reviewed under Part XVIII may have to be reviewed under Part XIX. See Guidance on the Common Reporting Standard – Part XIX of the Income Tax Act.

7.2 This chapter provides guidance on the review procedures and reporting requirements in respect of preexisting individual accounts. New individual accounts are covered in Chapter 8 and entity accounts are discussed in Chapter 9 of this guidance.

Preexisting individual accounts

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

Note: See paragraph 8.10 for a description of when a new individual account can be treated as a preexisting account.

7.4 Preexisting individual accounts fall into one of following categories:

- accounts closed before July 1, 2014;
- account holder status previously determined under a Qualified Intermediary, Withholding Partnership, or Withholding Trust Agreement;
- accounts exempted by a monetary threshold;
- cash value insurance contracts and annuity contracts unable to be sold to U.S. residents;
- accounts subject to review;
- lower value accounts; and
- high value accounts.

Accounts closed before July 1, 2014

7.5 A financial institution is not required to perform review procedures on accounts that were closed before July 1, 2014 (see paragraphs 12.40 to 12.41 for account closures).

Account holder status previously determined

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

Threshold exemptions that apply to preexisting individual accounts

7.7 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.

7.8 When a financial institution does not designate any accounts, it must review all of its preexisting individual accounts.

7.9 A financial institution that wants to use any monetary threshold exemptions that can 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 of US$50,000 or less on June 30, 2014, on December 31, 2015, or on December 31 of a subsequent year;

- 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 an 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.

7.10 The aggregation rules as described in Chapter 6 of this guidance apply for the purposes of determining whether a financial account has to be reviewed, identified, or reported.

7.11 A financial institution can make selective use of the threshold exemption. 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.

7.12 A financial institution is not required to advise the CRA of whether it has designated an account. 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.

7.13 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 and annuity contracts

7.14 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.

7.15 The sale of contracts to U.S. residents will be considered effectively prevented if the issuing specified insurance company (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 licensed 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

7.16 When ownership of a preexisting cash value insurance contract or annuity contract is assigned to another person (referred to as an "absolute assignment" in the insurance industry), 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.

7.17 Once the Canadian insurance company becomes aware that an assignment has been made, it will need to perform due diligence procedures on the new account holder (see the procedures in Chapter 8 of this guidance).

Accounts subject to review

7.18 A preexisting individual account in respect of which a designation has not been made to rely on the monetary threshold exemptions will be reportable if the financial institution has identified U.S. indicia (see paragraph 7.24) and those indicia have not been cured by receiving a self-certification and/or documentary evidence as required by the specific circumstances.

7.19 If one or more U.S. indicia is discovered in connection with an account, reporting would not be required if the financial institution cures the indicia.

7.20 A financial institution must attempt to cure the indicia by applying the appropriate steps set out in paragraphs 7.30 to 7.47. If a financial institution is unable to cure the indicia, the financial institution is required to treat the account as a U.S. reportable account.

7.21 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.

7.22 Whether a depository account remains a reportable account is dependent on whether its balance is above US$50,000, the threshold for reporting. The reportability of an account can alter annually even if 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.

Lower value accounts

7.23 Generally, a lower value account is a preexisting individual account with a balance or value that is equal to or 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, 2015, or on December 31 of any subsequent year.

Electronic record searches for lower value accounts

7.24 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 a U.S. citizen;
- an unambiguous indication of a U.S. place of birth;
- a current U.S. mailing or residence address (including a P.O. Box);
- a current U.S. telephone number;
- standing instructions to transfer funds to an account maintained in the U.S. (regardless of who holds the account);
- a 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.

Effects of not finding any indicia for lower value accounts

7.25 When none of the indicia listed above are discovered through an electronic record search, no further action is required in respect of lower value accounts, until there is a change in circumstances that results in one or more U.S. indicia being associated with the account, or the account becomes a high value account.

Effects of finding indicia for lower value accounts

7.26 If any indicia described in paragraph 7.24 are detected through the electronic record search, or if there is a change in circumstances that results in one or more indicia being associated with the account, the financial institution must treat the account as a U.S. reportable account, unless the steps it is required to undertake to cure the indicia result in the account not being identified as a U.S. reportable account (see paragraphs 7.30 to 7.47). It is a mandatory requirement that a financial institution attempts to cure the indicia before determining that an account is a U.S. reportable account.

Note: Subsection 265(5) of the ITA does not require a financial institution to make any attempt to cure the indicium that is the identification of the account holder as a U.S. resident or a U.S. citizen. However, financial institutions may choose to cure that indicium by applying paragraph 7.29.

7.27 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 record 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 in connection with its obligations under Part XVIII of the ITA.

Curing indicia

7.28 "Curing indicia" is a term used to describe the actions required to be taken by a financial institution to know whether the indicia it discovers is to remain as the final determinant of whether the account holder is a U.S. resident or a U.S. citizen. The specific steps required to be undertaken to cure each indicium is discussed in the following paragraphs.

Identification as a U.S. resident or a U.S. citizen

7.29 When the indicium is an identification that the account holder is a U.S. resident or a U.S. citizen, the account must 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 nor a U.S. citizen; and

- evidence of the account holder's citizenship in a country other than the U.S. (for example, a passport or other government-issued identification).

Unambiguous U.S. place of birth

7.30 When the indicium found is an unambiguous indication of a U.S. place of birth, the account must 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 nor a U.S. citizen;
- evidence of the account holder's citizenship in a country other than the U.S. (for example, a passport or other government-issued identification); and
- a copy of the account holder's Certificate of Loss of Nationality of the United States (a "CLN") or a reasonable explanation of why:
    - the account holder does not have such a certificate despite having relinquished U.S. citizenship; or
    - the account holder did not obtain U.S. citizenship at birth.

7.31 In the context of an electronic record search, 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.

7.32 The CRA's views of what may be accepted as a reasonable explanation for not having a CLN despite relinquishing U.S. citizenship for purposes of Part XVIII and the Agreement are informed by certain practical realities and how changes in law over time would have influenced reasonable courses of actions taken by individuals.

7.33 Generally, it is the CRA's view that an explanation demonstrating a relinquishment of U.S. citizenship (other than by a renunciation before a U.S.

consular or diplomatic official) before June 4, 2004, and in accordance with the U.S. *Immigration and Nationality Act* (Title 8 of the U.S. Code) as it existed at the time of relinquishment, is sufficient to demonstrate a reasonable explanation as to why an account holder does not have a CLN. Financial institutions are not expected to be experts in U.S. nationality law; any such explanation accepted by a financial institution is accepted for the purposes of Part XVIII and the Agreement only and is not finally determinative of tax or nationality status.

7.34 Other reasonable explanations as to why an account holder does not have a CLN despite having relinquished U.S. citizenship include:

- they applied for a CLN or formally renounced their U.S. citizenship before a U.S. diplomatic or consular official and are waiting to receive the CLN;
- they applied for a replacement copy of a previously issued CLN that they lost and are waiting to receive it; or
- they made and are waiting to attend an appointment with a U.S. consular office to apply for a CLN in respect of a relinquishing act performed after June 3, 2004 (other than a formal renunciation before a U.S. diplomatic or consular official).

7.35 Once an account holder receives a CLN in one of these circumstances they are expected to provide a copy to the financial institution. Financial institutions should follow up with account holders who have given an explanation described in this paragraph in order to ensure that a full documentary record as described in paragraph 7.30 is maintained.

7.36 An account holder spending little time in the U.S. subsequent to being born in the U.S. and/or that is (or identifies as) a Canadian despite also being a U.S. citizen is not grounds upon which to accept an explanation as reasonable.

7.37 Financial institutions should not accept as reasonable any explanation which is unlikely or ambiguous in light of an account holder's actions. For

example, if a financial institution knows that the individual voted in an U.S. election or travelled from Canada to a country (other than the U.S.) under a U.S. passport after the date the account holder claims to have relinquished U.S. citizenship, the financial institution does not have to accept the explanation.

7.38 Financial institutions can accept as reasonable an explanation as to why an account holder did not obtain U.S. citizenship at birth if the individual can explain why, despite being born in the U.S., they were not subject to U.S. jurisdiction. This would include individuals born in the U.S. while one or both of their parents were in the U.S. as the head or member of a diplomatic mission.

Current U.S. address

7.39 When the indicium found is a current U.S. mailing address or residence address (including a U.S. P.O. 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 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

7.40 When the indicium found is one or more U.S. telephone numbers and these are the only telephone numbers associated with the account, 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 nor a U.S. citizen; and

- documentary evidence that establishes the account holder's non-U.S. status.

7.41 A telephone number is not considered a U.S. telephone number unless it is clearly identifiable as a U.S. telephone number (for example, 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 and a non-U.S. telephone number are associated with the account

7.42 When the indicium found is one or more U.S. telephone numbers and there is also a non-U.S. telephone number 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 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.

7.43 When the indicium found is a current standing instruction 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 the following:

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

- a written reasonable explanation to establish non-U.S. status.

7.44 There will be a standing instruction to transfer funds to an account 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.

7.45 However, instructions to make an isolated payment will not be a standing instruction even when given well in advance of the payment being made.

Effective power of attorney or signatory authority

7.46 When 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 nor a U.S. citizen; or
- documentary evidence that establishes the account holder's non-U.S. status.

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

7.47 When 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 nor a U.S. citizen; or
- documentary evidence that establishes the account holder's non-U.S. status.

High value accounts

7.48 A high value account is a preexisting individual account (other than a contract referred to in paragraphs 7.14 and 7.15) with a balance or value that exceeds US$1,000,000 on June 30, 2014, or on December 31, 2015, or on December 31 of any subsequent year.

7.49 The aggregation rules described in Chapter 6 of this guidance apply to determine whether the aggregate balance or value of a financial account exceeds the US$1,000,000 threshold.

Enhanced review procedures for high value accounts

7.50 Enhanced review procedures apply with respect to high value accounts. Financial institutions are required to apply:

- the electronic record search for high value accounts;
- a paper record search for high value accounts; and
- a relationship manager enquiry for high value accounts.

Electronic record searches for high value accounts

7.51 A financial institution must review its electronically searchable data for U.S. indicia listed in paragraph 7.24. 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 of the U.S.

Paper record searches for high value accounts

7.52 A paper record search is required unless the financial institution can access all of the following information from an electronic record 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;
- 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.

7.53 If a financial institution does not have this capacity or does not capture the above information electronically, a paper record search for 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 five 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 the 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.

7.54 In the context of a paper record search, a place of birth will only be considered an "unambiguous indication of a U.S. place of birth" if the U.S. is identified as the country of birth or if the information on the place of birth renders the U.S. the only possible place of birth without any form of review. For example, if "Georgia" is identified as a person’s place of birth (without reference to the U.S.), an "unambiguous indication of a U.S. place of birth" does not exist.

Relationship manager enquiry for high value accounts

7.55 In addition to the electronic and paper record searches described above, the enhanced review procedures require financial institutions to make certain enquiries of relationship managers. The term "relationship manager" is not defined in the Agreement or in Part XVIII. However, the CRA views a relationship manager as an officer or other employee of a financial institution who oversees or manages the financial accounts of particular account holders on an ongoing basis.

The information below reveals that the term "relationship manager" is considered to have the same meaning for purposes of Part XVIII and Part XIX.

7.56 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
- a high value account assigned to the relationship manager must be treated as a U.S. reportable account.

7.57 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. Therefore, 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.

7.58 A person that is a relationship manager is generally expected to be part of a sales team or otherwise be outward-looking toward 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.

7.59 Relationship managers typically offer a degree of ongoing care and attention toward high net worth account holders that 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 can 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.

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

7.61 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 asked to determine whether he or she knows of any more 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.

7.62 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 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.

7.63 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.

7.64 A financial institution must have appropriate communication channels and procedures in place to capture any change of circumstances in relation to a high value account that is made known to the relationship manager in respect of the account holder's status. The financial institution is required to establish and maintain a record of its procedures.

7.65 Notwithstanding the preceding paragraphs, a person will not be considered a relationship manager with respect to an account unless it has an aggregated balance of more than US$1,000,000.

Effects of not finding any U.S. indicia for high value accounts

7.66 When no indicia in paragraph 7.24 are discovered during the enhanced review procedures for high value accounts, and the account is not identified as being held by a U.S. resident or a U.S. citizen after making enquiries with the relationship manager, no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account.

Effects of finding U.S. indicia for high value accounts

7.67 When one or more indicia in paragraph 7.24 are discovered through the enhanced review procedures for high value accounts, or if there is a change in circumstances that results in one or more indicia being associated with the account, a financial institution must treat the account as a U.S. reportable account, unless the steps it undertakes to cure the indicia result in

the account not being identified as a U.S. reportable account (see paragraphs 7.30 to 7.47, with the understanding that an "in-care-of" address outside the United States and a "hold mail" address shall be treated as U.S. indicia and the cure is the same as for an "in-care-of" address in the U.S.).

7.68 A financial institution that finds U.S. indicia should 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 provided to allow 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.

Additional procedures applicable to high value accounts in subsequent years

7.69 Once a financial institution applies the enhanced review procedures to high value accounts, it is not required to re-apply such procedures, other than a relationship manager enquiry, to the same high value account in any subsequent year. Annual verifications with the relationship manager with respect to the account holder would suffice without there being a requirement for relationship managers to confirm on an account-by-account basis that they do not have actual knowledge that an account holder assigned to them is a specified U.S. person. It suffices that relationship managers be instructed to bring changes in circumstances to the attention of the appropriate officials within the financial institution responsible for Part XVIII reporting.

Change in circumstances

7.70 A change in circumstances includes any change that results in the addition of information relevant to an account holder’s status or otherwise conflicts with such account holder’s status. In addition, a change in circumstances includes any change or addition of information to the account or to any account associated with such account if such change or addition affects the status of the account holder, such as a U.S. address.

7.71 A change in circumstances is only relevant if the new information affects the status of whether the account holder is or is not a U.S. resident or U.S. citizen. For example, a person who has been identified as a Canadian resident provides the financial institution with details of an address change to the U.S. This is information that reveals that there has been a change in circumstances that may affect the status of the account holder.

7.72 If a change in circumstances is identified that results in one or more U.S. indicia being associated with the account, the financial institution must treat the account as a U.S. reportable account, unless the steps it undertakes to cure the indicia result in the account not being identified as a U.S. reportable account (see paragraphs 7.30 to 7.47). This may involve having to obtain a self-certification and / or other documentation from the account holder to establish whether the individual is a specified U.S. person. If, by the later of the last day of the relevant calendar year, or 90 days following the notice or discovery of such change, the account holder fails to provide the information requested, the financial institution must treat the account as a U.S. reportable account.

Relevance of records previously reviewed

7.73 A self-certification or documentary evidence that has been previously reviewed and is still maintained by the financial institution may be relied upon for purposes of curing indicia unless the financial institution knows or has reasons to know that the self-certification or documentary evidence is incorrect or unreliable. A document such as a driver's licence that has been previously reviewed and is still maintained does not lose its reliability for the purposes of curing the indicia just because it expired between the time it was earlier reviewed and the time due diligence to cure indicia is performed (for example, a driver's licence with an expiry date of December 31, 2013, that was reviewed by a financial institution earlier in 2013 and is maintained by it is not, by virtue of that expiry alone, ineligible to be relied upon by the financial institution in 2014).

7.74 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. resident or a U.S. citizen obtained a week before finding U.S. indicia will be significantly more reliable in curing that indicia compared to what would be the case if the certification were a year old. The time at which an earlier obtained self-certification or document becomes unreliable depends on the circumstances.

7.75 Documentary evidence or a self-certification with an expiry date (such as a W-8BEN, W-8BEN-E or other similar form) do not become invalid for purposes of Part XVIII merely because it expires subsequent to a financial institution having received it.

Validation of self-certification

7.76 Earlier sections of this chapter describe various situations in which a financial institution can request a self-certification from an account holder.

7.77 A self-certification must include a clear declaration from the account holder as to whether he or she is a specified U.S. person.

7.78 If the self-certification obtained establishes that the account holder is not a specified U.S. person, the financial institution is not required to treat the account as a U.S. reportable account unless the financial institution knows, or has reason to know, that the self-certification is unreliable.

7.79 The self-certification is valid if it is signed (or otherwise positively affirmed) by the account holder, it is dated, and it contains the account holder's:

- Name
- Residence address
- Jurisdiction of residence for tax purposes
- U.S. TIN (if the account holder is a specified U.S. person)
- Canadian TIN (if applicable)

Note: A self-certification is not invalid simply because of a missing TIN. A TIN may be collected through other means. However, when the account holder is a specified U.S. person, the financial institution must use reasonable efforts to obtain the U.S. TIN in order to report it on the Part XVIII Information Return.

7.80 Although there is no requirement for a financial institution to report a U.S. TIN (for example, a social security number or an employer identification number) for preexisting accounts before 2017, having a specified U.S. person furnish the U.S. TIN when he or she self-certifies may be a desirable approach considering that this information is required for preexisting accounts for the 2017 and subsequent reporting periods. It should be noted that after 2016, an account holder that does not provide his or her U.S. TIN upon request in connection with a preexisting account that is required to be reported, may be liable to a penalty of $100 for each such failure under subsection 162(6) of the ITA. If the account holder is a specified U.S. person and does not have a U.S. TIN, the account holder must apply to the U.S. government for a U.S. TIN no later than 90 days after the request is made and provide it to the financial institution within 15 days of receipt. A financial institution that has identified a U.S. reportable account but has not received a U.S. TIN from the account holder, must still report the account by filing a Part XVIII Information Return to the CRA.

7.81 A self-certification can be signed (or otherwise positively affirmed) by any person authorized to sign on behalf of the account holder. Where a person other than the account holder signs a self-certification on the account holder's behalf, the financial institution must rely on documentary evidence of that person's authority to act on behalf of the account holder.

Determining tax residency of an individual

7.82 An account holder may be unsure whether he or she is a U.S. resident or a U.S. citizen and may ask a financial institution for clarification about the rules for U.S. laws. These rules are complex, and financial institutions are not expected to provide information on all aspects of U.S. residency and citizenship. If an account holder asks for such a clarification, a financial

institution may refer the account holder to relevant U.S. government websites and/or resources. It is the responsibility of the account holder to determine whether he or she is a U.S. resident or a U.S. citizen.

7.83 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 himself or herself as a U.S. citizen (such as a U.S. passport) or reveals an unambiguous indication of a U.S. place of birth. However, it is possible that an account holder is not a U.S. citizen despite having an indication of an unambiguous U.S. place of birth, see paragraphs 7.30 to 7.38.

Optional certification for snowbirds and other temporary visitors to the U.S.

7.84 If a financial institution identifies an account with U.S. indicia in the form of a U.S. telephone number, a U.S. address, or standing instructions to transfer funds to an account maintained in the U.S., it will be required to take steps to cure the indicia. If when it does so, it understands or suspects that the U.S. indicia arise 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 (for example, retirees known as "snowbirds"), it can invite the account holder to provide information beyond what is needed to cure U.S. indicia (see paragraphs 7.39 to 7.45).

7.85 The additional information is intended to relieve a financial institution of having to 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, like students, who are receiving an education in the U.S., and 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, U.S. telephone number, or standing instructions to transfer funds to an account maintained in the U.S. associated with this account 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, because I am 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)

7.86 If a 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, a U.S. telephone number, or standing instructions to transfer funds that have become associated with the account up until the end of the calendar year in which seven 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, for example, 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 does not have to act to cure the new U.S. telephone number because it already received Mr. Smith's earlier self-certification with the optional declaration completed.

7.87 The optional declaration can be used as part of a self-certification, in a stand-alone form or can be incorporated into another form so long as it is positively acknowledged by the account holder by signature or other means that the certification is correct.

Acceptable documentary evidence

7.88 The term "documentary evidence" for individuals includes any of the following:

- a certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the account holder claims to be resident;
- any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes (for example, a driver's licence);
- 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.

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

- a passport;
- a national identity card;
- a driving licence;

- a provincial health insurance card (if not prohibited by provincial law);
- a birth certificate provided by an individual under the age of 21;
- a government-issued age of majority card;
- a Canadian citizenship card;
- a Record of Landing (IMM1000) or a Confirmation of Permanent Residence (IMM 5292) issued before 1/1/2004;
- a permanent residence card;
- a Canadian Armed Forces identity card;
- a government-issued Certificate of Indian Status;
- an Alberta photo identification card;
- a B.C. identification card;
- a Government of Newfoundland and Labrador photo identification card;
- a Nova Scotia photo identification card;
- a Prince Edward Island voluntary ID;
- a Saskatchewan mandatory photo ID;
- a Manitoba identification card; and
- a NEXUS card.

7.90 Canada's attachment to the Qualified Intermediary Agreement can be found on the IRS website.

Timing of review

Lower value accounts

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

7.92 Where a preexisting lower value or high value account is closed after June 30, 2014 but prior to the financial institution carrying out its due diligence procedures, the account still needs to be reviewed. Where, following the due diligence procedures the account is found to be reportable, the financial institution must report the information for the closed account. Where the

account is closed and the financial institution has no continuing contractual relationship with the account holder and therefore is unable to undertake action in relation to any indicia or is unable to receive a response to any query, the account should be treated as a U.S. reportable account.

Example 1

On June 30, 2014, a financial institution determines a particular depository account is a lower value account (for example, the balance of the account exceeds US$50,000 but is equal to or less than US$1,000,000). The financial institution completes due diligence procedures on the lower value account in March 2015 and determines that the account is held by a specified U.S. person. On December 31, 2015, the balance of the account is US$42,000. The financial institution is not required to report the account with respect to 2015 on a Part XVIII Information Return.

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

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

7.94 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

so identified 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.

7.95 When the balance or value of an account does not exceed US$1,000,000 on June 30, 2014, but does on December 31, 2015, or on December 31 of any subsequent calendar year, the financial institution must perform the enhanced review procedures described for high value accounts by June 30 of the year after 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 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 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 8 – New individual accounts

Introduction

8.1 At the time an individual account is opened, a reporting Canadian financial institution must determine whether the account 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 apply specific procedures to determine whether the account holder is a specified U.S. person. If that is the case, reporting obligations to the CRA will exist in connection with the account.

8.2 This chapter provides guidance on the review procedures and reporting requirements in respect of new individual accounts. Chapter 7 discusses preexisting individual accounts, and entity accounts are covered in Chapter 9 of this guidance.

New individual accounts

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

Threshold exemptions that apply to new individual accounts

8.4 A financial institution can apply the monetary threshold exemptions set out in section III of Annex I of the Agreement in connection with the review of new individual accounts. More specifically, a financial institution can 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.

8.5 A financial institution can apply the monetary threshold exemption for all new individual financial accounts or for a clearly identifiable group of accounts, such as by line of business or the location at which the account is maintained.

8.6 If a financial institution does not apply the monetary threshold exemption with respect to any account, it will be required to review all new individual accounts.

8.7 A financial institution that applies the monetary threshold exemption 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 exceeds US$50,000 on December 31, 2014, or on December 31 of any subsequent year thereafter; or
- cash value insurance contracts, unless the cash value exceeds US$50,000 on December 31, 2014, or on December 31 of any subsequent year thereafter.

8.8 A financial institution is not required to advise the CRA of whether it has applied a monetary threshold exemption. 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.

8.9 If an account is not reportable because of a designation, the financial institution that maintains the account is not required to monitor the account for U.S. indicia.

New account opening for holders of existing individual accounts

8.10 A new account opened by an individual account holder may be treated as an existing account, subject to meeting the four conditions as follows:

- the account holder already holds with the financial institution (or with a related entity in Canada) another financial account;
- the opening of the new account does not require the provision of new, additional or amended client information by the account holder other than for Part XVIII purposes;

- with respect to an account subject to AML/KYC Procedures, the financial institution is permitted to satisfy those procedures for the new account by relying on the procedures performed in connection with the existing account; and
- the financial institution and its related entity or entities in Canada treat both accounts, existing and new accounts, as a single account for purposes of satisfying the standards and knowledge requirements and determining the balance or value of any of the financial accounts when applying any account thresholds as discussed under paragraph 8.12.

Note: Paragraph 8.10 includes "account transfers" where an account holder closes the existing account and at that time replaces it with a new account.

New, additional or amended customer information

8.11 Customer information refers to information about the identity of the account holder. It does not cover the nature or characteristics of the account or investment such as altering the mix of investments within an account. New, additional or amended customer information is likely to be required where an account holder that currently holds only a depository account opens a custodial account (as the account holder would often be required to provide information with respect to its risk profile), or an account holder concludes a new insurance contract.

Treatment of the accounts as a single account

8.12 The last condition in paragraph 8.10 that allows a new account to be treated as an existing account requires a financial institution to view all accounts of a customer as a single account such that it is aware of any information that may cause a reasonably prudent person to question documentary evidence, self-certifications, or a claim being made by the customer such as being resident of a particular jurisdiction. In order to satisfy this condition the financial institution must do two things:

- Apply the standards and knowledge, as required to establish the correctness or reliability of documentary evidence or self-certifications from that account holder, as if the existing account held by the account holder and the new account are a single account. If the financial institution has reason to know that the status assigned to one of the accounts is inaccurate, then it has reason to know that the status assigned to all other accounts of the account holder is inaccurate.
- Where the existing account is a pre-existing account, treat the pre-existing account and the new account as a single account for the purposes of applying any of the account thresholds. For example, where there is a pre-existing account and a new account is being opened, the financial institution's internal policies and procedures must account for the year-end account balances of both accounts when monitoring whether their aggregate balance or value exceeds US$1,000,000 at the end of that calendar year and future years. If it exceeds US$1,000,000, it will trigger the enhanced review procedures for high value accounts. The financial institution's policies and procedures would also need to take into account in this aggregation the knowledge that any relationship managers (of an account) possess for financial accounts held with the financial institution or with a related entity.

Example

An individual holds a preexisting account with a balance that was US$35,000 on June 30, 2014. The individual opens a new account at the same financial institution and the new account does not require the provision of new, additional or amended customer information. The financial institution applied the US$50,000 threshold and is able to link the new account to the existing account. The new account can be treated as a continuation of the preexisting account and can continue to be treated as exempt and will not be subject to the

enhanced review procedures in paragraph 7.50 until such time as the aggregate balance or value of the accounts exceeds US$1,000,000.

Accounts subject to review

8.13 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 due diligence procedures described below.

8.14 Due diligence must be carried out by obtaining a self-certification that allows the financial institution to determine whether the account holder is a specified U.S. person. A financial institution 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 the AML/KYC Procedures.

8.15 Financial institutions must have account opening process that facilitate collection of a self-certification and /or documentary evidence at the time of the account opening. However, financial institutions are not expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

8.16 From July 1, 2014 to June 30, 2017, a financial institution can determine the status of a new account holder using either the self-certification or the due diligence procedures that apply to pre-existing individual accounts that are lower value accounts, as outlined in Chapter 7. Effective July 1, 2017, paragraphs 265(2)(c) and (3)(b) of the ITA were amended to eliminate the ability to use the due diligence procedures that apply to preexisting individual accounts, on new accounts. However, when an account holder has an existing account at the time of a new account opening, the new account can be treated like the existing account subject to meeting the four conditions described in paragraph 8.10. If a new financial account was opened at a financial institution between July 1, 2014 and June 30, 2017 and the due diligence procedures for preexisting individual accounts were applied at that

time to determine the status of the account holder, the financial institution can continue to rely on that determination for the account for the purposes of paragraph 8.10, until a change in circumstances occurs.

Note: A financial institution can continue to apply paragraphs 265(2)(c) and (3)(b) and the related CRA guidance at paragraphs 9.18 to 9.21 of the August 28, 2015 version of this document, until June 30, 2017.

Example

An individual holds one depository account at a financial institution that was opened after June 30, 2014 (the original account). At that time, the financial institution completed the appropriate due diligence procedures including relying on subparagraph 265(2)(c)(ii) and determined the account is not a U.S. reportable account. On July 31, 2017, the individual opens a second depository account at the same financial institution. The institution applies the US$50,000 threshold and is able to link the two accounts. The second depository account can be treated as a continuation of the original account and can continue to be treated as exempt until such time as the aggregate balance or value of the accounts exceeds US$50,000.

8.17 An account that was properly designated by the financial institution under paragraph 264(1)(b) of the ITA so as to avoid its treatment as a U.S. reportable account in a calendar year must be reviewed by the financial institution, which includes obtaining a valid self-certification, within 90 days after the end of the calendar year in which the account ceases to be so designated or eligible under that paragraph by virtue of a balance or value exceeding the applicable threshold. A new depository account can still be designated in subsequent years under paragraph 264(1)(b) provided it meets the eligibility criteria.

Validation of self-certification

8.18 The previous sections describe various situations in which a financial institution must obtain a self-certification. A self-certification must include a clear declaration from the account holder as to whether he or she is a specified U.S. person.

8.19 If the self-certification obtained establishes that the account holder is not a specified U.S. person, the financial institution is not required to treat the account as a U.S. reportable account unless it knows, or has reason to know, that the self-certification is unreliable.

8.20 A self-certification is valid if it is signed (or otherwise positively affirmed) by the account holder, it is dated, and it contains the account holder's:

- Name
- Residence address
- Jurisdiction of residence for tax purposes
- U.S. TIN (if the account holder is a specified U.S. person)
- Canadian TIN (if applicable)

Note: A self-certification is not invalid simply because of a missing TIN. A TIN may be collected through other means. However, when the account holder is a specified U.S. person, the financial institution must use reasonable efforts to obtain the U.S. TIN in order to report it on the Part XVIII Information Return.

8.21 An account holder that does not provide a U.S. TIN on request in connection with a new account that is required to be reported, may be liable to a penalty of $100 for each such failure under subsection 162(6) of the ITA. If the account holder is a specified U.S. person and does not have a U.S. TIN, the account holder must apply to the U.S. government for a U.S. TIN no later than 90 days after the request is made and provide it to the financial institution within 15 days of receipt. A financial institution that has identified a U.S. reportable account but has not received a U.S. TIN from the account holder,

must still report the account by filing a Part XVIII Information Return to the CRA.

Note: Some account holders may have a Canadian TIN, in which case, the Canadian TIN should be reported on the self-certification when the person is a specified U.S. person. For individuals, a Canadian TIN can be in the form of a SIN or an individual tax number (ITN).

8.22 A self-certification can be signed (or otherwise positively affirmed) by any person authorized to sign on behalf of the account holder. Where a person other than the account holder signs a self-certification on the account holder's behalf, the financial institution must rely on documentary evidence of that person's authority to act on behalf of the account holder.

8.23 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. resident or a U.S. citizen, 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 paragraphs 7.30 to 7.38).

8.24 In the case of U.S. indicia, other than the provision of a U.S. place of birth – or if the account holder is known to be a U.S. resident or a U.S. citizen – when the account is opened, documentation issued by a government other than the U.S. to comply with AML/KYC Procedures can typically be expected to allow a financial institution to confirm the reasonableness of a self-certification of an account holder's non-U.S. status.

8.25 A financial institution that opens an account without obtaining a self-certification from the account holder must treat the account as a U.S. reportable account. However, for reporting related to the 2020 and future calendar years, a financial institution can rely on the indicia that it has in its records in order to determine whether the account holder is a specified U.S. person (see paragraph 7.24 for indicia) and whether the account should be reported. If the financial institution has no such indicia in its records and has no reason to know that the account holder is a U.S. resident or a U.S. citizen,

then the account is not required to be reported and no further action is required until there is a change in circumstances that results in one or more indicia with respect to the account holder.

Change in circumstances

8.26 A self-certification remains valid until there is a change in circumstances (as described in paragraphs 7.70 to 7.72) that causes the financial institution to know or have reason to know that the original self-certification is incorrect or unreliable. When a financial institution cannot rely on the original self-certification it must obtain either:

- a valid self-certification that establishes the status of the account holder; or
- a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification.

8.27 Financial institutions are expected to notify the person providing a self-certification of the person's obligation to notify the financial institution of a change in circumstances.

8.28 A self-certification becomes invalid on the date that the financial institution holding the self-certification knows or has reason to know that circumstances affecting the correctness of the self-certification have changed (for example, the mailing address was changed to a U.S. address). However, a financial institution can choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification become invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. A financial institution can rely on a self-certification without having to enquire into possible changes of circumstances that can affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

8.29 If the financial institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day

period, or if the filing date is near, the financial institution must treat the account as a U.S. reportable account as a result of the change in circumstances.

Curing self-certification errors

8.30 A financial institution can treat a self-certification as valid, notwithstanding that the self-certification contains an inconsequential error, if the financial institution has sufficient documentation on file to supplement the information missing from the self-certification due to the error. In such case, the documentation relied upon to cure the inconsequential error must be conclusive.

8.31 A failure to declare U.S. residence or U.S. citizenship on a self-certification is not inconsequential. In addition, information on a self-certification that contradicts other information contained on the self-certification or in the customer master file is not an inconsequential error.

Form of self-certification

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

8.33 Regardless of the account opening method, a self-certification must be obtained in the course of the account opening process (see paragraphs 6.25 to 6.29).

8.34 The following guidance illustrates how the self-certification procedures can operate in various scenarios.

In-person account openings

8.35 A financial institution must have procedures in place to secure a self-certification from its account holders. There is no prescribed form for the

certification. Financial institutions can use any form as long as it asks for the required information.

8.36 A form will be considered sufficient in this regard if it requires account holders to indicate:

- whether they are specified U.S. persons and clearly indicates that a U.S. citizen is such a person;
- their residency or residencies for tax purposes and clearly indicates that a U.S. citizen is considered to be a 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.

8.37 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.

8.38 A financial institution can collect an account holder's status information by way of that information being communicated to a customer service representative for input into the electronic client account records management system. If this approach is to be adopted, certain safeguards must be in place to ensure that the self-certification provided to the financial institution results in an unambiguous acknowledgement that the person declaring their status agrees with the representations made through the self-certification. The following is one example of a satisfactory approach:

- collect status information from the account holder at account opening;
- require that the information collected be read back to the account holder to confirm the accuracy of what was recorded; and
- have the account holder sign an account opening agreement which has the account holder attest specifically that all representations made in respect of their status are correct and

complete and that updated information will be provided, where necessary. A statement that captures this attestation must be prominent or otherwise easily identifiable by the account holder and proximate to the signature block of the agreement unless the statement that captures this attestation is separately initialed by the account holder.

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

Telephone account openings

8.40 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.

8.41 A financial institution can accept a voice recording or digital footprint as long as it is captured by the financial institution in a manner that can credibly demonstrate that the self-certification was positively acknowledged.

8.42 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 such as by way of a follow-up email confirmation.

On-line account applications

8.43 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. Therefore, it must secure a self-certification from the

account holder. A financial institution can accept an electronic form including the electronic signature of the account holder (or person formally authorized to sign) 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.

8.44 An electronic signature can be numeric, character-based, or biometric, as long as it is unique to the person and a record can be kept. An electronic signature may also be encrypted. For example, a client's personal identification number can be used as an electronic signature. CRA's expectation is that it will be able to review a self-certification record during an examination, but the electronic signature does not need to be unencrypted.

8.45 In order for the CRA to accept an electronic signature from an account holder whose identity has been verified by the financial institution, the electronic signature will generally need to be provided in one of the following ways:

- It may be provided if the account holder sends personal information, including the electronic signature using the electronic address most recently provided by the account holder to the financial institution;
- It may be provided in person by the account holder, in the presence of the financial institution e.g., using a stylus or finger on a tablet; or
- It may be provided through an access controlled, secured electronic location such as a secure website that is accessible to the account holder only because the location of the secure website has been made known to the account holder and access has been granted by the financial institution.

Note: For more information, see CRA Program updates for electronic signature in software.

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

8.46 Many Canadian residents visit the U.S. on a regular basis without becoming or having the status of being a specified U.S. person. This group includes Canadians attending university in the U.S., and "snowbirds", who are Canadian residents who spend part of the winter each year in the southern U.S. As a result, a financial institution can add elements in the self-certification it uses (such as the optional declaration in paragraph 7.85) in connection with new account openings. If it does so, it has to have procedures in place to ensure that self-certifications that contain these additional elements are not abused. If this approach is taken, it can reduce the number of occurrences when 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.

8.47 The optional declaration can be used as part of a self-certification, in a stand-alone form or can be incorporated into another form so long as it is positively acknowledged by the account holder by signature or other means that the certification is correct.

Chapter 9 – Entity accounts

Introduction

9.1 A reporting Canadian financial institution has due diligence and reporting obligations under Part XVIII with respect to entity accounts. A financial institution that maintains a financial account held by an entity must determine whether:

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

9.2 This chapter provides guidance on the review procedures and reporting obligations in respect of preexisting and new entity accounts. Chapter 7 covers preexisting individual accounts and Chapter 8 discusses new individual accounts.

U.S. reportable accounts

9.3 If a financial institution maintains a financial account held by an entity, it must determine whether the account is a U.S. reportable account. Doing so requires assessing whether the entity account has to be reviewed given that monetary threshold exemptions exist, as explained below. If an entity account has to be reviewed, the financial institution must perform specific procedures to determine whether the account holder is a specified U.S. person or a passive NFFE with one or more controlling persons who is a U.S. resident or a U.S. citizen. If the account holder has either status, the financial institution will have reporting obligations to the CRA in connection with the account.

9.4 In certain cases, the procedures differ depending on whether the account under review is a new or a preexisting entity account. In determining whether an entity account is a U.S. reportable account, a financial institution can follow the guidance in the order most appropriate under the circumstances.

9.5 An entity 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, a deemed-compliant FFI, or an exempt beneficial owner;
- an active NFFE; or
- a passive NFFE where none of the controlling persons are specified U.S. persons.

Payments to NPFIs

9.6 For each of the 2015 and 2016 calendar years, a financial institution must determine if it makes certain payments to an account held by an NPFI. It must report the name and address of each NPFI and the aggregate amount of payments made to each NPFI in the particular year before May 2 of the following year. For a description of the types of payments that must be reported, see paragraphs 12.47 to 12.48.

Preexisting entity accounts

9.7 A preexisting entity account is an account maintained by a financial institution that is held by an entity as of June 30, 2014.

Preexisting entity accounts that are not required to be reviewed, identified or reported

9.8 A financial institution is not required to perform review procedures on accounts that were closed before July 1, 2014.

9.9 No review is required of an account if the account is exempt by virtue of a monetary threshold exemption that has been applied by a financial institution (see monetary threshold exemptions at paragraphs 9.43 to 9.47).

Determining whether a preexisting entity account holder is a specified U.S. person

9.10 In the case of a preexisting entity account (other than an account in respect of which a designation to apply a monetary threshold exemption has been made), a financial institution must review information that it maintains for regulatory and customer relationship purposes (including information collected according to the 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; or
- a classification of the account holder as a U.S. resident in current customer files.

9.11 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 that maintains the account obtains a self-certification from the account holder, or reasonably determines based on information in its possession or that is publicly available, that the account holder is not a specified U.S. person. For example, such information can reveal that the entity is a corporation that is publicly traded on an established securities market in which case it would not be a specified U.S. person.

9.12 Information which can assist with a reasonable determination of whether an entity account holder is a specified U.S. person includes:

- information published by a government body, such as information in a list published by a tax administration that contains the names and identifying members of financial institutions. For example, if the financial institution knows that the account holder is a financial institution and has a 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;
- information in a publicly accessible government register;
- information disclosed on an established securities market; and
- any publicly accessible classification with respect to the account holder that was determined based on a standardized industry coding system.

Determining whether a preexisting entity account holder is a passive NFFE with one or more controlling persons

9.13 Unless a financial institution has previously determined based on information in its possession or that is publicly available that the account

holder is a U.S. person, an active NFFE or a financial institution, the financial institution must obtain a self-certification from the account holder to determine whether the preexisting entity account holder is a passive NFFE.

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

9.15 A financial institution can rely on publicly-available information (for example, a public registry) or on information collected and maintained according to the AML/KYC Procedures in determining the controlling persons. Those same procedures can also be used to determine whether the individual is a U.S. resident or a U.S. citizen in a case 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 the individual is a U.S. resident or U.S. citizen.

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

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

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

9.18 It is generally expected that based on a review of information maintained for regulatory or customer relationship purposes, including information collected according to the AML/KYC Procedures, a financial

institution will be able to determine whether the entity account holder is a financial institution. If a determination cannot be made based on that information, the account is not required to be reported as an NPFI and the due diligence review should continue on the basis that the account holder is not a financial institution (unless the account holder is subsequently identified to be a financial institution).

9.19 A financial institution can determine that an entity account holder is not an NPFI by verifying that the account holder has a GIIN. The financial institution can verify whether the account holder has been issued a GIIN by referring to the IRS FFI list.

9.20 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 a partner jurisdiction financial institution (unless the IRS has publicly listed the account holder as an NPFI).

9.21 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 an NPFI. If reasonable efforts to obtain the self-certification fail, the account holder is to be treated as an NPFI.

9.22 If the account holder is an NPFI, the financial institution must report the aggregate amount of certain payments made by it to an NPFI that is the holder of an account, for each of 2015 and 2016 calendar years. It must report before May 2 of the following year, the name and address of each NPFI and the aggregate amount of payments made to each NPFI in the particular year.

Timing of review

9.23 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.

9.24 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, 2015, or on December 31 of any subsequent year, must be completed by June 30 of the year after 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 Part XVIII Information Return filed with the CRA before May 2, 2018.

New entity accounts

9.25 A new entity account is an account maintained by a financial institution that is opened by an entity after June 30, 2014.

9.26 In view of the IRS Notice 2014-33, a financial institution can treat an entity account opened after June 30, 2014, and before January 1, 2015, as a preexisting entity account, so long as:

- no designation is made in connection with the account under paragraph 264(1)(c) of the ITA; and
- the financial institution documents in its procedures that it is relying on the IRS Notice.

New entity accounts that are not required to be reviewed, identified or reported

9.27 There are no monetary threshold exemptions that apply to new entity accounts. However, where a financial institution maintains credit card accounts, there is no need to review, identify or report these accounts if the financial institution has policies and procedures that prevent account holders establishing a credit balance in excess of US$50,000 (see paragraphs 9.48 to 9.51).

New account opening for holders of existing entity accounts

9.28 A new account opened by an entity account holder may be treated as an existing account, subject to meeting the four conditions as follows:

- the account holder also holds with the financial institution (or with a related entity in Canada) another financial account;
- the opening of the new account does not require the provision of new, additional or amended customer information by the account holder other than for Part XVIII purposes;
- with respect to an account subject to AML/KYC Procedures, the financial institution is permitted to satisfy those procedures for the new account by relying on the procedures performed in connection with the existing account; and
- the financial institution and its related entity or entities in Canada treat both accounts, existing and new accounts, as a single account for purposes of satisfying the standards and knowledge requirements and determining the balance or value of any of the financial accounts when applying any account thresholds as discussed under paragraph 8.12.

Note: Paragraph 9.28 includes "account transfers" where an account holder closes the existing account and at that time replaces it with a new account.

9.29 When 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 (see paragraph 8.12).

Determining whether a new entity account holder is a specified U.S. person

9.30 Upon opening of an entity account after June 30, 2014, a financial institution must determine whether the account holder is a specified U.S. person. Doing so requires assessing whether the entity account is held by a U.S. person and if so, whether that person is a specified U.S. person. When that is the case, reporting obligations to the CRA will exist in connection with the account.

9.31 A specified U.S. person does not include an active NFFE, a Canadian financial institution, or other partner jurisdiction financial institution. If a financial institution reasonably determines that the account holder is an active NFFE or a 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 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.

9.32 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 and confirm the reasonableness of such self-certification based on the information obtained by the financial institution in connection with the opening of the account, including information collected according to the AML/KYC Procedures.

9.33 If the self-certification indicates that the entity account holder is a specified U.S. person, the account must be treated as a U.S. reportable account unless the financial institution reasonably determines based on

information in its possession or that is publicly available, that the account holder is not a specified U.S. person. For example, such information can show that the entity is a depository institution.

Determining whether a new entity account holder is a passive NFFE with one or more controlling persons

9.34 Unless a financial institution has previously determined based on information in its possession or that is publicly available that the entity account holder is a U.S. person, an active NFFE, a Canadian financial institution, or other partner jurisdiction financial institution, the financial institution must rely on the self-certification to determine whether a new entity account holder is a passive NFFE.

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

9.36 A financial institution can rely on publicly available information (for example a public registry) or on information collected and maintained according to the AML/KYC Procedures in determining the controlling persons of the entity. However, a financial institution must obtain a self-certification from the entity account holder or from each controlling person to determine whether the individual is a U.S. resident or a U.S. citizen.

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

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

9.38 A financial institution must determine whether a new entity account holder is an 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 other partner jurisdiction financial institution, it will be considered to have

determined that the account holder is not an NPFI (unless the IRS has publicly listed the account holder as an NPFI).

9.39 A financial institution can determine that an entity account holder is not an NPFI by verifying that the account holder has a GIIN. The financial institution can verify whether the account holder has been issued a GIIN by referring to the IRS FFI list.

9.40 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 an NPFI. If the account holder that is a financial institution does not provide a reliable self-certification, the account holder is to be treated as an NPFI.

9.41 It is generally expected that based on a review of public information or information in its possession, a financial institution will be able to make a reasonable determination on whether the account holder is a financial institution. If a reasonable determination cannot be made based on that information and reasonable efforts to obtain self-certification fail, the due diligence review should continue on the basis that the account holder is not a financial institution (unless the account holder is subsequently identified to be a financial institution).

9.42 If the account holder is an NPFI, the financial institution must report the aggregate amount of certain payments made by it to an NPFI that is the holder of an account, for each of 2015 and 2016 calendar years. It must report before May 2 of the following year, the name and address of each NPFI and the aggregate amount of payments made to each NPFI in the particular year.

Monetary threshold exemptions

9.43 A financial institution can apply the monetary threshold exemptions in connection with the review of entity accounts. If a financial institution wants to apply the exemptions, it can do so by designating the accounts (which will be required to form part of a clearly identifiable group of accounts).

9.44 When a financial institution does not designate any accounts, it must review all of its entity accounts.

9.45 A financial institution is not required to advise the CRA of whether it has designated an account. 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

9.46 A financial institution is not required to review a preexisting entity account with a balance or value that is equal to or less than US$250,000 on June 30, 2014, if it designates the account. When that designation is made and that account later exceeds US$1,000,000 on December 31, 2015 or any subsequent year, the financial institution will be required to review the account to determine whether the account is reportable.

9.47 A financial institution can designate to review all preexisting entity accounts or separately, with respect to any clearly identifiable group of accounts, such as by line of business or the location at which the account is maintained.

New entity accounts

9.48 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.

9.49 A credit card account is not required to be reviewed, provided that the 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 entity account holder for more than 60 days; and
- designates the account.

9.50 A financial institution can designate all credit card accounts or a clearly identifiable group of accounts, such as by line of business or the location at which the account is maintained.

9.51 While the above provisions in the Agreement apply to new entity accounts, credit card accounts that are individual accounts or preexisting entity accounts can benefit from the general threshold exemptions available to those categories of accounts.

Validation of self-certification

9.52 The previous sections describe various situations in which a financial institution must obtain a self-certification to determine the classification of an entity. The self-certification must include a clear declaration from the account holder as to whether it is a specified U.S. person, a passive NFFE with one or more controlling persons who is a U.S. resident or a U.S. citizen, or an NPFI.

9.53 A financial institution 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 the AML/KYC Procedures.

9.54 Documentary evidence or a self-certification with an expiry date (such as a W-8BEN, W-8BEN-E or other similar form) do not become invalid for purposes of Part XVIII merely because it expires subsequent to a financial institution having received it.

9.55 A financial institution has reason to believe that a self-certification provided by an entity account holder is unreliable if the entity represents itself as a financial institution residing in Canada and the financial institution knows or has reason to know that the entity is not a Canadian financial institution (see paragraph 3.29).

9.56 If an entity certifies that it has no residence for tax purposes, the financial institution can rely on the address of the principal office of the entity to determine the tax residence of the account holder.

9.57 Regardless of 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 valid.

9.58 If the self-certification obtained establishes that the account holder resides in the U.S. and is a specified U.S. person, the financial institution must treat the account as a U.S. reportable account.

9.59 If the self-certification obtained establishes that the account holder is an NPFI (see paragraphs 4.14 to 4.16), the financial institution must report certain payments made to the account. These accounts are required to be reported for the 2015 and 2016 calendar years only (see paragraph 12.45).

9.60 If the self-certification obtained establishes that the account holder resides in Canada and/or a jurisdiction other than the U.S. and is a passive NFFE, the financial institution must treat the account as a U.S. reportable account but only if one or more of its controlling persons is a U.S. resident or a U.S. citizen.

9.61 The self-certification is valid if it is signed (or otherwise positively affirmed) by the account holder, it is dated, and it contains the account holder's:

- Name
- Residence address
- Jurisdiction of residence for tax purposes
- U.S. TIN (if the account holder is a specified U.S. person)
- Canadian TIN (if applicable)

Note: A self-certification is not invalid simply because of a missing TIN. A TIN may be collected through other means. However, when the account holder is a specified U.S. person, the financial institution must use reasonable efforts to obtain the U.S. TIN in order to report it on the Part XVIII Information Return.

9.62 An account holder that does not provide a U.S. TIN on request in connection with an account that is required to be reported, may be liable to a

penalty of $100 for each such failure under subsection 162(6) of the ITA. If the account holder is a specified U.S. person 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 is made and provide it to the financial institution within 15 days of receipt. A financial institution that has identified a U.S. reportable account but has not received a U.S. TIN from the account holder, must still report the account by filing a Part XVIII Information Return to the CRA.

Note: Some account holders may have a Canadian TIN, in which case, the Canadian TIN should be reported on the self-certification when the person is a specified U.S. person. For entities, a Canadian TIN can be in the form of a BN or a trust account number.

9.63 While a financial institution can rely on publicly-available information or the AML/KYC Procedures in determining the controlling persons of the entity, it must obtain a self-certification from the entity account holder or from each controlling person to determine whether the individual is a U.S. resident or a U.S. citizen.

9.64 The self-certification with respect to the controlling person is valid if it is signed (or otherwise positively affirmed) by the controlling person, a person with authority to sign for the controlling person, or the authorized signing officer of the entity; it is dated; and it contains each controlling person's:

- Name
- Residence address
- Jurisdiction of residence for tax purposes
- U.S. TIN (if the controlling person is a specified U.S. person)
- Canadian TIN (if applicable)

Note: A self-certification is not invalid simply because of a missing TIN. A TIN may be collected through other means. However, when the controlling person is a U.S. resident or a U.S. citizen, the financial institution must use reasonable efforts to obtain the U.S. TIN in order to report it on the Part XVIII Information Return.

9.65 The requirements for the validity of self-certifications with respect to new individual accounts (see paragraphs 8.18 to 8.31) are applicable for the validity of self-certifications with respect to entity accounts and to determine whether a controlling person of a passive NFFE is a U.S. resident or a U.S. citizen. The same is applicable with respect to curing self-certifications errors, the requirement to obtain self-certifications on an account-by-account basis, and documentation collected by other persons.

9.66 Documentary evidence or a self-certification with an expiry date (such as a W-8BEN, W-8BEN-E or other similar form) do not become invalid for purposes of Part XVIII merely because it expires subsequent to a financial institution having received it.

Entity account not supported by a valid self-certification

9.67 If a financial institution fails to obtain a valid self-certification and is unable to determine whether the entity account holder is a specified U.S. person, an active NFFE, a Canadian financial institution, or other partner jurisdiction financial institution, it must treat the account as a U.S. reportable account. In reporting the account, the financial institution can categorize it as an account held by a specified U.S. person or a passive NFFE. However, for reporting related to the 2020 and future calendar years, if it is believed or information indicates that the entity account holder is a U.S. person, the financial institution can report the account holder as a specified U.S. person. Information indicating that an entity account holder is a U.S. person includes:

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

9.68 If it is believed or information indicates that the entity account holder is not a U.S. person, the financial institution can treat the account holder as a passive NFFE.

9.69 If the entity account holder is treated as a passive NFFE, the financial institution must identify its controlling persons and report them as specified U.S. persons. However, for reporting related to the 2020 and future calendar years, the financial institution can rely on the indicia that it has in its records in order to determine whether one of the controlling persons is a specified U.S. person (see paragraph 7.24 for indicia) and whether the account should be reported. If the financial institution has no such indicia in its records and has no reason to know that the controlling person is a U.S. resident or a U.S. citizen, then the account is not required to be reported and no further action is required until there is a change in circumstances that results in one or more indicia with respect to the controlling person.

Change in circumstances

9.70 A change in circumstances includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder or a controlling person such as a new administrator, a new major shareholder or a distribution to a discretionary beneficiary) or any change or addition of information to any account associated with such account if such change or addition of information affects the status of the account holder.

9.71 If there is a change in circumstances that causes the financial institution to know, or have reason to know, that the self-certification or other documentation associated with the account is incorrect or unreliable, the financial institution must request a self-certification or other documentation from the account holder to establish whether the entity is a specified U.S. person or a passive NFFE and whether one or more controlling persons is a U.S. resident or a U.S. citizen. If, by the later of the last day of the relevant calendar year, or 90 days following the notice or discovery of such change, the account holder fails to provide the information requested, the financial institution must treat the account as a U.S. reportable account.

Controlling persons

9.72 Article 1 of the Agreement defines the term "controlling persons" as

> *the natural persons who exercise control over an 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.*

9.73 Controlling persons of an entity are natural persons who exercise direct or indirect control over the entity. Only individuals can be controlling persons.

9.74 Financial institutions can give effect to this definition by reference to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and related regulations, such as section 138 of the PCMLTFA Regulations. Generally, whether a person exercises control over an entity is determined in a manner consistent with how beneficial owners are identified in the PCMLTFA, including the ownership thresholds set by Canadian financial regulatory authorities.

9.75 For example, in the case of a corporation, a person is considered a controlling person of a corporation if they directly or indirectly own or control 25% or more of the corporation. Where no natural person is identified as exercising control of the corporation, the controlling persons of the corporation are the natural persons who hold the positions of senior managing officials, such as the chief executive officer or the person who performs that function.

Note: The requirement to treat a senior managing official as a controlling person of a corporation is effective, starting July 1, 2017.

9.76 In the case of a trust, controlling persons include its settlors, trustees, protectors (if any), beneficiaries (or class of beneficiaries) and any other natural persons exercising ultimate effective control over the trust. A person is treated as a beneficiary if they have the right to receive, directly or indirectly, a mandatory distribution; or they receive, directly or indirectly, a discretionary distribution from the trust. In the case of discretionary beneficiaries, the beneficiary may only be treated as a controlling person in the calendar year in which a distribution has been paid or made payable to the discretionary beneficiary.

9.77 Where a trust is a passive NFFE, the financial institution must obtain information on all natural persons that are considered controlling persons in order to determine if one or more of the controlling persons is a specified U.S. person. Since a discretionary beneficiary of a trust is only considered a controlling person in the calendar year in which a distribution has been paid or made payable to her/him, the financial institution must maintain appropriate procedures in place to be notified when a distribution is made to a discretionary beneficiary of the trust in a given year. For instance, the financial institution requires a notification from the trust that a distribution has been paid or made payable to a discretionary beneficiary within the time needed to correctly comply with their filing requirement each year. This may be achieved by having:

- the financial institution seeking annual refreshment of the certification – this requires the trust to re-certify whether any members of the class of beneficiaries who have received distributions since the previous certification are discretionary; or
- the financial institution requiring the trust, as a condition of holding the account and on an as needed and a timely basis, to provide a new certification when the trust has paid or made payable a distribution to a discretionary beneficiary (this condition can be included in the account opening documents).

9.78 Where a controlling person of an entity account that is a passive NFFE is an entity, then for purposes of determining the passive NFFE's controlling persons, one has to look through the chain of control or ownership of the entity to identify the natural persons that are controlling persons of the entity.

9.79 In the case of a passive NFFE that is a corporation, where the control or ownership of the passive NFFE is with a trust, i.e., the trust directly or indirectly owns or controls 25% or more of the passive NFFE, the financial institution must obtain information on all natural persons who are controlling persons of the trust. In the case where the passive NFFE is a corporation and its control or ownership is with another corporation that directly or indirectly owns or controls 25% or more of the passive NFFE, the financial institution should require the authorized signing officer to disclose all of the natural persons who directly or indirectly own or control 25% or more of the corporation.

9.80 In the case of a legal arrangement other than a trust, depending on the control structure of the arrangement, controlling persons are persons in equivalent or similar positions to those described either in paragraph 9.75 who directly or indirectly own or control 25% or more of the legal arrangement or where the control is exercised through other means than ownership, the controling persons are the persons in equivalent or similar positions to those described in paragraph 9.76.

Example

According to the partnership agreement, Howard will invest $100,000 in the partnership to buy equipment and rent space for the entity, and Betty will be solely responsible for operating the entity and performing its business. All decisions related to the partnership must be unanimous; in case of a disagreement, either partner can decide to end the partnership. Howard and Betty will split the income from the entity 50/50. If they decide to end the partnership, Howard will get

85% of the proceeds of the sale of the business assets, while Betty will get 15%.

The business structure is important in this example as the ownership and control of the entity is shared between Howard and Betty despite an uneven split of proceeds in the case the business is sold. Should the account be reportable, Howard and Betty would both be considered to hold an equivalent or similar position to any other controlling person of the legal arrangement.

Use of standardized industry codes

9.81 As discussed in paragraph 9.10, a financial institution can, in certain circumstances, rely on information it has in its possession to reasonably determine the status of an entity account holder. Standard industry codes, such as the Standard industrial classification (SIC) and the North American industry classification system (NAICS) codes can help a financial institution in this regard with respect to preexisting entity accounts.

Note: For preexisting entity accounts, when a financial institution has reasonably assigned any one of the following SIC (version 1980) or NAICS (version 2012) codes to an entity account holder, it can 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). Later and earlier versions of the same codes can be used from Statistics Canada. A concordance table is available at Statistics Canada.

SIC codes

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

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 cannot rely on the code to determine that the account holder is not a passive NFFE.

9.82 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 standardized industrial code, which presumably would have been assigned on the basis of the same or similar information. Therefore, the coding systems themselves are not thought to be particularly useful.

Other considerations

9.83 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 just because the entity's declared status is 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 co-operation with the U.S. For example, a personal trust residing in a partner jurisdiction 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 just because the trust would be viewed as a passive NFFE under Canadian law.

Chapter 10 – Multiple Financial Institution Arrangements

Introduction

10.1 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(7) and (8) of the ITA, ensures the distribution of the responsibilities under Part XVIII aligns with the structure of the financial industry in Canada.

Client name accounts

10.2 Subsections 265(7) and (8) apply to client name accounts. In brief, where a reporting financial institution maintains a client name account and all of the following

criteria are met, the financial institution is exempt from the due diligence requirements in respect of the account and shall rely on another financial institution ("dealer")'s determination in respect of whether the account is reportable:

- The property recorded in the account is also recorded in a financial account ("related account"), maintained by the dealer.
- The dealer is authorized under the provincial legislation to engage in the business of dealing in securities or any other financial instrument, or to provide portfolio management or investment advising services.
- The dealer has advised the financial institution whether the related account is a reportable account.
- It cannot reasonably be concluded by the financial institution that the dealer has failed to comply with its obligations under Part XVIII.

10.3 The following paragraphs illustrate the application of the above provisions to the investment funds and their dealers, based on information provided by the Canadian financial institution industry.

Investment funds and their dealers

10.4 Canadian investment funds include conventional mutual funds, non-conventional investment funds (for example, exchange traded funds), and specialized funds (for example, labour-sponsored investment funds). These funds operate in diverse portions of the capital markets and rely on both public offerings and private placements. These funds are subject to a number of regulatory requirements under provincial securities legislation and nationally-applied rules.

10.5 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 KYC requirements under securities legislation as well as to client identification requirements under the PCMLTFA and related regulations.

10.6 Dealers such as mutual fund dealers, exempt-market dealers, and other investment dealers are financial institutions in their own right (e.g., 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 clients' financial accounts they maintain.

10.7 When investment fund units are sold through dealers, they can be issued in the name of the beneficial owner (client name) or recorded in the name of the dealer (nominee name). These accounts are inclusive of investments in fund units regardless of whether the dealer purchased units on behalf of a client in nominee name or in client name. This is because of the definition of "financial account" which is consistent with the Canadian fund industry's "Allocated Compliance Model" (as contemplated under the PCMLTFA regulations) and the responsibilities that industry participants have for client identification under Canada's AML regime.

Holdings in nominee name

10.8 If a dealer holds legal title to units of an investment fund on behalf of a client (the ultimate investor), the dealer maintains the account of the client, and the dealer is 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. Therefore, the fund has to verify the status of the dealer that is its direct account holder. A dealer's status can be verified by referring to publicly available information. For example, the U.S. Internal Revenue Service Foreign Financial Institution List can be used to verify the status of the dealer. For the accounts held in nominee name, the fund has no obligation to ascertain information or perform reporting in connection with the ultimate investors.

10.9 For the purpose of applying the relevant aggregation requirements (as set out in Chapter 6 of this guidance) to aggregate accounts to determine whether any preexisting custodial account is below a particular monetary threshold provided for in Annex I of the Agreement, for each client, a dealer will need to consider all the financial accounts it maintains for that client without reference to whether the client's underlying interests are in different funds or other investments.

Holdings in client name

10.10 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 dealers place their clients in mutual fund units without holding legal title to the investment or having custody over the asset.

10.11 An investment fund unit held in client name will be a financial account maintained by the fund for the purposes of Part XVIII even if that unit is also contained in an account of a dealer. However, in view of overlapping responsibilities that exist at the dealer level, subsection 265(8) of the ITA offers funds (and other financial institutions) relief from having to perform due diligence in connection with a unit held in client name that is also contained in an account of a dealer that is a financial institution.

10.12 In view of the current compliance practices between dealers and fund managers for client name accounts, subsection 265(8) of the ITA along with CRA's administrative policy in paragraph 10.14 are generally expected to apply in respect of such accounts. The CRA expects dealers to perform the due diligence and account classification and funds to perform the reporting, unless a fund is advised by a dealer that the dealer will take responsibility for its own reporting.

10.13 In case of a new account or when there is a change in circumstances related to an existing account, if the fund is notified by the dealer of its determination of the reportable status of the related account, the fund is relieved from conducting its own due diligence and must rely on the dealer's determination unless it can reasonably be concluded by the fund that the dealer has failed to perform the due diligence. Such conclusion can be based on a review of the available information including the information received from the dealer. If it can reasonably be concluded by the fund that the dealer failed to comply with its due diligence obligations, the fund must conduct its own due diligence. Alternatively, the fund can also refuse to open the account in the case of a new account until it is satisfied that the dealer conducted its due diligence and has obtained a self-certification.

Example 1

In the case of a new account, the dealer provides a classification as to whether the account is reportable for a unit of the fund held in client name that the dealer is considered to maintain and confirms in writing or through a systemic/electronic notification to the fund that a self-certification has been obtained to support the classification.

Example 2

In the case of an existing client name account with the fund where the account was not reportable, the dealer informs in writing or through a systemic/electronic notification to the fund of a change of address for the client in the U.S. and that the account is a U.S. reportable account based on the new self-certification or any other documentation obtained by the dealer. In such a case, had the dealer only provided a new address in the U.S. without any classification, the fund would need to get more information from the dealer as to whether the account is a U.S. reportable account or conduct its own due diligence.

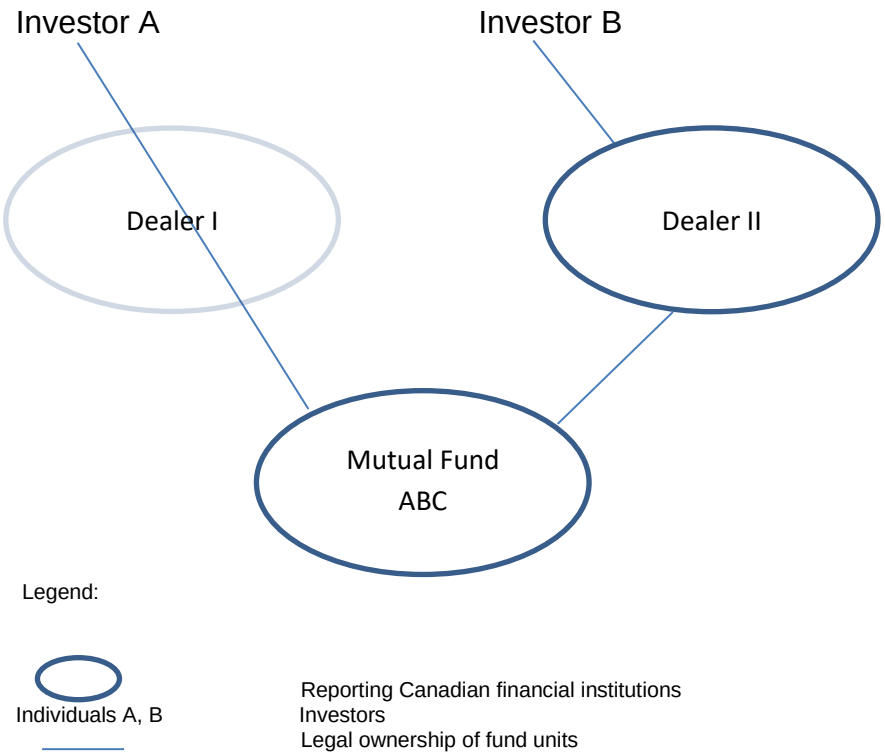
10.14 If a dealer communicates its determination of an account holder's status to the fund on a timely basis and the fund files the Part XVIII Information Return in respect of a reportable account, the dealer is not required to file a separate Part XVIII Information Return with the CRA in respect of that account. Similarly, where a dealer files the Part XVIII Information Return with the CRA in respect of a reportable account and informs the fund in writing, the fund is not required to file a separate Part XVIII Information Return with the CRA in respect of that account unless the fund can reasonably conclude that the dealer has not complied with its reporting obligations. This approach avoids duplicate reporting (if any) in respect of the account.

10.15 To the extent that a fund relies on due diligence performed at the dealer level in respect of a financial account, the fund is not entitled to apply any monetary threshold or to rely on any status as a deemed-compliant FFI, other than a sponsored investment entity or sponsored controlled foreign corporation as

described in paragraph D of section III of Annex II of the Agreement, that would cause it to be a non-reporting Canadian financial institution under Annex II of the Agreement to avoid having to report in connection with the account. Designations made under subsection 264(1) of the ITA (that is, the application of thresholds) and reliance on deemed compliant financial institution status can be used only at the dealer level.

Example – Identification and reporting of an interest in a fund

Two U.S. residents, Investor A and Investor B, seek to invest in Mutual Fund ABC (referred to in this example as 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 that 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 Dealer II have as account holders Investor A and Investor B, respectively. Both Dealer I and Dealer II, have Part XVIII responsibilities in

connection with the financial accounts they maintain, irrespective of whether the fund units are held in client name or in nominee name.

The Fund maintains a 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. If, in respect of Investor A, Dealer I communicates its determination of Investor A's status to the Fund and the Fund files a Part XVIII Information Return to report Investor A's interest in 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. Similarly, the Fund is not required to perform due diligence in respect of Investor A unless it can reasonably be concluded by the Fund that Dealer I has failed to comply with its obligations under Part XVIII.

In respect of Investor B, the Fund has to verify that Dealer II is a financial institution. For example, the Fund can do this by verifying that the dealer has a GIIN (by referring to the IRS FFI list). If the Fund confirms that Dealer II is a financial institution, the Fund is not required to file with the CRA a separate Part XVIII Information Return to report Dealer II as Dealer II is not a specified U.S. person.

Other structures

10.16 It is important to note that the term "dealer" in subsection 265(7) of the ITA includes any financial institution 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. The affairs of a particular client can result in two or more financial institutions each maintaining an account for that client. To address this scenario and to avoid duplicative efforts, subsection 265(8) of the ITA along with CRA's administrative policy described in paragraph 10.14 provide relief to the financial institutions from having to perform the same due diligence and fulfil the reporting obligations in connection with a client name account where all the criteria as discussed in paragraph 10.2 are met. An example may be the case of a custodial institution having a client–name account and an investment

manager that meets the criteria of a dealer in respect of a related financial account it maintains, provided all other criteria as described under paragraph 10.2 are met. Consequently, the dealer account rules in Part XVIII can apply to situations where investment managers have client accounts that result in financial assets being custodied with other financial institutions.

Introducing broker/carrying broker arrangements

10.17 For the remainder of this chapter, the term "investment dealer" is used to refer specifically to investment dealers that are subject to membership and regulation requirements of the Investment Industry Regulatory Organization of Canada (IIROC).

10.18 IIROC investment dealers are financial institutions and have Part XVIII due diligence and reporting obligations in connection with the financial accounts they maintain.

Financial accounts of the introducing broker

10.19 Within the industry, an IIROC investment dealer (the "introducing broker" or "IB") can enter into an agreement with another IIROC investment dealer (the "carrying broker" or "CB") to allow it to use the back office of the carrying broker to perform certain trading-related functions on IB's behalf.

10.20 The definition of "financial account" in the Agreement includes the accounts that an introducing broker maintains for its clients. Where an introducing broker is maintaining the account, but under a contract, relies on the services of a carrying broker to fulfil the Part XVIII due diligence and reporting obligations of the introducing broker, the introducing broker remains responsible for those obligations.

10.21 In a cross-border context, where the introducing broker is not a reporting Canadian financial institution, there may be agreements under which the account is relinquished to the carrying broker. Under such circumstances, since the carrying broker would be maintaining the account, as the reporting financial institution, the carrying broker will be responsible to fulfil the Part XVIII due diligence and reporting obligations in Canada.

Chapter 11 – Special circumstances

Cash value insurance contracts and/or annuity contracts

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

11.1 A financial institution can presume an individual beneficiary (other than the owner of the contract) who receives a death benefit under a cash value insurance contract or an annuity contract is not a specified U.S. person and can treat such financial 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.

11.2 A financial institution has reason to know a beneficiary of a cash value insurance contract or an annuity contract is a U.S. resident or U.S. citizen if the information collected by the financial institution and associated with the beneficiary contains U.S. indicia as described in paragraph 7.24. If a financial institution knows or has reason to know that the beneficiary is a U.S. resident or U.S. citizen, the financial institution must attempt to cure the U.S. indicia as explained in paragraphs 7.28 to 7.47. 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

11.3 Certain financial arrangements administered by financial institutions involve employment-based situations. The due diligence and reporting obligations under Part XVIII should not unduly affect employers that offer employment-based benefits of a low-risk nature.

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

11.4 A financial institution can treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a U.S. reportable account until the date on which an amount is payable to the employee/certificate holder or beneficiary if all of the following requirements are met:

- The group cash value insurance contract or group annuity contract is issued to an employer and covers at least 25 employees/certificate holders.
- The employees/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the death of the employee/certificate holder.
- The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed US$1,000,000.

11.5 A group cash value insurance contract means a cash value insurance contract that:

- provides coverage on individuals who are associated through an employer, trade association, labour union or other association or group; and
- charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender and smoking habits of the member (or class of members) of the group.

11.6 A group annuity contract means an annuity contract under which the obligees are individuals who are associated through an employer, trade association, labour union or other association or group.

Group payroll deduction savings plans

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

- the financial institution knows or has reason to know that there are U.S. indicia in the member's information obtained or maintained by the financial institution associated with the member's account;
- the member makes a contribution to the plan other than by payroll deduction (For this purpose, a member payment made to the plan for the period of a sponsor approved leave of absence (such as maternity, paternity, or disability) will not cause the member's account to be reviewable or reportable as long as the payments by the member to the sponsor do not exceed the aggregate contribution amount that the member would have made by payroll deduction but for the leave of absence. Such payments to the sponsor by the member can be made through prepayment before the leave of absence or as otherwise agreed upon by the sponsor. The sponsor can include member contributions, including member payments received for the period of the sponsor approved leave, in its regular payroll contribution remittance.); or
- less than 25 employees are members of the plan (a determination that can 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).

Retirement Compensation Arrangements

11.8 When an employer or its representative, consistent with the AML/KYC Procedures in Canada, creates a retirement compensation arrangement as defined in subsection 248(1) of the ITA (referred to as an "RCA") for its employees (referred

to as "members") and contributions to the RCA are invested by the RCA in one or more financial accounts, a member is not treated as a beneficiary of the RCA, and therefore a controlling person, until the RCA has commenced making payments to the member. The financial institution that maintains such an RCA account is not required to review or report a member as a controlling person of an RCA trust or an account holder unless:

- the financial institution knows or has reason to know that there are U.S. indicia in the member's information obtained or maintained by the financial institution associated with the member's participation;
- the RCA is not established or administered in Canada; or
- less than 25 employees are members of the RCA (a determination that can be made based on the number of employees in the RCA at the end of the calendar year preceding the calendar year for which reporting obligations are being determined).

Employee Health Trusts

11.9 An employee life and health trust, defined in section 144.1 of the ITA, is a trust established by one or more employers for the sole purpose of providing designated employee benefits. A health and welfare trust is not defined in the ITA. In Folio S2-F1-C1: *Health and Welfare Trusts*, the CRA describes a health and welfare trust as a "trust arrangement established by an employer for the purpose of providing health and welfare benefits to its employees". An employee life and health trust and a health and welfare trust are collectively referred to in this chapter as an "employee health trust". Under these arrangements, trustees receive contributions from the employer and in some cases from employees, to provide certain health and welfare benefits agreed to between the employer and the employees.

11.10 When an employer or its representative creates an employee heath trust for its employees (referred to as "members") and contributions to the employee health trust are invested by the trust in one or more financial accounts, the financial institution that maintains such a trust account is not required to review or report a member as a controlling person of the employee health trust or an account holder unless:

- the financial institution knows or has reason to know that there are U.S. indicia in the member's information obtained or maintained by the financial institution associated with the member's participation;
- the health and welfare trust is not established or administered in Canada or in the case of an employee life and health trust it does not satisfy the requirements in subsection 144.1(2) of the ITA; or
- less than 25 employees are members of the employee health trust (a determination that can be made based on the number of employees in the trust at the end of the calendar year preceding the calendar year for which reporting obligations are being determined).

Note: A review of RCAs and employee health trusts that relies on paragraphs 11.9 and 11.10 can be performed concurrently with the review of preexisting RCA and employee health trust accounts for Part XIX purposes.

Reporting of group payroll deduction savings plans, RCAs and employee health trusts

11.11 Group payroll deduction savings plans, RCAs and employee health trusts (collectively referred to in this paragraph as "plans") can be structured in a number of different ways. In some situations, there can be more than one financial institution involved, not only as a financial institution maintaining one or more different types of financial accounts or assets, but also acting in one or more capacities such as administrator, custodian, trustee, etc. Industry participants that maintain accounts covered under a plan, can agree on the means to avoid unnecessary or duplicative reporting and to otherwise give practical effect to the above guidance. Where reporting is required, it is also unnecessary to report the aggregate balance of, or amounts paid or credited to, the plan as a whole. Instead, where applicable, plan members ought to be considered as individual account holders with financial accounts reflective of their interest in the plan.

Account transfers

Account transfers of a single account holder

11.12 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 for the receiving financial institution and the due diligence procedures for new accounts apply.

11.13 Account transfers between unrelated financial institutions are to be treated as new accounts for the receiving financial institution except where the conditions for mergers or bulk acquisitions of accounts described below are met.

Mergers or bulk acquisition of accounts

11.14 When 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.

11.15 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.

11.16 The acquiring financial institution can 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. To give effect to this understanding, a financial institution can 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.

11.17 The CRA expects the acquiring financial institution will 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 according to the due diligence procedures if the acquirer has reason to know that a status is incorrect or there is a change in circumstances.

Mergers of investment entities

11.18 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.

11.19 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 when both funds are sponsored by the same sponsor.

11.20 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

11.21 When 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 (that is, the fund).

Merging fund is a reporting financial institution

11.22 When the merging fund is a reporting financial institution (including a sponsored financial institution, but when 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

11.23 When the merging fund is not a reporting financial institution, a partner jurisdiction financial institution, or a participating foreign financial institution (for example, 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 can 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 by December 31 of the year after the year of the merger if the merger takes place after September 30 of any calendar year.

Exchanges of units

11.24 Periodically, units of one fund are exchanged for the units of another fund where both funds are managed by the same manager. An exchange of units of a fund that is a trust for units of another fund that is a trust does not create a new financial account where both funds are managed by the same manager. Similarly, sub-funds of a mutual fund corporation, as described in paragraph 12.3, are collectively one financial institution for Canadian purposes, and an exchange of units of one sub-fund for units of another sub-fund is not considered to create a new account. (The reference to units includes securities in investment funds, see paragraph 10.5.)

Deemed-compliant FFI that is merged or acquired by another financial institution

11.25 Where a deemed-compliant FFI ceases to qualify as a deemed-compliant FFI because it is merged into or is acquired by another financial institution, it suffices that the acquiring financial institution undertakes account identification procedures to identify accounts held by specified U.S. persons only with respect to new accounts opened on or after the date of the merger or acquisition. It is not required to review preexisting accounts maintained prior to the date of the merger or acquisition unless there is a change in circumstances associated with the account that:

- causes the acquiring financial institution to know, or have reason to know, that the self-certification or other documentation associated with the account is incorrect or unreliable;
- with respect to a preexisting individual account, results in one or more U.S. indicia being associated with the account; or
- with respect to a preexisting individual account or preexisting entity account that was not required to be reviewed, identified, or reported, causes the preexisting account to become a preexisting account required to be reviewed, identified, or reported due to an increase in the account balance or value.

Financial institution that ceases to be a deemed-compliant FFI to become a reporting Canadian financial institution

11.26 Where a financial institution with a local client base or a local bank ceases to be a deemed-compliant FFI to become a reporting Canadian financial institution because it no longer meets the criteria to be a deemed-compliant FFI (as provided in paragraphs 3.62 and 3.64), the relevant cut-off date for reviewing accounts shall be the beginning of the following reportable period. For instance, if the reportable period began on January 1, 2021, then the reporting financial institution is required to apply the new account due diligence procedures for any financial account opened on or after January 1, 2022. As such, the first reporting year would be January 1, 2022 to December 31, 2022 and any U.S. reportable accounts would have to be reported

before May 2, 2023. It is not required to review preexisting accounts maintained prior to the cut-off date unless there is a change in circumstances associated with the account that:

- causes the financial institution to know, or have reason to know, that the self-certification or other documentation associated with the account is incorrect or unreliable;
- with respect to a preexisting individual account, results in one or more U.S. indicia being associated with the account; or
- with respect to a preexisting individual account or preexisting entity account that was not required to be reviewed, identified, or reported, causes the preexisting account to become a preexisting account required to be reviewed, identified, or reported due to an increase in the account balance or value.

Financial institution that ceases to be a deemed-compliant FFI with no reporting obligation under the Agreement to become a deemed-compliant FFI with limited reporting obligation under the Agreement

11.27 Where a financial institution that is a local bank ceases to be a deemed-compliant FFI with no reporting obligation under the Agreement to become a deemed-compliant FFI with limited reporting obligation under the Agreement because it no longer meets the criteria to maintain its status as a deemed-compliant FFI with no reporting obligation, the relevant cut-off date for reviewing accounts shall be the beginning of the following reportable period. For instance, if the reportable period began on January 1, 2021, then it suffices that it undertake account identification procedures to identify non-resident accounts held by specified U.S. persons only with respect to new accounts open on or after January 1, 2022. As such, the first reporting year would be January 1, 2022 to December 31, 2022 and any U.S. reportable accounts would have to be reported before May 2, 2023. It is not required to review preexisting accounts maintained prior to the cut-off date to identify non-resident accounts held by specified U.S. persons unless there is a change in circumstances associated with the account that:

- causes the financial institution to know, or have reason to know, that the self-certification or other documentation associated with the account is incorrect or unreliable;
- with respect to a preexisting individual account, results in one or more U.S. indicia being associated with the account; or
- with respect to a preexisting individual account or preexisting entity account that was not required to be reviewed, identified, or reported, causes the preexisting account to become a preexisting account required to be reviewed, identified, or reported due to an increase in the account balance or value.

Dormant accounts

11.28 A financial institution can apply its normal operating procedures to classify an account as dormant.

11.29 A financial institution can classify a dormant account based on documentation it already has in its possession for the account holder. Where this review indicates the account is a U.S. reportable account, the financial institution should report the account notwithstanding that there has been no contact with the account holder. In view of the likelihood that any attempt to cure indicia in connection with a dormant account that is a preexisting individual account would be unsuccessful, there is no need to obtain or review the information described in subparagraph B(4) of section II of Annex I of the Agreement.

11.30 If the account is closed and the balance is transferred to a pooled account for unclaimed balances, maintained by the financial institution, there does not exist a reportable account.

11.31 An account ceases to be dormant on the earliest of any of the following events occurring:

- the account holder initiates a transaction on the dormant account or any other account held with the financial institution;

- the account holder communicates with the financial institution about the dormant account or any other account held with the financial institution; or
- the account ceases to be a dormant account under the normal operating procedures of the financial institution.

Chapter 12 – Part XVIII – Information reporting

Information elements for U.S. reportable accounts

12.1 Each reporting Canadian 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 before May 2nd following the calendar year to which the information return applies. Information returns that are late filed or not filed electronically will be subject to the penalties under subsections 162(7.01) and (7.02) of the ITA. In addition, any financial institution that fails to provide any information required on an information return is liable to a penalty of $100 for each such failure under subsection 162(5) of the ITA unless reasonable effort was made by the financial institution to obtain the information from the account holder.

Note: 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.

12.2 A financial institution that does not maintain a U.S. reportable account nor make payments to an NPFI that give rise to reporting and therefore does not have reporting obligations for a particular year, is not required to file a "nil" Part XVIII Information Return for that year with the CRA.

Information on the reporting Canadian financial institution

12.3 The reporting financial institution must identify itself to the CRA by providing its name, address, BN, and GIIN.

Note: A mutual fund corporation with classes of shares where each such class is considered a separate fund pursuant to securities legislation (each such fund is referred to as a "sub-fund") is one reporting financial institution. Since sub-funds are part of the same entity, they can be reported using the corporation's GIIN.

12.4 The GIIN is a 19-character identification number issued by the IRS to a financial institution.

12.5 The ability of a financial institution to provide U.S. withholding agents with a GIIN is expected to facilitate its participation in U.S. markets. Financial institutions seeking to secure a GIIN can do so by going to 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 in the Agreement and the CRA has received assurances that the RO in connection with a registration by a 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 may be identified as additional points of contact).

Information identifying each account holder

12.6 In relation to each U.S. reportable account, the following identifying information of the account holder must be reported:

- Name
- Residence address
- U.S. TIN (if the account holder is a specified U.S. person - see paragraphs 12.23 to 12.28)
- Canadian TIN (if applicable - see paragraph 12.29)
- Date of birth (if applicable - see paragraphs 12.24 and 12.25)

12.7 When an account held by a passive NFFE is controlled by one or more specified U.S. persons, the same identifying information as mentioned above must be provided in respect of each of its controlling persons who is a specified U.S. person.

Account information

12.8 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 nature of the account.

Custodial accounts

12.9 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 the following listed elements must be provided:

- 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; and
- the total gross proceeds from the sale or redemption of property paid or credited to the account.

Note: A financial institution holding an investment fund unit as intermediary or nominee for a customer can consider all amounts received in connection with that unit as other income. Similarly, a financial institution holding an interest in a mutual fund corporation as intermediary or nominee for a customer can consider all distributions received in connection with that interest as dividend income.

12.10 Where a cash value insurance contract or annuity contract, including a segregated fund contract, is held in nominee name and is reported as part of a custodial account, the custodian should report all amounts paid or credited to the custodian from the contract (i.e., withdrawals from the contract). This amount can be reported as gross proceeds paid or credited to the account. For this purpose, the amount "paid or credited to the account" means the amount that would have been paid or credited to the account holder if the account was held directly by the account holder.

Custodial accounts and other income

12.11 The term "other income" means any amount considered as income under the ITA other than interest, dividends, or gross proceeds or capital gains from the sale or redemption of property, such as trust income.

Custodial accounts and gross proceeds

12.12 The total gross proceeds from a sale or redemption are the total amount realized as a result of a sale or redemption of property. The sale or redemption is to be determined regardless of whether the owner of the property is subject to tax with respect to the sale or redemption.

12.13 The total gross proceeds from a sale or redemption of property is the total amount paid or credited to the account increased by any amount not paid by reason of the repayment of margin loans. Commissions and fees with respect to the sale or redemption can be deducted in determining the total gross proceeds. Gross proceeds are considered paid on the date that the proceeds are credited to the account of or otherwise made available to the person entitled to the payment.

12.14 Gross proceeds may also include the return of capital and the distribution of capital gains in respect of the property even where there has not been a sale or redemption of the property. Alternatively, such amounts can be reported as "other income".

12.15 A financial institution is required to report income and the total gross proceeds from the sale or redemption of property held in a custodial account when the income or gross proceeds are paid or credited to, or with respect to, the custodial account. The requirement to report in respect of property held in a custodial account applies regardless of whether the amount is paid or credited to an account other than the custodial account.

12.16 In the case of a sale or redemption of an interest bearing debt obligation, the gross proceeds include any interest that has accrued between interest payment dates. Alternatively, the amount of accrued interest can be included in the total gross amount of interest reported for the account.

12.17 In the case of a clearing organization that settles sales and purchases of securities between members of such organization on a net basis, the gross proceeds from sales or dispositions are limited to the net amount paid or credited to a member's account that is associated with sales or other dispositions of property described in this section by such member as of the time that such transactions are settled under the settlement procedures of such organization.

12.18 A partnership interest held in a custodial account is a financial asset and is therefore to be reported along with any other assets held in a custodial account. A custodian does not necessarily have details regarding the annual allocations of income, gain or losses made to each partner. Therefore, a financial institution is not required to report annual allocations of income, gain or loss made by a partnership to a partner in respect of a partnership interest held in a custodial account. However, distributions paid or credited by the partnership to the custodial account must be reported as either gross proceeds or other income.

Depository accounts

12.19 If the account is a depository account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period is required in respect of reporting for 2015 and subsequent years.

Other accounts

12.20 For accounts other than custodial or depository accounts (such as equity and debt interests, cash value insurance contracts, annuity contracts and client name 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 the account during the calendar year or other appropriate reporting period with respect to which the financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the year or period.

Note: For greater clarity, there is no need to distinguish the return of capital from other amounts paid or credited. Also, distributions from an entity that is a CIV that are considered paid or credited for income tax purposes are considered paid or credited to the account holder of the unit.

12.21 Whether an interest in a partnership is treated as a financial account or an asset depends on whether the interest is held as a financial account or as an asset in a financial account. A partnership interest that is held directly by an account holder is an equity interest and is to be reported as other accounts. A partnership interest held in a custodial account is an asset and is therefore to be reported along with any other assets held in a custodial account.

Explanatory information

Account holder address

12.22 The address to be reported is the current residence address of the account holder. If no current residence address is associated with the account holder, report the address that is on file for mailing or other purposes. In the case of an account held by a passive NFFE controlled by one or more specified U.S. persons, the current residence address of each controlling person who is a specified U.S. person must also be reported.

U.S. federal taxpayer identification number (U.S. TIN)

12.23 The U.S. TIN is a unique nine-digit number, assigned by the U.S. Government to an individual or entity that is a specified U.S. person and used to identify the individual or entity for purposes of administering U.S. tax laws. A U.S. TIN includes:

- a social security number (SSN);
- an individual taxpayer identification number (ITIN); and
- an employer identification number (EIN).

12.24 For the 2014 to 2016 calendar years (phase-in period) in connection with a preexisting account, the U.S. TIN is required to be reported only if it exists in the

records of the financial institution. If it does not exist in the records of the financial institution, the financial institution must report the specified U.S. person's date of birth if that information is in its records.

12.25 For the 2017 and subsequent calendar years, a financial institution is required to report the U.S.TIN as applicable. [However, for 2017-2024 calendar years in connection with preexisting accounts, the U.S. has announced some temporary administrative relief measures for a financial institution that has not obtained the U.S. TIN (see paragraphs 12.55 to 12.64).]

12.26 If a specified U.S. person does not have a U.S. TIN, it is required to apply for one and provide the number to the financial institution. Even if the account holder does not provide a U.S. TIN, the account remains reportable.

12.27 A financial institution must make reasonable efforts to secure the U.S. TIN of a specified U.S. person. "Reasonable efforts" means genuine attempts to acquire the U.S. TIN of the account holder of a U.S. reportable account. Such efforts must be made at least once a year until the U.S. TIN is obtained. A financial institution is authorized to ask its account holders to provide a U.S. TIN at any time regardless of the phase-in period provided for in the Agreement.

Example

Reasonable efforts include contacting the account holder (e.g., by mail, in-person or by phone), including a request made as part of other documentation or electronically (e.g., by facsimile or by e-mail); and reviewing electronically searchable information maintained by a related entity of the financial institution.

12.28 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 when information supplied by an individual or an entity proves to be inaccurate and the financial institution has no reason to know that.

Canadian taxpayer identification number (Canadian TIN)

12.29 A financial institution must provide the Canadian TIN of the account holder if it is in the records of the financial institution in the case of a preexisting account and if the account holder has a Canadian TIN in the case of a new account. In the case of an account held by a passive NFFE controlled by one or more specified U.S. persons, the Canadian TIN (if applicable) of each controlling person who is a specified U.S. person must also be reported. A Canadian TIN can be in the form of a SIN, an ITN, a BN, or a trust account number.

Account number

12.30 The account number to be reported with respect to a financial account is the identifying number assigned to the account or another number that is used to identify the financial account within the financial institution.

Account balance or value

12.31 The account balance or value as of the end of the relevant calendar year or other appropriate reporting period must be reported together with the currency in which the balance or value is denominated (see paragraph 12.38). For depository accounts, the relevant year end 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 2023, the balance to be reported will be the account balance at December 31, 2023. This balance will be reported to the CRA before May 2, 2024.

12.32 An account with a balance or value that is negative must be reported as having an account balance or value equal to zero.

12.33 When 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, 2023, the product will be valued on June 2, 2024. The June 2, 2024 value will be reported for the 2024 calendar year to the CRA before May 2, 2025.

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

12.35 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 (that is, 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 because the account holder has used the value that had been accumulated to purchase the right to a series of future payments. A financial institution can 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.

12.36 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.

12.37 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, nor is it 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.

Currency

12.38 All amounts reported by a financial institution must identify the currency in which they are denominated. In the case of an account denominated in more than one currency, the financial institution can report the information in a currency in which the account is denominated and is required to identify the currency in which the account is reported.

Joint accounts

12.39 Each holder of a jointly held account that is a U.S. resident or U.S. citizen is attributed the entire balance or value of the account as well as the entire amount paid or credited to the joint account (or with respect to the joint account).

Example

When 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, 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. For reporting purposes, one slip with the full account balance, should be prepared for each joint holder that is a specified U.S. person.

Account closures

12.40 In respect of an account closure, the account balance reporting requirement intends to capture the amount or value withdrawn from the account in connection with the closure (as opposed to the account balance at the exact point of closure). In practice, account closing procedures differ between institutions and between different products and accounts. A financial institution can use any reasonable and consistently applied approach to determining when a particular account is considered to be closed. For example, an equity or debt interest in a financial institution would generally be considered to be closed upon termination, transfer,

surrender, redemption, cancellation, or liquidation. However, an account with a balance or value equal to zero or that is negative will not be a closed account solely by reason of such balance or value.

12.41 It is acceptable for a financial institution to record the balance or value within five 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 when it receives instructions to close the account, it can record the most recent available balance or value that is obtainable after it receives instructions to close the account. (This can 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.)

Accounts may cease to be reportable

12.42 Other than in the context of an account closure, the requirement to report an account under Part XVIII for a particular year is based on the status of the account holder at the end of that year. As such, if an account holder ceases to be a specified U.S. person prior to the end of the year, the accounts held by that account holder are not reportable accounts for that year. In the case of an account closure, the requirement to report the account under Part XVIII for the year in which the account was closed is based on the status of the account holder at the time of closure.

Specification of certain data elements

Filer category

12.43 The filer category must be reported on the Part XVIII Information Return based on specific filing status. One of the following values must be reported to indicate the filer category of the financial institution:

- F602 for Registered Deemed-Compliant (RDC) FFI including Reporting Model 1 FFI that does not fall in any of the other following categories
- F605 for Qualified Intermediary (QI), Withholding Foreign Partnership (WP), or Withholding Foreign Trust (WT) with an Agreement with the U.S.
- F607 for Sponsoring Entity of a Sponsored FFI
- F610 for Withholding Agent under the U.S. Internal Revenue Code

Note: The filer category F602 includes all reporting Canadian financial institutions but, where one of the other categories applies, that other category should be selected instead. The filer category of a reporting Canadian financial institution must be omitted if there is a sponsor with a filer category specified.

Timetable for reporting

12.44 The following lists provide the information required to be reported in respect of each U.S. reportable account. The obligation to obtain and report information with respect to U.S. reportable accounts is phased in over a three-year period starting in 2014 as shown below.

Information to be reported to the CRA every year for all accounts, starting in 2014

- Name
- Address
- U.S. TIN or date of birth (if applicable)
- Canadian TIN (if applicable)
- Account number or functional equivalent
- Account balance or value

Information to be reported to the CRA every year, starting in 2015 or 2016

Information to be reported by type of account	Custodial accounts	Depository accounts	Other accounts
Total gross amount of interest paid or credited to the account	Starting 2015	Starting 2015	N/A
Total gross amount of dividends paid or credited to the account	Starting 2015	N/A	N/A
Total gross amount of other income paid or credited to the account	Starting 2015	N/A	N/A

Total gross amount paid or credited to the account holder with respect to the account including the aggregate amount of redemption payments made to the account holder	N/A	N/A	Starting 2015
Total gross proceeds from the sale or redemption of property paid or credited to the account	Starting 2016	N/A	N/A

For 2017 and subsequent years, all of the information listed above is to be reported to the CRA before May 2 of the following calendar year.

Reporting on NPFIs

12.45 When a reporting Canadian financial institution makes certain payments to a nonparticipating financial institution (NPFI) in respect of an account held by the NPFI, it must report the name, address and the aggregate amount of payments made to each NPFI for the 2015 and 2016 calendar years, by electronically filing a Part XVIII Information Return before May 2 of the following year.

12.46 Specifically, the fields of a Part XVIII Information Return in respect of an NPFI (Account Holder type code F103) should be reported as follows:

- Account Holder Type – "3"
- Account Number – "NANUM" or account number
- Name – the NPFI's name
- Address, City Name and Country Code – the NPFI's address, including city name and associated country code
- Account Balance – leave blank or use "0.00"
- Other Amount – the aggregate amount of payments made
- Account Currency Type Code – the currency code of the payment

12.47 The payments to be reported are:

- non-U.S. source interest paid in respect of a financial account held by an NPFI;
- non-U.S. source dividends paid on shares held in a financial account held by an NPFI; and
- other non-U.S. source payments paid in respect of a financial account held by an NPFI, including gross proceeds from the sale or redemption of property. (However, see paragraph 12.51 on the reporting of 2015 information.)

12.48 The financial institution has to 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 can treat all payments as having a non-U.S. source to avoid having to distinguish payments based on source.

12.49 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 licences;
  - transportation;
  - freight;
  - gambling winnings;
  - awards;
  - prizes;
  - scholarships;
  - interest on outstanding accounts payable arising from the acquisition of goods or services; and
- payments for which the financial institution has only a passive role in the payment process, such as when 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 (for example, processing a cheque, arranging the electronic transfer of funds on behalf of one of its customers, and crediting a payment to a customer's account).

12.50 Where shares in a financial institution are considered to be financial accounts to the financial institution, dividends paid by the financial institution directly to an investor that is an NPFI, are reportable.

12.51 Consistent with IRS Notice 2016-08, payments that are gross proceeds made by a reporting Canadian financial institution to a NPFI during the 2015 year may, but are not required to, be reported to the CRA. A financial institution is not required to advise the CRA on whether it has included gross proceeds in reporting payments to NPFIs for the 2015 year. It is required to keep a record of its decision. Other types of payments such as interest, dividends, and other income remain reportable for the 2015 year and should be aggregated and reported as "other amount" on the Part XVIII Information Return.

Service providers

12.52 A financial institution can rely on one or more third-party service providers to meet its obligations under Part XVIII. However, all obligations remain the responsibility of the financial institution.

Example 1

A financial institution can 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 financial institution can use a third-party service provider to file its Part XVIII Information Return. The third-party service provider is required to use its transmitter number and must include the financial institution's BN on the information return. A third-party service provider can 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

12.53 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 if the IRS raises concerns in connection with the reporting of a financial institution. In general, pursuant to subsection 162(7) of the ITA, a failure to comply with an obligation imposed under the ITA/ITR, such as a due diligence obligation under Part XVIII of the ITA, may be subject to a penalty of $25 per day to a maximum of 100 days, during which the failure continued, except where another provision of the ITA (other than subsection 162(10) or 162(10.1) or 163(2.22)) sets out a penalty for the failure.

Minor and administrative errors

12.54 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 can contact the CRA to discuss the matter. If contacted, the CRA will attempt to resolve the matter and, if necessary, will contact the Canadian financial institution and apply Canadian law where appropriate.

Significant non-compliance

12.55 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 financial institution. If contacted, the CRA will attempt to resolve the matter.

12.56 The CRA will contact the financial institution and apply Canadian law where appropriate. If voluntary compliance and/or administrative action by the CRA do not resolve the issue within 18 months of the IRS's notification of the issue, the IRS is entitled to treat the financial institution as an NPFI and trigger the adverse consequences associated with that status in the U.S.

12.57 Significant non-compliance includes:

- repeated failure to file the Part XVIII 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; or
- otherwise active assistance to specified U.S. persons in avoiding the reporting obligations under Part XVIII.

12.58 Pursuant to IRS Notice 2017-46, for the 2017, 2018 and 2019 calendar years, a financial institution will not be viewed as significantly non-compliant with its obligations under the Agreement for not reporting a U.S. TIN with respect to a preexisting account that is a U.S. reportable account, and may use 9 "A" in lieu of the U.S. TIN, provided that it:

- reviews electronically searchable data for any missing U.S. TIN;
- requests any missing required U.S. TIN from each account holder annually; and
- obtains and reports the date of birth of each account holder and controlling person whose required U.S. TIN is missing.

12.59 It is expected that financial institutions will design/adjust their systems and procedures in accordance with the IRS Notice 2017-46 and related CRA guidance. As such, a financial institution that has not complied with the notice and related CRA guidance, may only include 9 "0" in the U.S TIN field of the Part XVIII information return as opposed to 9 "A" where the U.S. TIN is not reported for the 2018 and 2019 calendar years. As such, a financial institution is not required to design/adjust its systems to include 9 "A" in the U.S TIN field for the 2017 calendar year and is not required to advise the CRA on whether it has performed all of the new requirements. However, it is required to keep a record of its procedures.

12.60 In order to better understand the reasons why a financial institution has not been able to obtain a U.S. TIN, for reporting related to 2020 and 2021 calendar years the IRS developed a series of codes that may be used to populate the TIN

field in circumstances where the TIN is not available, as an alternative to using 9 "0". The use of these codes is optional and does not mean that a financial institution will not be at risk of being found significantly non-compliant due to a failure to report each required U.S. TIN. The IRS will take into account the facts and circumstances leading to the absence of the U.S. TIN, such as the reasons why the TIN could not be obtained, whether the financial institution has adequate procedures in place to obtain TINs, and the efforts made by the financial institution to obtain TINs.

12.61 The series of codes is as follows:

- 222222222 – Preexisting individual account with only U.S. indicia being a U.S. place of birth.
- 333333333 – New individual account that (1) has indicia of a U.S. place of birth, and (2) either:
  - has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect; or unreliable, and a new self-certification has not been obtained, or
  - was below the threshold for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification has not been obtained.
- 444444444 – Preexisting individual and entity account that (1) has U.S. indicia other than a U.S. place of birth, and (2) either:
  - has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect; or unreliable, and a new self-certification or other documentation has not been obtained, or
  - was below the threshold for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.

- 555555555 – New individual and entity account that (1) has a U.S. indicia other than a U.S. place of birth, and (2) either:
    - has a change in circumstances causing the self-certification or other documentation originally obtained at account opening to be incorrect; or unreliable, and a new self-certification or other documentation has not been obtained, or
    - was below the threshold for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
- 666666666 – Preexisting entity account with account balance exceeding US$1,000,000 held by a passive NFFE with respect to which no self-certifications have been obtained, and no U.S. indicia has been identified in relation to its controlling persons.
- 777777777 – Preexisting accounts where there is no TIN available and the account has been dormant or inactive, but remains above the reporting threshold.

12.62 For 2022, 2023 and 2024 calendar years, the IRS has issued Notice 2023-11, 2023-3 IRB 1, pursuant to which, the IRS will not determine a financial institution as significantly non-compliant with its obligations under the Agreement with respect to reporting the required U.S. TINs for preexisting accounts solely because of the financial institution's failure to obtain and report each required U.S. TIN for such accounts, provided that the financial institution complies with all the conditions set forth as follows:

- For each U.S. reportable account (including new accounts) with a missing required U.S. TIN, the financial institution:
    - obtains and reports the date of birth of each account holder that is an individual and controlling person whose U.S. TIN is not reported;
    - starting in calendar year 2023, annually requests from each account holder any missing required U.S. TIN. To satisfy the requirement to

make an annual request from each account holder for missing required U.S. TINs, the financial institutions must use the method of communication that is, in the financial institution's reasonable judgment, most likely to reach the account holder. In addition, the communication must include either of the following:

- the web address of the State Department's Joint Foreign Account Tax Compliance Act (FATCA) FAQ, (https://travel.state.gov/content/travel/en/international-travel/while-abroad/Joint-Foreign-Account-Tax-Compliance-FATCA-FAQ.html), or
- a copy of the FAQs described in the preceding bullet and either
  - (i) a copy of the relief procedures provided by the IRS for certain former citizens, or
  - (ii) the web address for Relief Procedures for Certain Former Citizens (https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens);

- starting in calendar year 2023, annually searches electronically searchable data maintained by the financial institution for any missing required U.S. TINs; and
- reports an accurate TIN Code for each account that is missing a required U.S. TIN. For calendar year 2022, the financial institutions have an option to use either the TIN codes described in paragraph 12.61 or the updated TIN codes described in paragraph 12.64. However, for 2023 and 2024, only the most recent TIN codes as described in paragraph 12.64 should be used.

12.63 In all cases, while it is still possible to report an account without a U.S. TIN, by entering 9 "0" in the TIN field, the financial institutions are encouraged to use the codes issued by the IRS.

12.64 Further to Notice 2023-11, the IRS has issued an updated series of TIN codes that identify features of these accounts that may explain why the financial institution cannot report a U.S. TIN. The use of these codes will allow the IRS to better understand the facts and circumstances behind the missing U.S. TINs. The updated TIN field code and related scenarios are as follows:

- 222222222 – Pre-existing individual account with only U.S. indicia being a U.S. place of birth, other than an account reported under code 000222111. This code takes precedence if any other code (other than 000222111) could also be applicable.

- 000222111 – Pre-existing depository individual account with only U.S. indicia being a U.S. place of birth. Additionally, financial institution must determine that the account holder is a resident of Canada. This code takes precedence if any other code could also be applicable.

- 333333333 – New individual account that (1) has indicia of a U.S. place of birth, and (2) either:

    - has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect or unreliable, and a new self-certification has not been obtained, or

    - was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification has not been obtained.

- 444444444 – Pre-existing individual or entity account that (1) has U.S. indicia other than a U.S. place of birth, and (2) either:

    - has a change in circumstances that either results in one or more U.S. indicia being associated with the account or causes a self-certification or other documentation originally obtained to be incorrect or unreliable, and a valid self-certification or other

documentation has not been obtained subsequent to the change in circumstances, or

  - was below the threshold for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.

- 555555555 – New individual or entity account that (1) has a U.S. indicia other than a U.S. place of birth, and (2) either:

  - has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or

  - was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.

- 666666666 – Preexisting entity account held by a passive NFFE with one or more controlling persons with respect to which self-certifications have not been obtained, and no U.S. indicia have been identified in relation to any controlling persons.

- 777777777 – Preexisting accounts where there is no TIN available and the account has been dormant or inactive, but remains above the reporting threshold. If an account could be classified into multiple TIN codes, the other code takes precedence.

- 999999999 – Any account for which the financial institution cannot obtain a TIN and none of the other TIN codes would be applicable. The use of this code indicates that a financial institution has completed its review of accounts without U.S. TINs and has in good faith applied TIN codes to records when applicable.

12.65 The IRS system will still generate an error notification to indicate the entry is invalid when one of the above codes is used.

Anti-Avoidance Provision

12.66 Part XVIII contains an anti-avoidance provision where if a person enters into an arrangement or engages in a practice, the primary purpose of which can reasonably be considered to be to avoid an obligation under Part XVIII, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

Example 1

If a financial institution did not create any electronic records for a lower value account so that an electronic record search would not yield any results, or maintains computerised systems artificially dissociated to avoid application of the account aggregation rules, then, in the absence of a commercial reason, it may be reasonable to view that these arrangements were established to avoid the relevant accounts being reported. Under such circumstances, the obligations under Part XVIII apply in respect of these accounts.

Example 2

A financial institution holds preexisting accounts. It is discovered that transfers from / to those accounts to / from the related offshore accounts have taken place just before and after the end of a calendar year so that the account balances go below the reporting thresholds at the end of the calendar year. In the absence of an apparent commercial or administration reason for these transfers, if it is reasonable to view that the year-end account balances were manipulated primarily to avoid the reporting of the accounts, the anti-avoidance provision applies.