Stakeholder Comments Template - First circulation

Product name: CRA Draft Guidance on the Common Reporting Standard	
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Phone number: 416-504-1118 ext 202	**Date:** August 26, 2021

Stakeholder area				CRA Area	
	Location	**Comments**	**Reasons** (For technical changes, please provide the legislative reference.)	**Changed** (tick)	**Discussed with stakeholder** (date and reason why change is not being made)
1.	Para. 5.11	The draft guidance provides that if the dealer fails to confirm that a self-certification was obtained, or fails to provide a classification of the account holder status to the fund manager, the fund manager should do any of the following: • Conduct its own due diligence; • Refuse to open the account until a self-certification is obtained; or • Freeze the account until the self-certification is obtained.	We disagree with the CRA including any reference in the guidance to a fund manager freezing an account until it has had discussions with the appropriate securities regulatory authorities to conclude that such an action, if permitted under a fund's constating documents, would not subject the fund manager to litigation from investors, or regulatory issues. If "freezing" an account means that an investor cannot redeem units when requested, this type of action should be made clear in the ITA and not only the CRA guidance, which does not have the force of law.		
2.	Paras. 6.2	The draft guidance provides an expansive definition for "financial account", defining it to include a "file with an entity engaged in the business of dealing in securities or any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." We request that the guidance provide more illustrative examples of what is and is not captured by the expansive definition of "financial account."	The expansive definition of "financial account" inadvertently captures many relationships for which due diligence and reporting should not be required. For example, it would capture the relationship between investment managers arising from the provision of model portfolio services.[1] This relationship is arguably not the intended target of due diligence and reporting requirements as it		

		More specifically, the guidance could indicate that the relationship between the provider and recipient of model portfolio services[1] is not a "financial account."	would result in duplicative reporting (since the end-clients of the investment manager that purchased the model portfolio services are already the subject of due diligence and reporting requirements).		
3.	Para. 7.20	We request that the relevant chapters be updated to incorporate the guidance in paragraph 7.20 concerning verbal or electronic self-certification.	Paragraph 7.20 of the draft guidance was updated to reflect self-certifications being provided verbally or electronically; however, similar updates were not made in subsequent chapters concerning self-certifications being signed (see, for example, paragraphs 8.65 and 8.67, which require a signature or positive affirmation).		
4.	Para. 7.24	We propose the following amendment to para. 7.24: 7.24 As stated in paragraph 7.18, a self-certification is generally required upon opening a new account and can 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 9.24 to 9.36). The account opening process typically begins when the account holder is assigned an account number and will typically be completed when the ~~beneficial owner~~ account holder is able to transact in the account. For more information on when a self-certification is required for a preexisting account and when there is a change in circumstances, see Chapters 8 to 10 of this	Paragraph 7.24 of the draft guidance refers to the "beneficial owner" whereas "account holder" is used elsewhere in the guidance (including in paragraphs 9.15 and 9.24 to 9.36). For consistency it would be preferable if the term "account holder" were used throughout, unless there is a specific reason to use the term "beneficial owner" in para. 7.24.		

[1] Some investment managers provide model portfolio services to other investment professionals who utilize those model portfolios to provide investment management advice to their clients. This relationship arises in the following circumstances:

- An investment manager creates investment model portfolios;
- A third-party investment manager purchases the investment model portfolios by entering into a services agreement with the investment manager for the provision of the model portfolio services;
- The third-party investment manager has individual agreements with its clients to provide them with segregated managed accounts;
- The third-party investment manager utilizes the investment model portfolios to implement the investment strategies utilized in the segregated managed accounts; and
- In order to implement those investment strategies in the segregated managed account, the clients must also engage the services of a dealer and a custodian.

Therefore, the end-clients and their segregated managed accounts represent a relationship/financial account for each of the third-party investment manager, the dealer and the custodian.

		guidance.			
5.	Paras 7.27-7.28	Paragraph 7.28 of the draft guidance states that a FI that fails to obtain and validate a self-certification when required will be liable for a penalty of up to $2,500. We request that the guidance provide an exception from the penalty if the FI takes any of the "effective measures" referred to in paragraph 7.27 (i.e., the closure or freezing of the account).	Subject to the comments above regarding para. 5.11, an exception to the penalty should be made if the account is closed or frozen, especially upon a change in circumstance. This is because the account exists as a result of a self-certification that was properly obtained at the time of account opening (i.e., prior to the change in circumstance), and the FI has done all it can by freezing/closing the account upon the account holder failing to provide a missing self-certification after the change in circumstance.		
6.	Para. 9.15	We request that the language of this paragraph be amended to clarify that an account will still be regarded as "frozen" even though it may be the subject of activity that is not directed by the account holder. Specifically, we would propose 9.15 be amended to read as follows: 9.15 A new account should not be opened until a valid self-certification is obtained. Where the account holder is able to transact into the account, the account will generally be considered opened unless the account is frozen to stop all transactions on the account, including the initial deposit, <u>provided that automatic deposits into an account established in connection with an employer sponsored equity compensation plan that is not eligible to rely on paragraph 11.15 can continue provided the account holder does not have control over those automatic transactions and is prevented from transacting in the account.</u>	Paragraph 9.15 of the draft guidance states that, where the account holder is able to transact into the account, the account will be considered opened unless the account is frozen to stop all transactions on the account, including the initial deposit. This paragraph starts by referring to the account holder being able to transact into the account and concludes by saying that all transactions must be stopped. Where a financial institution is a plan administrator for employer sponsored equity compensation plans (other than plans that are eligible to rely on the guidance in paragraph 11.15 of the draft guidance), it is possible that there may be automatic transactions that result in cash or property being deposited into the account of a particular employee. It is also possible that these automatic transactions may occur prior to the account holder having provided a self-certification to the financial institution. The plan administrator will be able to freeze the account to prevent the account holder from transacting in the account; however, the plan administrator will not be able to prevent the automatic transactions from occurring. If the account holder (i.e., the employee) does not		

			have any control over the automatic transactions and is also prevented from personally transacting in the account, the plan administrator should not be viewed as having breached its obligation to obtain a self-certification from the account holder simply because of the occurrence of these automatic transactions.		