THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

November 3, 2010

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Dear Jane:

Re: Foreign Account Tax Compliance Act (FATCA)

Thank you very much for meeting with Debbie Pearl-Weinberg and me regarding FATCA on Thursday, October 28, 2010. We appreciated your interest and candor, and are pleased to provide the following material, which we had indicated that we would forward to you.

1. Summary of tax information currently reported to the CRA by Canadian investment funds, most of which is provided to the U.S. pursuant to exchange-of-information provisions.
2. November 1, 2010 letter to the International Revenue Service/Treasury on Notice 2010-060.

We would like to confirm that IFIC supports the objective of the FATCA regime, that is, to help tax authorities in ensuring that people who are required to pay taxes in a country do so. However, our view is that new administrative requirements and compliance costs imposed on foreign financial institutions (as well as the U.S. Internal Revenue Service (IRS)) under FATCA are disproportionate to the risk to the U.S. of potential tax evasion from the Canadian mutual fund industry.

Our arguments can be summarized as follows: we believe widely held Canadian resident mutual funds should be excluded from the FATCA regime as there is little potential for overall tax leakage associated with U.S. persons who may own investments in Canadian mutual funds because:

- U.S. persons who are Canadian residents pay Canadian tax, in general at a higher rate than they would pay in the U.S., and would be entitled to foreign tax credits in the U.S. that would generally eliminate their U.S. tax liability; and
- Total non-Canadian-resident holders, from an informal IFIC survey of some members whose assets totaled an estimated 35% of total industry assets, represent only one per cent of total holders and:
  - U.S. persons who are U.S. residents are reported on to the IRS through the information exchange agreement;
  - Investors who are resident outside Canada and the U.S. are a very small portion of investors, and those resident in non-treaty countries are an even smaller portion at 0.13 percent of total investors.

We therefore recommended the following:

- Widely held Canadian funds should be subject to reduced monitoring and reporting requirements, as they represent a low risk of tax evasion.
- Alternatively, the compliance burden should be reduced by expanding the types of accounts exempt from the reporting regime, that is:
    - All registered plans, particularly retirement plans such as registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) (rather than just employer-sponsored pension plans), should be excluded from reporting requirements under FATCA ; and
    - The definition of exempted accounts, that is, 'depository accounts' below $50,000 (or whatever higher amount that the IRS/Treasury may determine), should be extended to include mutual fund holdings.

We continue to consider a number of areas of potential conflicts of law, particularly as regards to how privacy legislation would actually apply in the case of current clients. That is, it is not clear that fund managers could rely on a waiver obtained from a client in circumstances where the client would suffer financial hardship by not providing the waiver because, as our response notes, this raises concerns similar to those in situations where consent is obtained under duress. As well, existing account agreements with clients do not generally provide the mutual fund with the ability to close the account in the circumstances in which the FATCA legislation would mandate such accounts be closed. "Locked-in" RRSPs or RRIFs in particular, we believe, could not be closed under Canadian pension legislation. In addition, there obviously would be severe tax consequences for the annuitant and reputational risk concerns for Canadian financial institutions and the Canadian government should this happen.

We hope to meet with U.S. IRS and Treasury officials later this month and, prior to that, if possible, would welcome a joint meeting with you, your staff, and possibly the Canada Revenue Agency to continue our discussions. We will be in touch shortly to see when a meeting would be convenient and in the meantime, please do not hesitate to contact me at bamsden@ific.ca; (416) 309-2323 should you have any questions in the meantime.

Yours sincerely,

Cc: Mr. Kevin Shoom, Chief, International Taxation Section, Finance Canada (kevin.shoom@fin.gc.ca; (613)-992-2980)
Ms. Cynthia Richardson, Chief, Structural Issues Section, Financial Institutions Division, Financial Sector Policy Branch, Finance Canada (Richardson.Cynthia@fin.gc.ca; 613-996-9610)

Summary of Canadian tax reporting applicable to widely-held mutual fund investment securities held by non-residents of Canada in their Canadian accounts

Summary:

All distributions of income and capital gains and dividend payments as well as taxable proceeds of dispositions from a non-registered (taxable) account are reported to the Canada Revenue Agency.

All taxable withdrawals from a registered account are reported to the Canada Revenue Agency.

Therefore, The Canada Revenue Agency has all the tax reporting information related to non-resident investors of Canadian mutual funds and can share this information with the IRS for the purpose of FATCA administration.

For ease of understanding, we have grouped the accounts that can be held by investors into two categories, non-registered (taxable) and registered (tax-deferred or tax-free in the case of a Tax-Free Savings Account).

Type: Non-registered (taxable) accounts

Distribution of interest income, dividends, foreign-source income and capital gains from mutual fund trusts are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency.

Taxable Canadian dividends and capital gains dividends from mutual fund corporations are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency.

Proceeds of disposition for redemptions from mutual fund trusts and mutual fund corporations are reported on T5008 tax slips (or on client statements as a proxy) to the investors and on T5008 filing to the Canada Revenue Agency

Type: Registered accounts (accounts that are not taxable). For these tax-deferred accounts, except for Tax-Free Savings Accounts, which are tax-free up to the time of death, only withdrawals are reported when they become taxable.

Taxable withdrawals from a Registered Retirement Savings Plan (and their locked-in version under pension rules) are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency.

Taxable withdrawals from a Registered Retirement Income Fund (and their locked-in version under pension rules) are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency.

Taxable withdrawals from a Registered Education Savings Plan are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency.

Withdrawals of taxable amounts after death from a Tax-Free Savings Account are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency. Since 2009, only Canadian residents can contribute $ 5,000 annually in this type of account.

Taxable payments from a Deferred Profit-Sharing Plan are reported on NR4 tax slips to the investors and on NR4 filing to the Canada Revenue Agency.

Applicable to all accounts:

Where Canadian withholding taxes apply, they are also reported on the above tax slips and to the Canada Revenue Agency.

THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

Joanne De Laurentiis
PRESIDENT & CEO

November 1, 2010

Mr. John Sweeney
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Dear Mr. Sweeney:

Re: Comments on Notice 2010-60 – "Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code"

On behalf of The Investment Funds Institute of Canada ("IFIC") and its members, I thank you for the opportunity to provide our comments in respect of the Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code ("Notice 2010-060").

IFIC is the national association representing Canada's investment funds industry. Our members comprise investment fund managers, fund distributors and organizations that provide services to the investment fund industry (e.g., legal and accounting firms). Funds offered by IFIC members are typically structured as a trust or corporation, the interests in which are sold through retail distribution channels, that is, through dealers that may be related to or independent of fund managers. These funds typically publish financial statements on a semi-annual basis and the net asset value (NAV) per unit or share on a daily basis. As of September 30, 2010, there were 2,406 mutual funds in Canada, with estimated total assets under management of Cdn $691.5 billion.

IFIC submits this letter to assist the U.S. Department of Treasury and Internal Revenue Service ("IRS") (hereinafter collectively referred to as the "Treasury") in developing guidance to implement, in respect of investment funds, the Foreign Account Tax Compliance Act ("FATCA") provisions enacted as part of the Hiring Incentives to Restore Employment Act ("HIRE Act"). IFIC also responds to the preliminary implementation guidance provided in Notice 2010-60, 2010-37 I.R.B. (September 13, 2010). We hope that our comments will provide relevant information regarding our industry and that, with this information, Treasury's guidance to implement the FATCA provisions may be updated to provide improved direction on when the provisions should

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and should not apply, and how implementation may be shaped to ensure that resources are steered towards areas where there are greater risks of U.S. tax evasion. We believe that the framework found within Internal Revenue Code (IRC)[1] § 1471-1474 can be interpreted to provide relief from the FATCA provisions in situations where there is a low risk of tax evasion by United States persons.

Outline of Comments

The focus of our submissions – elaborated on in detail in the attachment to this letter – is briefly summarized as follows.

- First, investment funds resident (domiciled) in Canada should come within the scope of certain provisions of the Code that provide some relief from FATCA. There are two principal grounds for that relief:

    - The equity interests in Canadian investment funds (i.e., the units or shares of the fund) should be considered to be "regularly traded on an established securities market". Thus, those interests in the funds would be excluded from the definition of "financial account". Accordingly, as there will not be any financial accounts, there would not be any "United States accounts" and the funds should be classified as "deemed-compliant foreign financial institutions" ("deemed-compliant FFIs"). IFIC seeks confirmation from Treasury that this would be the case.

    - Payments made to Canadian investment funds would pose a very low risk of tax evasion. An informal survey conducted by IFIC indicated that approximately 99 percent of investors in most Canadian investment funds are residents of Canada. These survey results are supported by the fact that the regulatory regime in the U.S. generally requires registration to distribute units of Canadian investment funds in the United States, with certain limited exceptions. Therefore, either as part of the guidance to be provided by Treasury or through the Regulations, IFIC requests that certain investment funds be treated as a class of persons that pose a low risk of tax evasion. Accordingly, such funds would not have to enter into a full-fledged FFI agreement. IFIC proposes a definition of "widely held investment plan" for consideration by Treasury that can be incorporated into the guidance or Regulations, as the case may be, for this purpose. This definition would not be country-specific, but rather could be applicable to funds in any country.

- Second, there are a number of classes of persons holding units of Canadian investment funds that pose a very low risk of tax evasion. If the guidance to be provided by Treasury or the Regulations were to treat such persons as posing a low risk of tax evasion, the

[1] References to the Internal Revenue Code of 1986, as amended ("IRC" or the "Code"), unless otherwise indicated.

administrative and information systems burden of complying with FATCA would be more proportional to FATCA's potential financial benefit to the Treasury. It would also reduce, we believe, investment funds' and the Treasury's administrative costs associated with monitoring a significantly greater number of FFIs and account holders. We estimate that 12 million people living in Canada hold mutual funds. We seek the Treasury's approval of these additional classes of persons, referenced below, as persons that pose a low risk of tax evasion.

- Third, we would like clarification regarding the party responsible for FATCA compliance in certain situations, and point out some other areas of legal and practical concern.

We have the following specific recommendations and comments for Treasury to consider under the FATCA provisions:

1. Equity interests in investment funds resident in Canada should be excepted from the definition of "financial account" within the meaning of § 1471(d)(2)(C), and thus such investment funds may be deemed-compliant FFIs under § 1471(b)(2)(A). IFIC understands that these investment funds would have to comply with such procedures as the Treasury may prescribe, such as some sort of self-certification or audit procedure, to ensure that such institutions do not maintain United States accounts.

2. IFIC proposes that investment funds resident in Canada be regarded, pursuant to § 1471(f)(4), as a class of persons that pose a low risk of tax evasion and, accordingly, would not have to enter into a full-fledged FFI agreement. Not all Canadian resident investment funds would qualify for this treatment. IFIC proposes a definition of "widely held investment fund" that would so qualify, which would not be limited or specific to Canadian investment funds, for consideration by Treasury.

3. IFIC requests relief from FATCA in respect of the classes of persons or financial accounts described below. In each case, the rationale for requesting such relief is that the class of person or financial account, as the case may be, poses a low risk of tax evasion relative to the compliance burden associated with such person or account for the funds and the IRS. Some of our submissions are grounded in the Code and others relate to the guidance to be provided by Treasury and include our responses to specific requests for comments contained in Notice 2010-60.

    a. We recommend that the de minimis exception provided in § 1471(d)(1)(B) should be broadened from "depository accounts" to include all "financial accounts", including interests in investment funds, and that the $50,000 de minimis exception, or whatever higher amount that may be agreed to, apply in respect of all financial accounts (i.e., including all mutual fund investments) held by a person with a single

legal entity, excluding those financial accounts already excepted as foreign retirement plans (see 3.b below);

b. We seek confirmation that Canadian government-sanctioned "registered retirement savings plans" ("RRSPs") and "registered retirement income funds" ("RRIFs") come within the definition of "individual retirement plan" in § 1473(3)(c) and thus would be excluded from the definition of "specified United States person". In the alternative, the class of foreign retirement plans described in Notice 2010-60 that are considered low risk should be expanded to include RRSPs and RRIFs, which would then be excepted under § 1471(f)(4);

c. While there are certain small family trusts that could be deemed compliant under Notice 2010-60, there are also other fiduciary-type plans that similarly pose low risks of tax evasion and should be excepted under § 1471(f)(4), or treated as non-financial foreign entities (NFFEs) excepted under § 1472(c)(1)(G); and

d. Individuals who reside in the U.S. for a period greater than 183 days per year (frequently known as "snowbirds" when from Canada), who claim "closer connection" status to another country under an income tax treaty with the United States, and who are properly documented for purposes of chapter 3 and 61 of the IRC, should be exempt from specified United States person status under § 1473(3).

4. IFIC requests clarification of Notice 2010-60 that, to the extent that fund units/shares are sold through custodians or brokers, it is the intermediary custodian or broker which has the closest relationship with the client that is the FFI responsible for identifying and reporting any U.S. accounts with regard to these units/shares.

5. Regarding pass-thru payments, an FFI will be required to deduct and withhold a tax equal to 30 percent of any such payment made to a recalcitrant account holder. It was indicated in Notice 2010-60 that comments have been previously made regarding the difficulties in determining whether a payment is "attributable to" a withholdable payment. We would like to explain the specific difficulties for this withholding requirement by Canadian mutual funds.

6. In the context of legal issues, the requirement that our members provide information may contravene Canada's Personal Information Protection and Electronic Documents Act ("PIPEDA") and substantially similar legislation in the provinces of Quebec, Alberta and British Columbia. In addition, mutual funds may be prohibited from closing any existing accounts of U.S. persons pursuant to the contract entered into with such account holders.

7. We continue to review a number of areas of operational concern.

* * *

It is generally expected that it would take our members 18 months or more to put in place the systems and procedures necessary to comply with FATCA. We therefore hope that provision will be made to ensure that the required systems and operational changes can be made in a commercially reasonable time frame by requesting that two years after the Regulations have been enacted and all guidance published be made available for this purpose.

Attached is more detailed discussion of our request for relief and/or comments regarding the guidance to be provided by Treasury in respect of FATCA.

We would very much appreciate an opportunity to meet with the Treasury and the IRS to elaborate on our concerns and answer any questions that you may have; we may have additional comments at that time. We will call shortly to obtain an appointment and if you would like clarifications in the meantime, please do not hesitate to contact Barb Amsden, Director, The Investment Funds Institute of Canada (bamsden@ific.ca; 1 (416) 309-2323).

Yours sincerely,

Cc: Mr. Stephen E. Shay (stephen.shay@do.treas.gov)
Mr. Steven A. Musher (steven.a.musher@irscounsel.treas.gov)
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Ms. Jane Pearse, Director, Financial Institutions Division, Department of Finance (Canada) (jane.pearse@fin.gc.ca)
Mr. Kevin Shoom, Chief, International Taxation Section, Department of Finance (Canada) (kevin.shoom@fin.gc.ca)

ATTACHMENT

DISCUSSION PERTAINING TO IFIC COMMENTS ON NOTICE 2010-60 – "NOTICE AND REQUEST FOR COMMENTS REGARDING IMPLEMENTATION OF INFORMATION REPORTING AND WITHHOLDING UNDER CHAPTER 4 OF THE CODE"

1. **Equity interests in investment funds resident in Canada should be excepted from the definition of "financial account" within the meaning of § 1471(d)(2)(C), and thus such investment funds may be deemed-compliant FFIs under § 1471(b)(2)(A). IFIC understands that these investment funds would have to comply with such procedures as Treasury may prescribe, such as some sort of self-certification or audit procedure, to ensure that such institutions do not maintain United States accounts.**

Investment funds generally fall into the definition of an FFI under § 1471(d)(5)(C), as they may be deemed to be engaged primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests or commodities.

Investment funds in Canada are generally structured as trusts or corporations, the units or shares of which are sold through retail distribution channels, that is, through Canadian registered dealers that may be related to or independent of fund managers.

Canadian mutual funds operate in a similar manner to U.S. mutual funds. In the United States, an investor purchases shares in the mutual fund from the fund itself, or through a broker for the fund. A Canadian investor purchases securities in Canadian mutual funds through a distributor or dealer for the fund. In both cases, mutual funds will generally sell their securities to investors on a continuous basis and the shares/units are redeemable at any time.

Mutual funds in Canada are generally subject to regulatory oversight under Canada's securities legislation. First, all funds must be sold to the public either through a prospectus that is filed with and cleared through a securities commission or pursuant to a prospectus exemption (generally an "accredited investor" exemption). Second, a Canadian investor purchases securities through a dealer. The entities that distribute the funds (dealers) must be registered in each province in which they have clients; these entities (distributors/dealers) are subject to examinations by provincial securities commissions and self-regulatory organizations (e.g., Investment Industry Regulatory Organization of Canada, the Mutual Fund Dealers Association) and their sales representatives and advisors are licensed. As you are aware, U.S. mutual funds must register with the Securities and Exchange Commission ("SEC") and are bound by the regulations set forth by the SEC. In both countries, the regulatory framework is substantially similar, including the breadth of the regulatory body's jurisdiction. Dealers and advisors in both countries are subject to stringent account-opening, know-your-client (KYC) and anti-money-

laundering/anti-terrorist financing requirements. In this regard, Canada works closely with the U.S.'s FinCEN and other government equivalents that are members of the international inter-governmental Financial Action Task Force.

Section 1471(d)(2) provides that the term "financial account" means, with respect to any financial institution –

(A) Any depository account maintained by such financial institution,

(B) Any custodial account maintained by such financial institution, and

(C) Any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

It is our belief that the characteristics of interests in investment funds in Canada as discussed above are substantially similar to equity interests in securities of other financial institutions which are regularly traded on established securities markets. Despite not being traded on a stock exchange, the buying and redeeming of securities of investment funds as we have described them above, both in the U.S. and Canada, is substantially similar to the act of buying and selling securities on a stock exchange or other established market. In the case of the former, most stocks and bonds can be purchased by a wide range of investors (with restrictions on sales to non-residents) at the prevailing market price of the stock or bond. Most mutual funds can be purchased by a wide range of investors at a price based on the market value of the mutual fund's portfolio, which is based on prevailing market prices of the securities in the portfolio. In both cases, the investor effects their purchase through a registered dealer.

The distribution network available for widely held investment funds offers the same or similar liquidity as securities bought and sold on a stock exchange or other public market. Clear parallels can be drawn between an account holder trading securities on a stock exchange through their broker and an account holder that buys or sells securities in mutual funds through a dealer.

Providing an exception from the term "financial account" for interests in Canadian investment funds would alleviate the compliance burdens otherwise required of IFIC's members while not detracting from the intent of the FATCA provisions. Such an exception would be similar to, or the same as the purchase and sale of publicly traded debt or equity interests of other financial institutions on an established market – indeed, most mutual funds are simply pools of such debt or equity interests.

If eligible for the exception under § 1471(d)(2)(C), a qualifying investment fund would have no financial accounts and therefore have no U.S. accounts to report. While it still would be an FFI,

as it would not have U.S. accounts, we propose that it should be treated as deemed-compliant under § 1471(b)(2)(B).

IFIC requests confirmation from Treasury that its interpretation of the wording of the exception in § 1471(d)(2)(C) and its application to Canadian investment funds is correct and that such funds would be deemed-compliant FFIs.

2. **We propose that certain investment funds resident in Canada be regarded, pursuant to § 1471(f)(4), as a class of persons that pose a low risk of tax evasion and, accordingly, would not have to enter into a full-fledged FFI agreement. Not all Canadian resident investment funds would qualify for this treatment. IFIC proposes a definition of "widely held investment fund" that would so qualify, which would not be limited or specific to Canadian investment funds, for consideration by Treasury.**

An FFI may be regarded as meeting the requirements of § 1471(b) if such institution is a member of a class of institutions with respect to which Treasury has determined that such agreement is not necessary to carry out the purposes of § 1471(b), pursuant to § 1472(b)(2)(B). Furthermore, § 1471(f) would not subject a payment to withholding if the FFI were a member of a class of persons identified by the Treasury as posing a low risk of tax evasion. We request that widely held investment funds resident in Canada be considered to meet the requirements of § 1471(b) because, for the reasons set out below, payments to such funds pose a very low risk of tax evasion. We understand that Treasury may not be willing to provide "country-specific" exemptions of this type. Accordingly, we provide a definition of widely held investment fund for consideration by Treasury. Such definition could be used for all countries.

IFIC undertook an informal survey of its members, seeking data regarding the composition of investors in their funds. Respondents representing about 35 percent of assets under management of IFIC members stated that on average 99 percent of Canadian mutual fundholders in their funds are resident in Canada. Independent national third-party research shows that close to 80 percent of Canadian household fund assets, on average, are in government-sanctioned registered accounts (mainly retirement plans) and nearly 50 percent of all Canadian registered plan assets are held in mutual funds, with additional other low-risk-of-tax-evasion accounts. Furthermore, the vast majority of Canadian mutual funds do not have holdings that give rise to U.S.-source income or U.S. withholdable payments. IFIC acknowledges that some of those "Canadian resident" unitholders could also be U.S. citizens or U.S. residents for U.S. tax purposes. However, this subset of investors should still represent a class of persons that poses a very low risk of tax evasion. U.S. citizens that are resident in Canada should generally be subject to tax in Canada on their investment income at effective tax rates that are higher than the U.S. tax rates. Those persons should also generally be entitled to reduce their U.S. tax liability to nil through foreign tax credits.

The regulatory regime in the United States that governs the sale of mutual funds can provide some objective support for the accuracy of the unitholder data described above. While it would not be impossible for an IFIC member to distribute its investment funds in the U.S., the regulatory regime and the costs of complying with it are a significant impediment. Subject to limited exceptions (e.g., retirees or "snowbirds" who are *temporarily* resident in the United States) as provided for under Securities and Exchange Commission Final Rule: Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts Rule (17 CFR Parts 230, 240 and 270; Release Nos. 33-7860, 34-42905, IC-24491; File No. S7-10-99 International Series Release No.1226; RIN 3235-AH32), it is not practical to sell units of Canadian mutual funds in the United States as elaborated on in our submission of June 23, 2010.

Of the approximately one percent of investors in Canadian investment funds who are not residents of Canada, most, if not all, pose a low risk of U.S. tax evasion:

- A Canadian mutual fund reports distributions of income and capital gains, and dividend payments, to non-registered (taxable) accounts to non-resident investors on NR4 slips and to Canada's tax authorities, the Canada Revenue Agency (CRA), electronically. As the IRS is aware, information derived from such slips for each person with a U.S. address is automatically electronically provided to the IRS by the CRA each year pursuant to the exchange of information provisions under the Canada-U.S. Income Tax Convention. All taxable proceeds of dispositions from taxable accounts, including to accountholders resident in the U.S., are provided to the CRA on T5008s. All withdrawals from a registered (tax-deferred or tax-free, in the case of a Tax Free Savings Accounts (TFSAs) as described later) account are reported to the CRA. Therefore, we believe that the U.S. and IRS can rely on the information-sharing agreement to obtain the tax reporting information related to U.S.-resident investors of Canadian mutual funds for the purpose of FATCA administration.

- It is unlikely that significant Canadian mutual fund securities would be held by U.S. persons who are resident in third countries and who would pose a risk of tax evasion. First, it is likely that the regulatory burden would deter Canadian fund managers from offering their funds in foreign jurisdictions. Second, U.S. persons who are resident in a country that imposes an income tax would likely claim a foreign tax credit in the U.S. in respect of the taxes paid to that jurisdiction on income from the Canadian fund. Thus, there would not be U.S. tax leakage. This leaves only those U.S. persons who are resident in a low-tax jurisdiction – by estimates derived from our informal survey, only 0.13 of one percent of holders of Canadian mutual funds have addresses in non-treaty countries. Dividends, other than capital gains dividends, from corporations and income distributions from trusts would generally be subject to a 25 percent withholding tax, unless such rate is reduced by international tax treaties. Canadian-source withholding tax on distributions of ordinary income, dividend and foreign-source income from the fund would be a deterrent to owning Canadian funds.

We expect that, as a policy matter, Treasury would want to define the term "widely held investment fund" so that its scope is limited to those funds that actually represent a low risk of tax evasion by U.S. persons. We also expect that Treasury would want to use a single definition that would apply to all countries (or possibly only to countries that have an automatic exchange of information arrangement with the United States), rather than listing specific types of mutual funds as defined in the legislation of numerous different countries. We propose, for your consideration, the following criteria that could be included in a definition of "widely held investment fund":

i. It should be structured as a corporation or trust;
ii. The fund should be subject to tax in its jurisdiction of residence (i.e., not fiscally transparent);
iii. It should be required to distribute its securities to the public by way of a prospectus or qualify for some exemption from the prospectus requirement under securities legislation;
iv. It should be required to have (or intend to have, in the case of new funds) a minimum of 100 investors); and
v. It should be required that no more than 10 percent of the maximum value of the investments held can be beneficially owned by investors resident outside of the investment fund's home country (e.g., Canada in our case) (although dual residents and citizens would be able to invest in these funds).

3. **IFIC requests relief from FATCA in respect of the classes of persons or financial accounts described below. In each case, the rationale for requesting such relief is that the class of person or financial account, as the case may be, poses a low risk of tax evasion relative to the compliance burden associated with such person or account for the funds and the IRS. Some of our submissions are grounded in the Code and others relate to the guidance to be provided by Treasury and include our responses to specific requests for comments contained in Notice 2010-60.**

   a. **We recommend that the de minimis exception provided in § 1471(d)(1)(B) be broadened from "depository accounts" to include all "financial accounts", including interests in investment funds.**

      Section 1471(d)(1)(B) provides an exception to FATCA withholding where the aggregate value of all depository accounts held by an individual and maintained at the same financial institution which maintains such account does not exceed $50,000. The intention of this de minimis exception appears to be to reduce the compliance burden of financial institutions for depository accounts that in the aggregate do not exceed $50,000. Under the current wording, it appears as though no similar de minimis exception will be offered to the mutual fund industry as a whole, although in many ways

mutual funds, as interest rates fell, became the savings vehicle that individuals used for one of the purposes that deposit accounts were held. This produces inequities between the compliance requirements of certain industries, and we believe the exception was not intended to be as narrowly focused as written, provided there would not be additional opportunities for tax leakage associated with an expanded exception.

Canadian investment funds issue units to investors which can then be redeemed on demand at any time at the fair market value of such units. The units that individuals hold would likely not be viewed as depository accounts, but rather as a financial account. While mutual fund investments are not depository in nature, applying the same de minimis exception to mutual fund investments should not result in a greater amount of tax leakage than the potential tax leakage arising from the de minimis exception for depository accounts, and would reflect the general liquidity of this type of investment. Since many investors in widely-held investment funds and mutual funds carry account balances or values of less than $50,000, this exception would greatly relieve the compliance burden on the investment fund industry and, correspondingly, U.S. tax authorities.

We request that the $50,000 de minimis exception be provided in respect of all financial accounts (i.e., including all mutual fund investments) held by a person with a single legal entity, excluding those financial accounts already excepted as foreign retirement plans. We understand that other submissions are being made to increase the de minimis threshold to $250,000. IFIC requests that whatever de minimis threshold applies to depository accounts also be made applicable to financial accounts in investment funds generally.

b. **We request confirmation that Canadian government-sanctioned registered retirement savings plans ("RRSPs") and registered retirement income funds ("RRIFs") come within the definition of "individual retirement plan" in § 1473(3)(C) and thus would be excluded from the definition of "specified United States person". In the alternative, the class of foreign retirement plans described in Notice 2010-60 that are considered low risk should be expanded to include RRSPs and RRIFs which would then be excepted under § 1471(f)(4);**

§ 1473(3) exempts "individual retirement plans" from the definition of "specified United States person". IFIC requests confirmation that Canadian registered retirement savings plans and registered retirement income funds fall within the meaning of the term individual retirement plan. The IRS has ruled, in respect of the Canada-U.S. Tax Treaty ("Treaty"), regarding the similarity of individual retirement plans in Canada and the United States and has classified all of these plans as pensions for the purposes of the Treaty (e.g., U.S. IRAs and 401(K) plans and Canadian RRSPs and RRIFs). Since these plans are recognized under the Treaty as substantially similar and are treated the same

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for purposes of the Treaty, it would be reasonable also to treat RRSPs and RRIFs under § 1473(3) as an individual retirement plan.

In the alternative, IFIC submits that RRSPs and RRIFs pose a low risk of tax evasion. In Notice 2010-60, the IRS and Treasury recognized that certain foreign retirement plans pose a low risk of tax evasion for Chapter 4 purposes, and therefore payments beneficially owned by certain such plans are provided an exemption from withholding under § 1471(a). In particular, the preliminary guidance exempts a retirement plan that (i) qualifies as a retirement plan under the laws of the country in which it is established, (ii) is sponsored by a foreign employer, and (iii) does not allow U.S. participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement plan is established during the period in which benefits are accrued. Notice 2010-60 asked for comments as to whether other categories of foreign employee benefit plan or deferred compensation plans should be subject to the same treatment.

While we realize that country-specific exemptions may not be favoured, IFIC proposes that the category of retirement plans that are viewed as posing a low risk of tax evasion under IRC § 1471(f)(4) be expanded to include the following:

a. Registered Retirement Savings Plans:

   An RRSP is a tax-deferred savings plan that is intended to encourage Canadians to save for their retirement. Contributions can generally only be made to an RRSP if a person has employment or business income in a previous year. Annual contributions to an RRSP are capped at an amount that is considered to be sufficient to provide a similar post-retirement income as would be provided by an employer-sponsored defined benefit pension plan. A person who is a member of such a pension plan may not be able to make any RRSP contribution (i.e., where the plan provides for an adequate pension). Contributions to an RRSP are tax-deductible, investment income is tax-deferred and withdrawals are taxed at ordinary income tax rates.

b. Registered Retirement Income Funds:

   RRIFs are similar to RRSPs in that they are another tool offered to Canadian residents to encourage retirement savings. A RRIF is really an extension of the RRSP, as all RRSP funds must be rolled over into a RRIF or a life annuity when the annuitant under the RRSP turns 71. Generally, no other contributions may be made to the RRIF, other than from funds transferred from an RRSP. A minimum amount of income is required to be distributed from the RRIF each year and is taxable income that would be reported on NR4s in the case of U.S.-resident holders.

RRSPs and RRIFs are analogous to the foreign retirement plans described in Notice 2010-60, except that they are not generally sponsored by an employer. As with other foreign retirement plans, a U.S. person should only have an interest in a RRSP or RRIF if he or she was resident in Canada and had employment or business income that would entitle him or her to make contributions to the plan. We also note that payments made out of an RRSP or RRIF to a non-resident of Canada are generally subject to withholding tax at 25 percent as well as the issuance of NR4 reporting forms.

IFIC has other concerns regarding the extension of the FATCA regime to RRSPs and RRIFs. Specifically, privacy legislation may preclude IFIC members from disclosing the name or status of RRSP and RRIF accountholders to the IRS. For any such recalcitrant persons, IFIC members are concerned that they do not have the capacity, legally, to close an RRSP or RRIF account. This would particularly be the case for "locked-in" RRSPs or RRIFs. A member of a registered pension plan (which is excepted by Notice 2010-60) may, at various times (e.g., retirement, commutation, death, etc.), transfer the value of their pension plan entitlement into a locked-in RRSP or RRIF. Such locked-in plans remain subject to federal or provincial pension benefits standards legislation, which governs when funds may be withdrawn from the locked-in plans. There are extremely adverse tax consequences to terminating an RRSP or RRIF: the annuitant would be required to pay tax on the accumulated amount and would not have any ability to re-contribute the amount to another plan.

c. **While there are certain small family trusts that could be deemed compliant under Notice 2010-60, there are also other fiduciary-type plans that similarly pose low risks of tax evasion and should be excepted under § 1471(f)(4) or treated as NFFEs excepted under § 1472(c)(1)(G);**

Canadian tax legislation provides for certain registered, tax-deferred plans that may be analogous to the family trusts described in Notice 2010-60 that would be deemed compliant. They are individually settled and government-sanctioned savings plans or trusts with restricted annual and lifetime deposit limits, which are established by governments to provide incentives for educational savings or to supplement disability benefits and which are monitored for compliance on an individual or entity-level basis by governmental agencies. Such plans, which include Canada's Registered Education Savings Plans ("RESPs") and Registered Disability Saving Plans ("RDSPs"), pose a low risk of tax evasion. Payments to these types of plans should be considered as beneficially owned by these plans and excepted under § 1471(f)(4); or as such plans are not in the business of investing, be treated as NFFEs under § 1472(d) and payments to these plans excepted under § 1472(c)(1)(G).

RESPs are specifically designed to assist Canadian residents to save for post-secondary education. RDSPs are designed to assist those with disabilities to save more for both retirement and day-to-day life than they could otherwise afford due to their (generally) reduced earning capacity. Due to the specific purposes and requirements of these accounts, it is even less likely that a significant amount of U.S. tax leakage would result from these accounts.

Tax Free Savings Accounts ("TFSAs") are a general purpose savings plan offered as a tool to Canadian residents (including dual citizens) to encourage Canadians to extend their savings. They complement RRSPs and RRIFs and the federal government states that seniors are expected to receive one-half of the total benefits provided by the TFSA (Budget 2008). Eligibility for this plan is restricted to residents of Canada, and any income earned inside the TFSA is not subject to further Canadian taxation.

The other common feature of the above accounts is that they are all subject to varying contributory restrictions, where each of these accounts is subject to an annual contribution limit. With respect to TFSAs for example, the TFSA contribution limit accrues in the amount of $5,000 per year, which leads to a decreased likelihood that these accounts will be used for purposes of U.S. tax evasion. For purposes of the FATCA provisions, these limits will work to further reduce the potential exposure from such accounts.

Due to the above reasons, we respectfully request that accounts with restricted annual deposit requirements determined by either annual employment income or an annual amount less than $10,000 or a lifetime amount equivalent to the cumulative sum of the annual amounts, and which are monitored for compliance on an individual or entity-level basis by governmental agencies, be deemed compliant as posing a low risk of tax evasion under § 1471(f)(4);

d. **Individuals who reside in the United States for a period greater than 183 days per year (frequently known as "snowbirds" when from Canada), who claim closer connection status to another country under an income tax treaty with the United States, and who have properly documented for purposes of chapter 3 and 61 of the IRC, should be exempt from specified U.S. person status under § 1473(3).**

There are a number of individuals (generally retired) who reside in the United States for a period greater than 183 days per year, yet claim closer connection status to another country under an income tax treaty with the United States. The IRS has recognized such claims when these persons have been properly documented for purposes of § 1441. Given these individuals are not intending to 'hide' income, but rather to pay tax on their worldwide income in a country to which they have closer connections, it seems the provisions of the FATCA regime are not intended for these persons to be treated as

specified United States persons. Rather, the FATCA regime seems to apply to those persons who are required to report their worldwide income on their U.S. return. Due to this, we respectfully request that persons who claim closer connection status under an income tax treaty with the United States, and are properly documented for purposes of § 1441 to claim this status, should be exempt from the specified U.S. person status under § 1473(3).

4. **IFIC requests clarification of Notice 2010-60 that, to the extent fund units/shares are sold through custodians or brokers, it is the intermediary custodian or broker which has the closest relationship with the client that is the FFI responsible for identifying and reporting any U.S. accounts with regard to these units/shares.**

   Funds may issue shares or units either in the name of a direct client (client-name) or through an intermediary, generally a custodian or broker. When shares or units are sold through a custodian or broker, the shares or units are recorded under that intermediary's omnibus account. The custodian or broker maintains the client-name accounts, and maintains the specific identity, documentation and information for each client that purchases fund units through the intermediary. Funds generally do not have access to this information.

   Section IV.E. of Notice 2010-60 (elimination of duplicative reporting) states that the Treasury and the IRS believe that it is preferable for reporting to be performed by the FFI that is in a direct payment relationship with the account holder, and that the Treasury and the IRS intend to issue regulations providing that in the case of a participating FFI that maintains an account of another participating FFI, only the participating FFI that has the more direct relationship with the investor or customer will be required to report the information required under § 1471(c).

   IFIC members support the intention of the Treasury and the IRS with regard to the above, and request additional clarification such that it is clear that the units or shares of a fund held by or sold through a custodian or broker that is a participating FFI will not be a U.S. account subject to reporting by the fund, even though that custodian or broker maintains a U.S. account for a customer who has purchased units or shares of the fund.

5. **Regarding pass-thru payments, an FFI will be required to deduct and withhold a tax equal to 30 percent of any such payment made to a recalcitrant account holder. It was indicated in Notice 2010-60 that comments have been previously made regarding the difficulties in determining whether a payment is "attributable to" a withholdable payment. We would like to explain the specific difficulties for this withholding requirement by Canadian mutual funds.**

Canadian mutual funds distribute income and gains realized within the fund at set times during the year. Generally, such distributions are made monthly, quarterly or annually. All income in the fund is aggregated, and generally must be distributed equally among unitholders. There is no earmarking of income from specific sources to specific investors – for example, a dividend received on June 30 by a fund is not earmarked as being available to be distributed to those persons who were unitholders on June 30. Rather, those persons who are unitholders on the record date for a distribution will share in the distribution. Moreover, a distribution is a net amount, after expenses, and may be comprised of dividend income, ordinary income or capital gains.

Furthermore, Canadian mutual funds do not currently track all income receipts, and In particular, gross receipts, on a jurisdiction-by-jurisdiction basis. It will be extremely difficult and very costly to implement systems changes to be able to track whether all or a part of a distribution to a U.S. person was a withholdable payment. We believe that a U.S.-regulated investment company would experience the same difficulties were it in the same position as a Canadian fund. Finally, it is not clear whether all Canadian mutual funds would be permitted under their governing documents to collect tax relating to a withholdable payment after a distribution from the fund has been made.

6. **In the context of legal issues, the requirement that our members provide information may contravene Canada's Personal Information Protection and Electronic Documents Act ("PIPEDA") and substantially similar legislation in the provinces of Quebec, Alberta and British Columbia. In addition, mutual funds may be prohibited from closing any existing accounts of U.S. persons pursuant to the contract entered into with such account holders.**

Disclosing personal data relating to an investor, except as permitted by Canadian laws, regulations or similar authorities, or pursuant to a waiver granted by the investor, is prohibited. However, in any event, it is not clear that fund managers could rely on a waiver obtained from a client in circumstances where the client would suffer financial hardship by not providing the waiver as this raises concerns similar to those in situations where consent is obtained under duress. Existing account agreements with clients do not generally provide the mutual fund with the ability to close the account in the circumstances in which the FATCA legislation would mandate such accounts be closed.

7. **We continue to review a number of areas of operational concern.**

Although requested, operational recommendations to simplify and rationalize investment fund compliance with FATCA are difficult to provide without greater precision in the direction of the rules, although there are certain things that we can conclude *a priori*. For example, it is more straightforward to obtain information at a point in time than to determine an average.