



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

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Dear Sirs:

Re: Foreign Account Tax Compliance Act January 10, 2011 Meeting: Further Information

Thank you for meeting with us on January 10, 2011 regarding our recent submission on particular aspects of the FATCA legislation. Please find attached further information that we undertook at the meeting to provide to you.

1. The legislation currently includes an exemption from due diligence for depository accounts with balances under \$50,000. In our submission, we requested an expansion of that exemption to include non-depository accounts such as mutual funds, and in evaluating our submission, you have asked for data confirming that such a change will impact a significant number of accounts. We attach the results of our member survey, responded to by members accounting for 72% of IFIC reported Assets under Management. The survey clearly demonstrates that this would apply to a meaningful number of accounts. (See *Annex A*).
2. You also had requested further details on account opening information collected, and the capability to electronically search this data. Please find attached details of our findings. (See *Annex B*). The following is a summary of our findings:
 - Currently the only information which is electronically searchable by a Canadian mutual fund manager for mutual fund accounts in Canada is the investor's name, address, social insurance number (and sometimes date of birth). Additional information obtained by the distributing dealer under the KYC rules is generally retained only in photocopy form and thus is not electronically searchable. In some cases, the additional information is retained as a PDF or other



similar electronic image. However, the vast majority of such electronic images are generated from scanning (as opposed to directly from a Word or other word processor document) and thus are also not generally electronically searchable.

- The only accounts which Canadian mutual fund managers can currently identify as United States Accounts (as defined in the FATCA legislation) are accounts of persons with a United States address.

3. Finally, you had indicated that any exemption granted from the definition of “United States account” for registered plans would not be country specific. We attach some draft language that you may consider in preparing non-country-centric language exempting certain registered plans from the definition of “United States account”. (See *Annex C*)

Please do not hesitate to contact us should you have any questions regarding the attached documents, or require further information.

We look forward to continuing these discussions with you.

Yours sincerely,



Debbie Pearl-Weinberg, Chair – Taxation Working Group/IFIC

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Data Indicating the Percentage of Accounts with Balances Under \$50,000

Firm Number	Percentage of Accounts under \$50,000	Assets under Management December 2010 (\$Billion)
1	84%	
2	93%	
3	90%	
4	63%	
5	94%	
6	88%	
7	93%	
8	96%	
9	90%	
10	89%	
11	65%	
Asset-Weighted Percentage	86%	
Sample Total Assets under Management		456.1
IFIC Reported Total Assets under Management*		635.6
Sample as Percentage of IFIC Reported Assets		72%

*Assets reported by IFIC representing approximately 85% of total industry mutual fund assets under management.

Potentially Searchable Information for Canadian Mutual Fund Accounts

1. **Introduction** During our meeting with you on January 10, we undertook to provide you with precise details regarding the information collected in respect of mutual fund accounts in Canada, and the extent to which such information is electronically searchable by the mutual fund managers. The collection and retention practices depend upon two principal variables, namely, the category of registration of the information collector and the type of account of the client. Accordingly, these two variables are discussed below.

2. **Categories of Registration** There are two relevant registration categories:
 - (a) **Investment Fund Managers** A mutual fund manager is required to be registered as an investment fund manager or (IFM) by the provincial securities commission in which its head office is located. IFMs generally do not sell their mutual funds directly to the public, but rather sell them through mutual fund dealers or investment dealers ("Dealers"). The Dealers, in turn, engage registered representatives. Thus, the IFM is not responsible for collecting know-your-client ("KYC") information or identifying clients for the purposes of anti-money laundering ("AML") legislation.

 - (b) **Dealers** Dealers generally do not manage investment funds. Rather, they sell mutual funds to investors on behalf of IFMs. Thus, dealers (and their registered representatives) are responsible for collecting KYC information and identifying clients for AML purposes. Dealers and their representatives are registered with the provincial securities commissions in the provinces where they conduct business and have clients. In addition, they must belong to a self regulatory organization ("SRO"). Mutual fund dealers belong to and are regulated by the Mutual Fund Dealers Association of Canada ("MFDA"), while investment dealers belong to and are regulated by the Investment Industry Regulatory Organization of Canada ("IIROC").

3. **Anti-Money Laundering** The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) sets out rules applicable to Dealers for identifying clients upon the opening of accounts.

4. **Recording Keeping Practices** The information which is collected and retained by an IFM in respect of a mutual fund account will be a subset of the information which is required to be obtained by the Dealer upon the opening of the account pursuant to the KYC rules. The information will vary depending on the type of mutual fund account as described below. As a general rule, documents are retained for at least seven years after an account has been closed.

5. **Types of Accounts** There are four types of mutual fund accounts administered by IFMs in Canada:

- (a) **In-House Accounts** In-house accounts arise where the IFM also acts as the Dealer. These accounts are generally only for employees and their families and some institutional clients, and typically account for less than 1% of all IFM accounts.
- (b) **Client Name Accounts** Client name accounts are opened by a Dealer, but are recorded in the client's name at the IFM. The Dealer collects all the KYC and identification information, and then places the trade with the IFM. The IFM issues all required tax receipts for these accounts to the client, based on the information provided by the client and the Dealer.
- (c) **Nominee Accounts** Nominee accounts are opened by a Dealer and are recorded in the name of the Dealer (as the Nominee for the client). The Dealer is not only responsible for the collection of KYC and identification information, but also is responsible for recordkeeping. Thus, all instructions regarding payments are received from the Dealer, and all distributions are made to the Dealer.
- (d) **Intermediary Accounts** Intermediary accounts are similar to nominee accounts, except that they are maintained at a trust company which administers retirement or pension accounts on behalf of clients. As with nominee accounts, all instructions regarding payments are received from the intermediary, and all distributions are made to the intermediary.

The majority of the mutual fund accounts in Canada are recorded in nominee or intermediary name, while most of the remainder are recorded in client name. The following three sections itemize the information which is typically collected and retained by the IFM for the four types of accounts described above.

6. **In-house Accounts** For in-house accounts, the IFM collects and retains the KYC and AML identification information. Thus, the following information is typically collected and retained by the IFM:

- (a) Name
- (b) Address
- (c) Date of birth
- (d) Social insurance number
- (e) Occupation
- (f) Net worth
- (g) Annual income

- (h) Investment knowledge, objectives, risk tolerance
- (i) Documents evidencing identification:
 - (i) photocopies of government issued documents (e.g., driver's license, passport, birth certificate), or
 - (ii) photocopies of credit check information and a cleared cheque for an account at a Canadian bank

7. **Client Name Accounts** For client name accounts, the following information is typically received and retained by the IFM:

- (a) Name
- (b) Address
- (c) Date of birth
- (d) Social insurance number

8. **Nominee and Intermediary Accounts** For nominee and intermediary accounts, the following information is typically received and retained by the IFM:

- (a) Name
- (b) Address
- (c) Social insurance number

9. **Electronic Searchability of Information** Currently the only information which is electronically searchable by an IFM for mutual fund accounts in Canada is the information retained for the purpose of administering the account. Moreover, the additional information obtained by the Dealer under the KYC rules is generally retained only in photocopy form and thus is not electronically searchable. In some cases, the additional information is retained as a PDF or other similar electronic image. However, the vast majority of such electronic images are generated from scanning (as opposed to directly from a Word or other word processor document) and thus are also not generally electronically searchable.

10. **Conclusion** Based on the above facts, the only accounts which Canadian mutual fund managers or IFMs can currently identify as United States Accounts (as defined in the FATCA legislation) are accounts of persons with a United States address. As noted in our submission of January 10, 2011, the Internal Revenue Service already receives information from the Canada Revenue Agency on such persons under the automatic exchange of information arrangements entered into between the two organizations pursuant to Article XXVII of the Canada-United States Tax Convention.

Proposed Draft Regulations in Respect of Registered Plans

Pursuant to the authority provided by paragraph 1471(f)(4), the following persons are identified by the Secretary and are prescribed as posing a low risk of tax evasion and thus subsection 1471(a) does not apply to such persons:

- a. A trust, plan or other arrangement (referred to herein as “the plan”) that is accepted for registration as and qualifies as a retirement plan under the tax law of the country in which it is established and which has all of the following attributes under such tax law:
 - i. The assets of the plan are to be held for the purpose of providing retirement income to the individual who established the plan (the “contributor”) or to a spouse or common-law partner of the contributor;
 - ii. Where contributions to the plan are deductible in computing the income of the contributor, withdrawals from the plan are required to be included in the income of the recipient thereof;
 - iii. Income and gains realized in respect of assets retained within the plan are not subject to tax until such income or gains are withdrawn from the plan, at which time such amounts would be included in the income of the recipient;
 - iv. A contributor must have income from employment or income from carrying on business in order to be permitted to make tax-deductible contributions to the plan. All other permitted contributions to the plan must be from another retirement plan of the individual or of a spouse, common-law partner of the individual, or of a parent or grandparent of the individual where the individual is financially dependent on the parent or grandparent;
 - v. The amount of the annual or cumulative life-time tax-deductible contributions to the plan a limited to such amount as the government of the particular country considers to be sufficient to provide a retirement income comparable to that which would be provided by a registered employer sponsored defined benefit pension plan and will be reduced on a formula basis for a particular individual that is a member of such a pension plan; and,
 - vi. The terms and conditions of the plan must be approved by the government of the country in which it is established and the failure to comply with such terms and conditions may result in the loss of registration and the preferential tax treatment afforded to the plan; and,

- b. A trust, plan or other arrangement (“the plan”) that is accepted for registration, and qualifies under the tax law of the country in which it is established, for the purpose of fulfilling a social policy objective of the particular government, including but not limited to support for infirmity or disability, the advancement of education or retirement savings and which has all of the following attributes under such tax law:
 - i. The amount of the annual or cumulative life-time contributions to the plan are limited;
 - ii. The terms and conditions of the plan must be approved by the government of the country and the failure to comply with such terms and conditions may result in the loss of registration and the preferential tax treatment provided to the plan;
 - iii. Where contributions to the plan are deductible in computing the income of the contributor, withdrawals from the plan are required to be included in the income of the recipient thereof; and,
 - iv. Income and gains realized in respect of assets retained within the plan are not subject to tax until such income or gains are withdrawn from the plan, at which time the government may or may not subject such amounts to tax.