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

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November 19, 2009

Chairman Richard E. Neal and Members
House Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515 U.S.A.
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Dear Chairman Neal and Members:

Re: IFIC Concerns Regarding *Foreign Account Tax Compliance Act, 2009*

On behalf of The Investment Funds Institute of Canada (IFIC), I would like to provide some preliminary comments on the proposed *Foreign Account Tax Compliance Act* (the "Bill"), published on October 27, 2009. IFIC is the voice of Canada's investment funds industry, including fund managers, distributors and industry service organizations with assets under management of $471 billion ($US) – the eighth largest mutual fund market in the world after that of the United States. The U.S.-Canadian relationship is unique – as notes the U.S. Department of State: "Since Canada is the largest export market for most States, the U.S.-Canada border is extremely important to the well-being and livelihood of millions of Americans. … The U.S. is Canada's largest foreign investor … and Canada is the fifth largest foreign investor in the U.S." *(November 2008).*

The following are general comments only as our members are currently reviewing the Bill to determine if there are other legal impediments to our members complying with the legislation. We will forward any such additional specific comments to you at a later date.

1. In principle, we believe that matters addressed in the Bill (that is, the exchange of information and withholding tax issues) should be addressed under the *Convention between The United States of America and Canada with respect to Taxes on Income and on Capital, signed at Washington on 26 September 1980 as Amended on 21 September 2007*. The latest Protocol to the Convention came into force on December 15, 2008 – less than 12 months ago.

2. In terms of specifics, we would like to bring the following practical concerns to your immediate attention:

   a. We believe that the effective date of the Bill – for years beginning after December 31, 2010 – is not feasible given the lack of precision in certain aspects of the Bill, the expectation of extensive new procedural requirements in as-yet-undrafted regulations and

the global reach of the Bill. We believe the effective date should be postponed to two years following finalization of required regulations governing procedural matters.

b. We have serious concerns with the requirement to share personal client information between affiliated companies on a worldwide basis as contemplated in the Bill, given that it may be contrary to privacy legislation of countries that may, in fact, have privacy laws similar to those enacted in the U.S. Canada has a strong commitment to maintaining the privacy of personal records, as exemplified by its *Personal Information Protection and Electronic Documents Act (PIPEDA)* legislation. Given the nature of the information that is required to be disclosed, we believe that the Secretary should continue to rely on longstanding formal bilateral agreements between the U.S. and Canadian government agencies that provide for mutual co-operation and the exchange of relevant information. The U.S. government itself has extensive concerns about cybersecurity, and the Bill's proposal for additional sharing of information across countries presents risks that the confidentiality of personal information will be breached. To address some of these concerns, we recommend that consideration be devoted to giving the Secretary of the Treasury the right to provide exceptions and grant relief from disclosure in appropriate cases.

c. Gross proceeds, including invested capital, appear to be caught in the ambit of the Bill and would be subject to the 30% withholding tax. We believe that these amounts should be grandfathered.

d. We believe that the legislation is unclear with regard to third-party intermediaries in the case of entities acting for clients holding their investments in nominee form. We think that third-party intermediaries should be responsible for reporting.

We hope that the Bill will be amended as requested above to avoid negative repercussions on Canadians' investment in the U.S. As noted above, our members continue to review the documentation and seek guidance, after which point we may provide additional comments. We would appreciate being including in any further communications on this subject and would be pleased to elaborate on our comments at your convenience.

Yours sincerely,

Cc: Brian Ernewein, General Director, Tax Policy Branch (brian.ernewein@gov.fin.ca)

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