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ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Dear Bob:

Re: Tax-Free Savings Accounts (TFSAs)

The Investment Industry Association of Canada (IIAC) supports the introduction of TFSAs and would like to work with your department to ensure TFSAs' timely availability, while minimizing the administrative burdens for investors and their financial service providers. We believe that a number of TFSA-related changes should be made to the legislation released March 11 in Bill C-50 *(An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget (Budget Implementation Act, 2008)).* For TFSAs to be successful in promoting further savings among Canadians, we believe that it is in the best interests of investors, government and TFSA providers for TFSAs to be as simple as possible to introduce and to manage and, to this end, in most respects as similar as possible to the current framework for registered retirement savings plans (RRSPs). We believe that the following recommendations will help achieve the optimal delivery of these new accounts and maximize TFSA contributor satisfaction.

1. ***Swift amendment to and passage of legislation critical:*** As the industry has written previously in the case of dividend eligibility and other reporting changes, it is important that tax legislation related to investment be passed, and reporting requirements be made clear, by the start of summer so that investment dealers can cost-effectively undertake any necessary systems, operational and procedural work necessary to enable the providers to meet client expectations and comply with the new requirements. To be in place at the beginning of 2009, TFSA legislation must be passed no later than June 2008 as firms cannot reasonably begin development until legislation is final and relevant specifications are available – we look forward to working with Finance Canada, Canada Revenue Agency (CRA), members of parliament on the Finance Committee and senators to help ensure speedy passage of Bill C-50, assuming the practical changes indicated here can be made. If there are systems-related or procedural requirements that Finance and/or the CRA are unprepared to have permanently identical to RRSP provisions due to concerns about tax base erosion, we urge Finance to implement measures for the 2009 year in a way that

allows the leveraging of the existing RRSP-related systems and procedural infrastructure with further technical changes to be made for the 2010 year – contrary to perceptions that technology makes changes easy, changes to systems and procedures are complex and require significant timelines that are not sufficient for the most efficient January 2, 2009 start for TFSAs across the country. This would allow a smoother implementation, avoiding investor – and in particular seniors' – frustration with TFSAs not being ready to allow contributions to be made on January 2, 2009.

2. ***Option for administrative relief needed:*** We appreciate that the CRA has already undertaken an early start with us to discuss forms and administrative matters pertaining to the TFSA. Nevertheless, in view of possible delays beyond the control of either Finance or the CRA, we believe that Bill C-50 should be amended to enable the CRA Minister to provide administrative relief, at least for the 2009 tax year, in case of unforeseen circumstances. The absence of such relief in the case of dividend eligibility legislation compounded problems and costs of what was otherwise a positive and equitable measure.

3. ***Right to offer/structure:*** The definition of qualifying arrangement in Bill C-50, as applicable to securities dealers, is limited to trusts, similar to RRSPs. We very strongly recommend that TFSAs *also* be able to be provided under contract to maximize flexibility and efficiency. Proposed new paragraph 146.2(1)(b) limits offerings to a trust, annuity contract or deposit with a Canadian Payments Association (CPA) member (or entity that could be a CPA member) or credit union and, in the February 26 budget, brokers were not listed as entities that could provide TFSAs. It is thought that this may tie back to the old four-pillar concept, when lines between banks, trust companies, insurance companies and brokers were more evident. As a point of principle, we believe that brokers should have the ability to offer TFSAs directly to establish a more level playing field and that paragraph 146.2(1)(b) should be amended to extend the offering list to include wording along the lines of "an account offered by a dealer in securities or commodities resident in Canada, the business activities of which are subject by law to the supervision of a regulating authority of a province". We believe that the qualified investment provisions for RRSPs should apply equally to these accounts.

4. ***Qualified investments:*** The requirements of monitoring, educating advisors, due diligence, internal auditing, system and procedural changes, etc., if qualified investments for TFSAs differ from those in RRSPs, would unnecessarily make TFSAs a higher-cost-than-necessary vehicle to provide to investors. For this reason, we strongly believe that qualified investments for TFSAs should be the same as for RRSPs, and that the "prohibited property" concept in the proposed legislation should be eliminated. Our members believe that the contributor should be responsible for ensuring that all investments put into the TFSA are eligible. We hope to discuss qualified investments and prohibited property in more detail with Mr. Baxter Williams of your office in the near future.

5. ***Monitoring and reporting:*** We agree that it is appropriate for the CRA to monitor TFSA clients' contribution room and over-contributions as they do for RRSPs because, like for RRSPs, contributors can hold TFSAs in multiple locations. Consistent with this, we strongly recommend that the tax reporting requirements be limited to mirroring what is done for RRSPs – as a minimum until experience allows the government and TFSA providers to identify problems and workable alternatives. Specifically:

    - The prescribed form referred to in subsection 146.2(3) of the amendments to the *Income Tax Act* is a requirement that should be met by an amendment to form T550 (Application for Registration of RSPs, ESPs or RIFs).
    - We agree that there should be no required reporting to the client as clients receive both transaction confirmations and account statements.

- Bill C-50 should be amended to specify that transaction-related TFSA reporting should be limited to a single, aggregated annual reporting file provided to the CRA to report aggregate contributions, withdrawals and amendments for each client. Under no circumstances should there be a requirement for daily or monthly reporting by TFSA providers, just as there is no such requirement for RRSPs – the CRA can apply tax on over-contributions in the same manner as is done for RRSPs and the client will have all necessary information through account statements. Indeed, we believe that for many contributors it will be much simpler for depositors/investors to manage TFSA contributions than it is for, for example, RRSP-holders, where there is no monthly reporting required. Moreover, on the principle that costs are passed through to users, we do not believe that the majority of TFSA-holders who *can* manage to monitor their contribution limits will be happy to know that they are paying for the costs of systems changes to accommodate a small number of individuals who cannot. We understand that the number of over-contributions to RRSPs is proportionately small and excess amounts are low. Requiring monthly reporting or, worse, reporting to allow the calculation of penalties on the highest amount in a month, would require additional systems and operational work, which we believe is not cost-justified given the one-per-cent-per-month penalty and our understanding of the government's intention that there will be no opportunity to recontribute in the same year a withdrawal is made.

  In this regard, and as we understand that TFSA providers do not have a responsibility for monitoring contributions or withdrawals (because they cannot), our read of Bill C-50 suggests "in and out" transactions in the same year *is* possible. We have heard from both Finance and CRA staff that this is not intended and understand the government's desire to prevent people from taking advantage of TFSAs to deposit, earn a return and withdraw to avoid paying taxes. Not allowing re-contributions until the following year appears consistent with the intent of TFSAs to promote savings and not to provide the basis for an everyday trading account. Annual reports will allow the identification and application of penalties where required.

- Form T2033, used for RRSP and RRIF transfers, would presumably be used to report TFSA transfers – form T2033 does not require the amount of the transfer to be reported between TFSAs and this should similarly apply in the case of TFSAs – in both cases, the value of in-kind transfers does not affect contribution room.

6. ***Transition:*** The draft legislation provides that qualifying TFSA arrangements must be entered into after 2008. This would appear to prevent opening accounts to a zero balance earlier and lead to a rush at the New Year (our members are already getting calls about opening TFSAs), risking negative publicity for TFSA providers and for the government, particularly from seniors who are expected to be a primary beneficiary group of TFSAs. We therefore recommend that the Bill C-50 definition of "qualifying arrangement" in proposed subsection 146.2(1) be amended to read along the lines of **"**an arrangement … ***into which no contributions may be made prior to January 1, 2009*** between a person …" *[emphasis added to show proposed rewording]*. TFSA providers should be able to send terms and conditions and any other relevant documentation at any time so that the investor is ready to transfer or pay into the TFSA on or after January 1, 2009 – reporting would prevent anyone from getting a tax benefit before that date.

7. ***Transfer and termination on death or marital break-up:*** We expect that there will be clarification as to how assets will be dealt with in the case of death or marital break-up of the TFSA-holder; in the latter case, the legislation should clarify that clients must self-identify and manage the process as TFSA providers may not be in a position to know the reason behind a transfer – the TFSA provider/issuer will undertake transfers according to standard practices once appropriate transfer authorizations are received. We expect to recommend to provincial governments that they make changes necessary to allow the same rights of

survivorship/beneficiary designations for TFSAs as for RRSPs so that, like RRSPs, TFSAs can be transferred tax-free to a designated beneficiary, as can annuities currently. We additionally request that Finance Canada help address this issue with provincial counterparts.

We also recommend amending the proposed rule that a TFSA is immediately taxable on death of the holder (unless the spouse is the successor holder) to provide a transitional period after death. Making the TFSA immediately taxable will be extremely difficult to administer as a TFSA provider may not be advised of a holder's death until many months later, meaning no way to process the deemed disposition of assets, reset cost at fair market value on death, etc. We recommend that the tax-free status of the TFSA remain in place following the death of the holder for a specified period of time as is the case for RRSPs. This reduces problems for investors, the risk of error for intermediaries and costs associated with refilings for the CRA. We know that the Canadian Bankers Association has further comments and questions regarding matters subsequent to a TFSA-holder's death and we support the recommendations or request for clarifications in regard to these issues.

8. ***Quebec:*** A court case in Quebec recently determined that RRSP trusts are not considered trusts under the Quebec Civil Code – it is likely that TFSA trusts would similarly not qualify as trusts under this law. In response to this case, we understand that Finance has proposed amendments to subsection 248(3) of the *Income Tax Act* to deem RRSP and registered retirement income funds to be trusts for purposes of that Act, as long as they are established prior to 2010. We recommend that this paragraph be extended to include TFSA trusts, and that the relief be provided on a permanent basis.

9. ***Foreign withholding taxes:*** Securities that pay foreign-source income may have foreign income tax withholding taken from payments made into the TFSA in accordance with applicable tax treaty requirements. As withdrawals from the TFSA will be exempt from Canadian tax, it is our understanding that such amounts should neither be reported by TFSA issuers to clients, nor eligible for Canadian residents to claim as credits against domestic tax liabilities. Please ensure that Technical Notes reflect this clarification.

In conclusion, the limited size of the accounts means that they may not be cost-effective to provide for some time or fees to be paid by contributors to cover related costs may make TFSAs less desirable in promoting savings than we believe is intended by the government or would be desirable for our economy. As it is, we estimate that our members already pay $20 million in T5-, T3-, T5013- and T5008-related tax-reporting costs that bring our members no benefit and, consistent with your March 12, 2008 request for comments on reducing paper and administrative burden, we hope that Finance will reflect the above recommendations in amended legislation and/or in the Technical Notes to accompany the final TFSA-related legislation.

We would be pleased to answer any questions on the issues we raise at your convenience and expect to provide our views to the House of Commons Finance Committee tasked with reviewing Bill C-50. We appreciate the opportunity to meet with Mr. Williams and CRA representatives responsible for TFSA consultations shortly.

Yours truly,

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