PMAC

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

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BRIEF TO THE HOUSE OF COMMONS STANDING COMMITTEE ON FINANCE FROM THE PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA (PMAC)

RELATING TO STUDY ON PART 5 OF BILL C-31

Good evening,

My name is Katie Walmsley. I am the President of the Portfolio Management Association of Canada. Joining me today is Paul Harris, who is the Chair of PMAC's Board of Directors and Managing Partner of Avenue Investment Management. PMAC represents over 180 investment management firms across Canada that manage total assets in excess of $800 billion and over $1 trillion including mutual fund assets. PMAC members manage investment portfolios for private individuals, foundations, universities and pension plans.

For FATCA purposes, portfolio managers are considered to be an "Investment Entity" under the FATCA rules as they provide individual and collective portfolio management services. Portfolio managers also fall within the definition of "Financial Institution" under the Canadian legislation.

Our main recommendation this evening is that portfolio managers should fall under the "deemed compliant foreign financial institution (FFI)" exemption thereby exempting portfolio managers from the registration and reporting requirements under FATCA.

Currently, given the narrow scope of the exemptions included in Annex II of the Canada-U.S. Intergovernmental Agreement, it appears that portfolio managers in Canada will need to register with the IRS and report on their client accounts to the CRA in order to be FATCA compliant. This is because, in Canada, portfolio managers have been included in the definition of "financial accounts". As a result, they cannot avail themselves of the deemed compliant FFI exemption and therefore MUST register with the IRS and report on their client accounts.

There are **two key reasons** for our recommendation:

1. **Custodians are the most appropriate financial institution to report on PM client accounts.**

Portfolio managers do not custody assets for their clients. These client accounts are in actual fact "maintained" by a third party custodian. The custodian has reporting responsibilities for these accounts by virtue of holding the legal title to the assets in the accounts. Custodians are already reporting on

In summary, we submit that portfolio managers who do not custody client assets should not be included in the definition of "Financial Accounts" given that in the portfolio management context, the financial account is maintained by the custodial institution. The definition of "Financial Account" in Part XVIII of the Income Tax Act creates significant confusion for portfolio managers as to whether they actually maintain financial accounts. The practical interpretation is that it's the custodian who in fact is maintaining the account.

We believe that an approach similar to that taken in the U.K. or the US would be more appropriate and that it be made clear that PMs do not maintain financial accounts for the purposes of FATCA reporting.

Investment entities in Canada, including portfolio managers, need clearly articulated rules and guidance. In all cases, it should be clear with whom the reporting responsibility lies in respect of financial accounts in order to ensure the CRA receives reporting information on financial accounts from the appropriate source and from a single source.

PMAC thanks the Committee for the opportunity to make these submissions.

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Per:

Katie Walmsley