Internal Revenue Service

Department of the Treasury

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TY:

Legend

A =
B =
Province R =
Fund X =
Indenture Y =

Dear :

This is in response to your representative's letter dated June 17, 1999, as amended by letters dated March 21, 2000 and April 14, 2000, requesting rulings regarding the taxability of income received by A under the Income Tax Treaty Between Canada and the United States (the "Treaty"). The information submitted is substantially as set forth below.

The rulings contained in this letter are predicated upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

B is a trust company organized under the laws of Canada, engaged in the business of offering its services as trustee to the public. A, a corporation incorporated under the laws of Province R in Canada, provides investment advisory services to clients.

Pursuant to Indenture Y between A and a predecessor to B, a pooled investment trust was created. A represents that Fund X is one section of such trust and that Fund X is treated as a separate trust under Canadian law. Fund X was created to facilitate pooled investments by certain clients of A to which A provides advisory services. A represents that Fund X is a resident of Canada for Canadian income tax purposes.

Fund X's objective is to earn income and profits for its unitholders by purchasing, holding and selling a diverse group of securities. To achieve its objectives, Fund X acquires, among other things, U.S. debt and equity securities. Fund X receives interest and dividend income from debt and equity instruments issued by U.S. issuers.

Indenture Y provides that the interest of each beneficiary of Fund X will be denominated in units of Fund X, and that a unitholder may request the redemption of all or any of the unitholder's units as of any valuation date. A unit of the Fund will be redeemable for a price equal to the portion of the net asset value represented by the unit, determined in accordance with valuation rules set forth in Indenture Y.

A represents that, as a Canadian resident, Fund X will potentially be liable for Canadian income tax, as well as certain other taxes. In particular, a Canadian trust may be liable for income tax under Part I of the Income Tax Act (Canada) (the "Canadian Act"), which sets out the primary income tax provisions applicable to Canadian taxpayers. A, however, also represents that Part I of the Canadian Act provides a special tax regime for Canadian trusts including subsection 104(6) of Part I, which provides that in computing its income for purposes of Part I of the Canadian Act, a trust is permitted to deduct any amount (including realized taxable capital gains) that is paid or payable in the year to beneficiaries of the trust. A represents that Indenture Y requires the Trustee to make payable to unitholders in each year an amount sufficient to ensure that the Fund will not have any income subject to regular Part I tax and that Fund X will make payable all earnings to its unitholders each year in accordance with Indenture Y. Unless the unitholder requests payment in cash, the amount payable to the unitholder is reinvested in Fund X.

A represents that Fund X will not carry on a trade or business in the United States and will not earn income from a related person within the meaning of Article XXI(3) of the Treaty.

A proposes that the units of Fund X will be purchased and held by one or more of the following types of entities: (1) a trust governed by a Registered Pension Plan that is tax exempt pursuant to paragraph 149(1)(o) of the Canadian Act ("RPP"); (2) a trust governed by a Registered Retirement Savings Plan that is tax exempt pursuant to subsection 146(4) and paragraph 149(1)(r) of the Canadian Act ("RRSP"); (3) a trust governed by a Registered Retirement Income Fund that is tax exempt pursuant to subsections 146.3(3) and 146.3(3.1) and paragraph 149(1)(x) of the Canadian Act ("RRIF"); (4) a trust governed by a Deferred Profit Sharing Plan that is tax exempt pursuant to paragraph 149(1)(s) of the Canadian Act ("DPSP"); (5) a trust governed by an Employees Profit Sharing Plan that is tax exempt pursuant to paragraph 149(1)(p) of the Canadian Act ("EPSP"); (6) a trust governed by a Registered Supplementary Unemployment Benefit Plan that is tax exempt pursuant to paragraph 149(1)(q) of the

Canadian Act ("Subplan"); (7) a vacation pay trust that is tax exempt pursuant to paragraph 149(1)(y) of the Canadian Act ("Vacation Pay Trust"); (8) a trust all of the beneficiaries of which are investors described in (1) through (7) ("Mixed Pooled Fund"); and (9) a segregated fund of an insurance company resident in Canada that is deemed to be an inter vivos trust by paragraph 138.1(1)(a) of the Canadian Act and under which all of the related insurance contracts are entered into with investors described in (1) through (7) (**"**Segregated Fund**"**).

Section 894(a) of the Code provides that the provisions of the Code shall be applied with due regard to any treaty obligation of the United States which applies to a taxpayer.

Article IV (Residence), paragraph 1 of the Treaty provides:

> For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by such estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries.

Article XXI (Exempt Organizations), paragraph 2 provides:

> Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by:
>
> (a) A trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to administer or provide pension, retirement or employee benefits; or
>
> (b) A trust, company, organization or other arrangement that is a resident of a Contracting State, <u>generally exempt from income taxation in a taxable year</u> in that State and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a).
>
> shall be exempt from income taxation in that taxable year in the other Contracting State. (Emphasis added.)

Article XXI, paragraph 3 provides:

> The provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company, organization or other arrangement from carrying on a trade or business or from a related person other than a person referred to in paragraph

1 or 2.

Prior to amendment by Article 10 of the third protocol to the Treaty, which generally entered into force on November 9, 1995, paragraph 2 (b) of Article XXI read as follows:

> A trust, company or other organization which is resident in a Contracting State, <u>not taxed in a taxable year</u> in that State and constituted and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a); (Emphasis added.)

The Technical Explanation to Article 10 of the third protocol states, in part, that:

> The other changes, all in paragraph 2, are intended to improve and clarify the language....In subparagraph 2 (b), the phrase “not taxed in a taxable year” was changed to “generally exempt from income taxation in a taxable year” to ensure uniformity throughout the Convention; this change was not intended to disqualify a trust or other arrangement that qualifies for the exemption under the wording of the present Convention.

Article XXIX A (Limitation on Benefits), paragraph 1 provides:

> For purposes of the application of this Convention by the United States,
>
> (a) A qualifying person shall be entitled to all of the benefits of this Convention, and
> (b) Except as provided in paragraph 3, 4, and 6, a person that is not a qualifying person shall not be entitled to any benefits of the Convention.

Article XXIX A, paragraph 2 provides, in part:

> For the purposes of this Article, a qualifying person is a resident of Canada that is:
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> * * * *
>
> (h) An organization described in paragraph 2 of Article XXI (Exempt Organizations) and established for the purposes of providing benefits primarily to individuals who are qualifying persons, persons who were qualifying persons within the five preceding years, or residents or citizens of the United States.

Based solely on the information submitted and on the representations made by the taxpayer, and provided that the entity deriving the dividends and interest is a resident of Canada within the meaning of Article IV of the Treaty and a qualifying person within the meaning of Article XXIX A of the Treaty, we conclude that:

i) An RPP is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

ii) An RRSP is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

iii) An RRIF is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

iv) A DPSP is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

v) An EPSP is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

vi) A Subplan is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

vii) A Vacation Pay Trust is a trust or other arrangement described in Article XXI(2)(a) of the Treaty. Consequently, dividends and interest derived by such a trust or arrangement will be exempt from U.S. income tax pursuant to Article XXI(2)(a) of the Treaty.

viii) Provided that the unitholders of Fund X consist, at all times, exclusively of RPPs, RRSPs, RRIFs, DPSPs, EPSPs, Subplans, Vacation Pay Trusts, Mixed Pooled Funds, and/or Segregated Funds, dividends and interest derived by Fund X will be exempt from U.S. income tax pursuant to Article XXI(2)(b) of the Treaty.

The above rulings are not applicable to any dividend or interest income derived from carrying on a trade or business in the United States or from a corporation which is a “related person” under Article XXI(3) of the Treaty.

Your representative also originally requested rulings concerning the treatment of Mixed Pooled Funds and Segregated Funds that include as investors organizations resident in Canada and described in Article XXI(1) of the Treaty. However, your representative withdrew those requests upon learning that this office was adverse.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

M. Grace Fleeman
Assistant to the Branch Chief, Branch 1
Associate Chief Counsel (International)

cc: