Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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CC:INTL:B01
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Date:
December 06, 2007

In re:

US Funds =

A =

B =

C =

Offering Memorandum=

Trust

Agreement =

Province R =

Canadian
Funds =

Dear :

This is in response to a letter from your authorized representative dated , requesting rulings that interest and dividends paid to certain Canadian investors will be exempt from U.S. withholding tax under Article XXI of the U.S.-Canada income tax treaty (the “Treaty”). Additional information was received in a letter dated . The information submitted is substantially as set forth below.

The rulings contained in this letter are predicated upon information and representations submitted by the taxpayers 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.

A, a domestic entity, is a registered investment company under the Investment Company Act of 1940. US Funds are each a series of A. Each US Fund has elected to be treated as a regulated investment company under I.R.C. § 851. B is a domestic corporation that serves as the investment manager of the US Funds.

C, an affiliate of B, is a company incorporated under the laws of Province R. C is in the process of forming the Canadian Funds. Each Canadian Fund will be a unit trust established under the laws of Province R.

A represents that, as a Canadian resident, each Canadian Fund 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 Canadian Income Tax Act (the "Canadian Act"), which sets out the primary income tax provisions applicable to Canadian taxpayers. A also represents that Part I of the Canadian Act provides a special tax regime for Canadian trusts, including subsection 104(6), 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 the Trust Agreement will require the Trustee to make payable to unitholders in each year an amount sufficient to ensure that each Canadian Fund will not have any income subject to regular Part I tax and that each Canadian Fund will make payable all earnings to its unitholders each year in accordance with the Trust Agreement. Unless the unitholder requests payment in cash, the amount payable to the unitholder will be reinvested in the respective Canadian Fund.

A represents that the Canadian Funds 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.

The Offering Memorandum for certain of the Canadian Funds provides that the investors are limited to (1) trusts governed by a registered pension plan ("RPP") that is exempt pursuant to paragraph 149(1)(o) of the Canadian Act and (2) certain Canadian master trusts whose beneficiaries are limited to RPPs and which are exempt from income taxation in Canada pursuant to paragraph 149(l)(o.4) of the Canadian Act ("Master Trusts").

It is proposed that units of the Canadian Funds will also be purchased and held by one or more of the following types of entities: (1) a trust governed by a registered retirement savings plan ("RRSP") that is tax exempt pursuant to subsection 146(4) and paragraph 149(1)(r) of the Canadian Act; (2) a trust governed by a registered retirement income fund ("RRIF") that is tax exempt pursuant to subsections 146.3(3) and 146.3(3.1) and paragraph 149(1)(x) of the Canadian Act; (3) a trust governed by a deferred profit sharing plan ("DPSP") that is tax exempt pursuant to subsection 147(7) and paragraph 149(1)(s) of the Canadian Act; (4) a trust governed by an employees profit sharing plan ("EPSP") that is tax exempt pursuant to subsection 144(2) and paragraph 149(1)(p) of the Canadian Act; (5) a trust governed by a registered supplementary unemployment benefit plan ("Subplan") that is tax exempt pursuant to paragraph 149(1)(q) of the Canadian Act; (6) a vacation pay trust ("Vacation Pay Trust") that is tax exempt pursuant to paragraph 149(1)(y) of the Canadian Act; (7) a Master Trust whose beneficiaries are DPSPs, RPPs or both; and (8) a tax exempt pension investment corporation (“TEPI”) that meets all of the conditions of and is tax-exempt pursuant to subparagraph 149(l)(o.2)(iii) of the Canadian Act.

I.R.C. § 894(a) provides that the provisions of the Code shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such 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:
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>> (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, generally exempt from income taxation in a taxable year 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.

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, *not taxed in a taxable year* 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 taxpayers, and provided that the entities deriving the dividends and interest are residents of Canada within the meaning of Article IV of the Treaty and qualifying persons within the meaning of Article XXIX A of the Treaty, we conclude that:

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

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

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

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

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

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

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

8. A Master Trust whose investors are limited to RPPs and DPSPs is a trust, company, organization or other arrangement described in Article XXI(2)(b) of the Treaty. Consequently, dividends and interest derived by such a Master Trust will be exempt from U.S. income tax pursuant to Article XXI(2)(b) of the Treaty.

9. A TEPI whose investors are limited to RPPs is a trust, company, organization or other arrangement described in Article XXI(2)(b) of the

Treaty. Consequently, dividends and interest derived by a TEPI will be exempt from U.S. income tax pursuant to Article XXI(2)(b) of the Treaty.

10. Provided that the unitholders of the Canadian Funds consist, at all times, exclusively of trusts, companies, organizations or other arrangements described in rulings 1 through 9, a Canadian Fund will be a trust, company, organization or other arrangement described in Article XXI(2)(b) of the Treaty. Consequently, dividends and interest derived by a Canadian Fund 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 that is a "related person" under Article XXI(3) of the Treaty. They also are not applicable to any distribution designated as a capital gain dividend.

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. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

M. Grace Fleeman
Senior Technical Reviewer
CC: INTL: Br 1

Enclosure:
Copy for § 6110 purposes