Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

April 5 , 2012

CC:PA:LPD:PR (REG-121647-10)
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

VIA ELECTRONIC MAIL
www.regulations.gov (IRS-REG-121647-10)

Re: **Comments on Proposed Regulations (REG-121647-10) Under Chapter 4 of Subtitle A of the Internal Revenue Code**

Dear Sirs/Madams:

The Canadian Life & Health Insurance Association (the "CLHIA")[1] and its member companies are writing to comment on proposed Treasury regulations (REG-121647-10) (the "Proposed Regulations") recently issued under Chapter 4 of Subtitle A of the Internal Revenue Code of 1986 (the "Code").[2]

We appreciate the efforts that Treasury and the Internal Revenue Service (the "IRS") made in the Proposed Regulations to address many of the unique issues relating to the application of Chapter 4 to insurers. However, we believe that there are a number of areas where the regulations under Chapter 4 could better address certain insurance-specific issues. Accordingly, we respectfully urge Treasury and the IRS to take the following comments into account in promulgating the final regulations.

[1] The CLHIA is a voluntary association of Canadian life and health insurers, with members accounting for over 99% of Canada's life and health insurance business. The industry provides protection to more than 26 million Canadians (representing over 75% of Canada's total population) through a wide variety of individual and group insurance products. In addition, Canadian life and health insurers have international operations in over 20 other countries, with over 15% of their worldwide premiums (amounting to over $20 billion) from countries other than Canada and the United States.

[2] Except as otherwise noted, all "section" references are to the Code, all "Treas. Reg. §" references are to regulations promulgated under the Code, and all "Prop. Treas. Reg." references are to the Proposed Regulations. In addition, all undefined terms used in discussing the Proposed Regulations have the meanings set forth in those regulations.

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Executive Summary

- Foreign life insurers and their branches should be able to qualify as registered deemed-compliant FFIs if they (i) implement procedures to preclude sales of life insurance and annuity contracts to U.S. persons who do not reside in the jurisdictions in which those insurers and branches operate and (ii) otherwise limit their sales to nonresidents of those jurisdictions. Establishment of such a deemed-compliant FFI status would have two principal benefits:
    - Significantly reducing the likelihood that members of insurance expanded affiliated groups ("EAGs") would fail to qualify as participating FFIs after January 1, 2016, when the "limited FFI" relief provision expires, and
    - Substantially easing the administrative burden on life insurers, very few of whom sell (or are even able to sell) life insurance and annuity contracts to nonresidents of their local jurisdictions.
- Several of the definitions that apply to life insurance or annuity contracts either are too restrictive or are ambiguous in some respect. They should be revised to provide needed clarity to insurers and to ensure that the definitions properly balance the compliance burden on insurers with the goals of Chapter 4. In particular, we propose the following changes to the Proposed Regulations:
    - The definitions of "life insurance contracts" and "annuity contracts" should be simplified to mean all products regulated as such in the local jurisdiction.
    - The term "cash value insurance contracts" should exclude reinsurance contracts.
    - The exception to the definition of "cash value insurance contracts" for premium refunds on non-life insurance contracts should be clarified to include amounts paid on termination, as well as on cancellation.
    - A $50,000 *de minimis* exception should apply to cash value life insurance and annuity contracts.
    - The definition of "term life insurance contracts" should be revised to remove the requirement that "equal periodic premiums [be] payable annually or more frequently during the period the contract is in existence".
    - The definition of "grandfathered obligations" should be revised to clarify that it applies to <u>all</u> life insurance and annuity contracts in existence on January 1, 2013.

  - The definition of "depository accounts" should be clarified so that it does not apply to the crediting of interest on (i) prepayments of premiums or other amounts payable by a policyholder or (ii) premium or experience refunds payable to a policyholder.

- The exclusions from U.S. account treatment in the Proposed Regulations for retirement and savings plans or accounts are worded so restrictively that most Canadian retirement and savings plans and accounts could not qualify for the exclusions. The relevant provisions should be modified to capture such plans and accounts.

- The final regulations should not require that account identification documentation be renewed as a matter of course. Instead, such renewal should be required only when U.S. indicia are identified in the course of an FFI's normal operations.

- Requiring the beneficiaries of life insurance and annuity contracts to be treated as the holders of those contracts at maturity would subject insurers to unequal treatment in comparison to other FFIs. Additionally, requiring insurers to capture information about beneficiaries is inconsistent with current legal standards and industry practice and would impose a significant unnecessary burden on insurers. Moreover, the operation of the "holder" rule is unclear in certain cases. Accordingly, this rule should be eliminated.

- Reporting on insurance and annuity contracts for Chapter 4 purposes should not include amounts excludible from income under section 101.

- Life insurance and annuity contracts are unique in that they often cannot be purchased on the same terms at a later date due to changes in the health or age of the covered individual. As such, insurers should not be required to close the accounts of recalcitrant account holders.

- Verifications and certifications with respect to Chapter 4 compliance should be reasonable and limited in scope absent patterns of compliance failures.

- Treasury should work with Canada and other foreign countries as expeditiously as possible to implement intergovernmental agreements ("IGAs"); IGAs should incorporate country-specific rules to take into account both the types of accounts that should be excluded from U.S. account treatment and each country's existing account holder identification and current tax reporting processes; and FFIs located in countries with which the United States is negotiating IGAs should be treated as deemed-compliant FFIs during those negotiations.

Detailed Comments

A. Deemed-Compliant Insurers

Under the Proposed Regulations, each FFI member of an EAG must be a participating FFI or a registered deemed-compliant FFI by January 1, 2016, in order to prevent all members of the EAG from being treated as nonparticipating FFIs as of that date. Prop. Treas. Reg. §1.1471-4(e).

Many CLHIA members have affiliates in jurisdictions that restrict or prohibit the information-collecting and reporting required by Chapter 4, any withholding on passthru payments, and/or the closure of accounts of recalcitrant account holders ("Recalcitrant Accounts"). We anticipate that, by January 1, 2016, many of those jurisdictions will have revised their laws or regulations to permit the reporting and other actions required by Chapter 4 or will have entered into IGAs with the United States that will allow FFIs to comply with Chapter 4 by reporting to their local taxing authorities, instead of the IRS. However, it is entirely possible that some jurisdictions will do neither by that date. In that event, the EAGs will be able to treat each of their members as a Chapter 4-compliant FFI only if those members who cannot qualify as participating FFIs can be treated as registered deemed-compliant FFIs.

Independent of the EAG issue, there are compelling reasons why insurers who do not market or sell life insurance or annuity contracts to non-residents, and therefore have very few, if any, policyholders who are U.S. persons, should be treated as deemed-compliant FFIs. Our prior submissions to Treasury detailed the unique nature of life insurers, the low level of tax-avoidance risk associated with the overwhelming majority of life insurance and annuity products, and the regulatory and other constraints placed on cross-border sales of life insurance and annuity contracts.[3] We understand that Treasury nevertheless may have concerns about the potential evasion of United States taxation with respect to certain limited types of insurance products. However, we believe it is appropriate to target the application of Chapter 4 to insurers who market and sell their contracts to non-residents and to permit insurers to be treated as deemed-compliant FFIs if they operate in such a way as to essentially eliminate the potential for their products to be used in United States tax evasion schemes.

Accordingly, **we strongly recommend that the final regulations include a category of registered deemed-compliant FFIs for any life insurer that:**

[3] We previously submitted comments to Treasury on the application of Chapter 4 to Canadian life insurers and their affiliates in letters dated June 15, 2010, November 1, 2010, February 1, 2011, June 13, 2011, and July 22, 2011.

(i) operates exclusively in the foreign country in which it is licenced to operate;[4]

(ii) has procedures in place that preclude the sale of life insurance or annuity contracts to U.S. persons who are not residents of such country; and

(iii) satisfies certain other technical requirements described more fully below.

That recommendation is fully consistent with the statement in the preamble to the Proposed Regulations that "[c]onsideration is being given … to providing a category of deemed-compliant FFIs for entities that issue certain insurance or annuity contracts that has requirements that are analogous to the requirements for local FFIs."

Although the requirements for local FFIs in the Proposed Regulations are a useful starting point for the requirements that should apply to registered deemed-compliant insurer FFIs, there are significant differences between the businesses conducted by banks, brokers, and financial planners (the types of entities that are covered by the local FFI rules) and the insurance business, as follows:

- Life insurers are **heavily and universally regulated as insurance providers, not investment vehicles**.
- Insurers located in one country generally are **legally prohibited from selling insurance in another country** without having a licenced branch in that country.[5]
- Most life insurers already **rarely, if ever, sell life insurance or annuities to non-residents** because of:
    - other governmental regulatory restrictions (including licencing, "know your customer" ("KYC") and anti-money laundering ("AML") restrictions);
    - corporate tax disincentives in the insurer's jurisdiction;[6]
    - excise or other taxes for which the insurer may be liable;[7] and

[4] For this purpose, the EU would be treated as a single country. *See* Prop. Treas. Reg. §1.1471-5(f)(1)(i)(A)(*5*).

[5] As reflected in Prop. Treas. Reg. §1.1471-5(f)(1)(i)(A)(*5*), cross-border sales may be permitted within the EU.

[6] In Canada, for example, Canadian insurers cannot deduct reserves for "non-resident" insurance or annuity contracts.

- the economic need to apply relevant actuarial data by geographic location.

- **Life insurance and annuity contracts cannot be moved from one life insurer to another**, unlike the case of money in bank accounts or amounts invested in other types of investment accounts, where an account owner can simply close an account in one financial institution and re-invest the proceeds at another financial institution. Life insurance policies and annuities are contracts that are subject to insurance statutes and regulations in effect in the jurisdictions in which they are issued. A holder certainly can surrender a contract issued by an insurer in one jurisdiction and acquire a new "replacement" contract issued by another insurer. However, there is no capability under either insurance contract law or relevant insurance statutes or regulations for the holder of an insurance or annuity contract to unilaterally transfer that contract from one life insurer to another, even if the insurers are affiliated. Even in the case of a surrender of one contract and a purchase of a new contract, the second insurer always would have to go through its usual underwriting and other contract issuance procedures. In addition, it is entirely possible that, due to changes in the insured's health or age, the surrendering policyholder would be unable to find a replacement contract or it would be prohibitively expensive. Thus, if Treasury and the IRS are concerned about expanding the scope of deemed-compliant FFIs because of the possibility that an owner of an account in one member of an EAG could move his or her account to another member of the EAG and thereby easily avoid the effects of Chapter 4, that concern would be misplaced in the case of insurance and annuity contracts.

In addition, except perhaps in the case of so-called "wrapper" insurance products, **there is very little reason to believe that any U.S. persons acquire life insurance or annuity contracts from foreign insurers in order to evade United States taxation** because of:

- the long-term nature of most life insurance and annuity products;

- the application of surrender charges upon the cancellation or termination of many types of life insurance and annuity contracts;

- the taxes that most foreign jurisdictions impose on the earnings portion of life insurance and annuity proceeds; and

- the application and underwriting hurdles that must be cleared, and the delays that necessarily will occur, in the acquisition of such products.

[7] Premium payments from U.S. residents to foreign insurers, for example, are subject to the section 4371 excise tax, for which the insurer may be liable if the insured fails to pay the tax.

In considering the deemed-compliant limitations that should apply to life insurers, we have concluded that certain of the local FFI rules should be modified in order to address the unique nature of life insurers and insurance products. First, as long as an insurer is licenced and regulated by the country in which it operates, we believe that it is not relevant to the purposes of Chapter 4 or the interests of Treasury or the IRS how that country taxes the policyholder or what type of reporting, if any, is required to be made to the local tax authority.

Second, because many life insurers that are licenced and operate in one country have a licenced branch in another jurisdiction, the deemed-compliant rules that apply to life insurers should treat such branches as separate entities for purposes of those rules.[8] Otherwise, if the "no fixed place of business outside its country of incorporation or organization" rule in Prop. Treas. Reg. §1.1471-5(f)(1)(i)(A)(*2*) with respect to local FFIs is applied to potential deemed-compliant life insurers, many of those companies would be unable to satisfy that rule.[9]

Finally, it is critical that, in the event a policyholder of a registered deemed-complaint insurer FFI subsequently becomes a U.S. resident, the insurer is not obligated to terminate that policyholder's contract. As noted above, insurance and annuity contracts are different from other types of financial accounts. Following the issuance of a life insurance contract, for example, a policyholder may become uninsurable or the cost of insurance may rise to an unaffordable level. It would be unreasonable to require the insurer to cancel that contract just because the policyholder had become a resident of the United States.

Indeed, we believe that local insurance regulators simply would not permit contracts to be cancellable under those circumstances, given that there would be a strong public policy argument that insurers should not be able to deprive an individual and his or her family of life insurance merely because of a change in the individual's residence. Consider, for example, the case of a sixty-year old resident of Thailand who bought a life insurance contract from a Thai insurer when he was thirty, has now been diagnosed with terminal cancer, and has become a permanent resident of the United States in order to live with his daughter in Florida. It would be unconscionable for the insurer to be required to cancel his contract (and unreasonable to expect an insurance regulator to permit such a cancellation) merely because of the change in his residence.

[8] In this regard, we note that some branches of controlled foreign corporation insurers can elect for purposes of Chapter 1 of Subtitle A of the Code (and certain other Code provisions) to be treated as separate foreign corporations organized under the laws of the countries in which they operate. *See* section 964(d). Although that election technically would not have any effect under Chapter 4, there obviously is no policy justification for ignoring the separate tax status of such a branch in developing rules for deemed-compliant insurers.

[9] In that event, their entire EAGs could fall out of compliance with Chapter 4.

Accordingly, **we propose the following criteria for registered deemed-compliant insurer FFIs, which would include any licenced insurance branch of an FFI:**[10]

- Licenced and regulated by the foreign jurisdiction in which it is organized.
- The relevant foreign jurisdiction is FATF-compliant within the meaning of Prop. Treas. Reg. §1.1471-1(b)(22).
- Has no fixed place of business outside of the relevant foreign jurisdiction, treating a branch as a separate entity for this purpose.[11]
- Does not solicit account holders outside of the relevant foreign jurisdiction.
- 95% of all accounts are held by residents of the relevant foreign jurisdiction. (For this purpose, we propose that the final regulations specify that this percentage be satisfied as of the prior year end before the company or branch registers as a deemed-compliant FFI and as of the prior year end before it renews its certification as a deemed-compliant FFI (*i.e.*, every three years). We also propose that the final regulations specify that this percentage be based on the number of total accounts, regardless of value or nature, and that it be calculated based on the residency of policyholders as of the date of issuance of their contracts.)
- Has policies in place to prevent account openings by U.S. persons who are not residents of the country, nonparticipating FFIs, or entities controlled or beneficially owned by U.S. persons (as determined under AML due diligence procedures).

The foregoing requirements would directly target the concerns underlying Chapter 4, while at the same time reducing the administrative burdens on insurers and allowing them to have Chapter 4-compliant EAGs, irrespective of the conflicts of law issues and other limitations that may preclude some insurance members of those EAGs from becoming and remaining participating FFIs.

B. Definitions

1. Life Insurance and Annuities

"Life insurance contracts" are defined in Prop. Treas. Reg. §1.1471-1(b)(35) by cross-reference to sections 7702, 101(f) and 817(h). As we understand the statutory

[10] As noted above, covered branches should include at a minimum any branch that had made a section 964(d) election.

[11] Again, these rules would have to take into account the special character of the EU.

references, that means that a life insurance contract for Chapter 4 purposes is any contract that is a life insurance contract under the applicable law of the relevant foreign jurisdiction. If our understanding is correct, we urge you to state that rule explicitly. The cross references are confusing and subject to misinterpretation. Given that compliance with Chapter 4 likely will fall on personnel who are not versed in United States tax law, it would be in the interest of both insurers and the IRS to make the underlying definitions as clear and easy to understand as possible.

The definition of "annuity contracts" under the Proposed Regulations is even less clear. Although Prop. Treas. Reg. §1.1471-1(b)(4) defines an annuity contract as a contract that would be an annuity under section 72 (as determined without regard to several subsections of section 72 and section 817(h)), that definition is ambiguous. Neither section 72 nor its implementing regulations specifically define an annuity. Instead, those provisions deal with the consequences of "amounts received as an annuity" (*i.e.*, amounts that are part of a series of periodic payments for a fixed period greater than one year or as long as the annuitant lives). Although Treas. Reg. §1.72-2(a)(1) provides that the contracts that generate such amounts are contracts "considered to be life insurance, endowment, and annuity contracts in accordance with the customary practice of life insurance companies," neither the statute nor the regulations address the scope of this reference. Given the multitude of products issued by life insurers and the fact that the "customary practices" of insurers may differ in different jurisdictions, there is a risk that the definition of annuity contracts in the Proposed Regulations will not be uniformly understood or applied. Moreover, for the same reasons described above in regard to the definition of "life insurance contracts," we believe that the definition of "annuity contracts" in the Proposed Regulations also is subject to confusion and misinterpretation.

Accordingly, **we recommend that life insurance and annuity contracts be defined for Chapter 4 purposes by analogy to the definition in section 953(e)(5)(A) – *i.e.*, a contract that is regulated as a life insurance or annuity contract by the jurisdiction in which the issuer is licenced**. Such a definition would be clear, concise, and not subject to confusion or misinterpretation.

2. <u>Exclusion of Reinsurance from "Cash Value Insurance Contracts"</u>

Prop. Treas. Reg. §1.1471-5(b)(3)(v) defines a "cash value insurance contract" as follows:

> (v) *Cash value insurance contracts*—
>
> (A) *In general*. Except as otherwise provided in paragraph (b)(3)(v)(B) or (C) of this section, the term *cash value insurance contract* means an insurance contract that has a "cash value" (as defined in paragraphs (b)(3)(v)(B) and (C) of this section) greater than zero. A term life

insurance contract described in paragraph (b)(2)(ii) is not a cash value insurance contract.

(B) *Cash value*. Except as otherwise provided in paragraph (b)(3)(v)(C), the term *cash value* means the greater of—

(1) The amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and

(*2*) The amount the policyholder can borrow under or with regard to the contract.

(C) *Amounts excluded from cash value*. Cash value does not include an amount payable under an insurance contract as—

…

(*2*) **A refund to the policyholder of a previously paid premium under an insurance contract (other than under a life insurance or annuity contract)** due to policy cancellation, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to correction of posting or other similar error . . . . [Emphasis added.]

In a reinsurance transaction, it is not uncommon for the ceding company (the "cedent") to have the right to recapture the ceded business from the reinsurer. In that event, the reinsurer typically would pay a recapture payment or return premium[12] (net of any ceding commission) to the cedent to reflect the transfer of insurance risk back to the cedent. Depending on how Prop. Treas. Reg. §1.1471-5(b)(3)(v)(B) is interpreted, such amount could be considered evidence of "cash value" that the cedent "is entitled to receive upon . . . termination of the contract." Moreover, although Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C)(*2*) excludes "a refund to the policyholder of a previously paid premium under an insurance contract," there are two possible issues with using that exclusion to exempt reinsurance contracts from treatment as U.S. accounts, as follows:

(i) **The amount paid by a reinsurer to a cedent upon termination of a reinsurance contract may not constitute a "refund . . . of a previously paid premium,"** as that language appears to refer to premium refunds attributable to errors, pro rations of premiums for a policy year in the event of a policy cancellation, or changes in policy limits or exposure. By contrast, the recapture

[12] That amount might be characterized using one or more other terms, depending on the jurisdiction involved and the identity of the companies.

payment or return premium that is paid in the case of a termination of a reinsurance agreement really is the economic amount due to the cedent for recapturing the insurance risk associated with the original reinsurance transaction. Thus, it is not at all clear that the language in Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C)(*2*) would apply to such premium.

(ii) **Even if the language in Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C)(*2*) applies to recapture payments or return premiums under reinsurance agreements, that exception is subject to the limitation that it does not apply "under a life insurance or annuity contract."** Although it can be argued that a reinsurance contract that reinsures life insurance or annuity contracts is not itself a life insurance or annuity contract, and that the exception therefore does not apply, there is uncertainty about that interpretation. Reinsurers are entitled to, and do, establish life reserves for reinsured life risks, and those reserves are based on the same criteria that apply to the underlying contracts. Although reinsurers do not have privity of contract with the underlying insureds, it is possible that an IRS agent could claim that a reinsurance contract covering underlying life insurance risks is a life insurance contract for purposes of the regulation.

Moreover, we do not believe that reinsurance contracts present any possibility of United States tax avoidance or that they should be treated as U.S. accounts. Reinsurance contracts do not have "cash value" within the assumed meaning of that term. Reinsurance is a means of shifting risk among insurers. A reinsurance agreement does not have an investment component analogous to the cash value in a directly written life insurance or annuity contract. In addition, reinsurance contracts do not permit withdrawals by the cedents during the contracts, and the net positive economic amount, if any, that a cedent may obtain on the termination of a reinsurance contract is a function of the nature of the risk recaptured by the cedent, the economic or contractual premium for that recapture, and the surrender and other charges imposed on recapture. There is no basis for equating the consequences of such a recapture with the payment of cash value under an insurance or annuity contract.

Nevertheless, as noted above, we are concerned that such contracts are not clearly outside the scope of Prop. Treas. Reg. §1.1471-5(b)(3)(v). Although there are a number of ways in which this issue could be addressed, **the simplest and most direct way to address the proper treatment of reinsurance contracts under Chapter 4 would be to add an exception to Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C) that would exclude all such contracts from treatment as financial accounts**. If you do not adopt that recommendation, at the very least the final regulations should provide an exception that expressly relates to amounts that a cedent could receive from a reinsurer upon the termination or cancellation of a reinsurance contract. In that context, **Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C) could be revised to add a new sub-clause (*4*): "A recapture payment, return premium, or similar amount paid by a reinsurer to a ceding company**

in connection with the termination, cancellation, or amendment of a reinsurance agreement."

3. Revision of Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C)(*2*)

As noted above, Prop. Treas. Reg. §1.1471-5(b)(3)(v)(C)(*2*) excludes from the definition of cash value refunds of premiums on non-life insurance and non-annuity contracts due to "policy cancellation." Our members write health, sickness, or disability insurance contracts that provide for premium refunds upon the occurrence of certain events, including (i) a surrender of the contract by the owner and (ii) a termination of the contract because of, for example, the death of the policyholder. Technically, it appears that a covered refund under the Proposed Regulations (which requires a policy "cancellation") may arise only in the first case, as the term "cancellation" implies that the insurance contract in question has been cancelled by the policyholder. We believe that the exception also should apply in the event of the termination of the contract. Accordingly, **we request that the words "or termination" be inserted after the word "cancellation" in sub-clause (C)(*2*)**.

4. Adoption of a $50,000 Exemption for Insurance and Annuity Contracts

The Proposed Regulations generally do not exempt from treatment as U.S. accounts low value accounts, even though such accounts logically present a very low risk of United States tax evasion. The sole exception in those regulations for low-value accounts is for individual depository accounts with a balance of $50,000 or less, which are specifically excluded from U.S. account treatment by section 1471(d)(1)(B). Although we understand that Treasury may not have provided a *de minimis* exception for other types of financial accounts because Congress did not specify any other exceptions to U.S. account treatment in section 1471(d), we strongly urge you to consider adding an exemption for life insurance and annuity contracts with a cash value of $50,000 or less. As we have noted in our prior submissions, insurers are treated as FFIs and insurance and annuity contracts are treated as financial accounts only because the Proposed Regulations have taken those positions. Although we do not dispute Treasury's authority to take that approach, the fact that insurers and their products are swept into Chapter 4 only because of regulations clearly gives Treasury the flexibility under the same regulations to exclude from the effect of Chapter 4 whatever insurance companies or insurance products that Treasury believes present a low risk of tax evasion.

Insurance contracts with a cash value of $50,000 or less do not present any realistic opportunity for use in a scheme to evade United States taxes. Not only is the cash value of such contracts quite low to start with, but a holder would incur significant surrender charges if he or she attempted to realize that cash value in any short period following the issuance of the contract. Thus, such contracts realistically could never be used to evade United States tax.

A $50,000 floor for cash value insurance and annuity contracts would substantially reduce Chapter 4 compliance costs for insurers by eliminating or minimizing costly data collection and reporting in the following ways:

- **For contracts that will never exceed the $50,000 threshold, insurers would not have to collect the information required by Chapter 4, monitor for the presence of U.S. indicia, or incur other associated costs.** Although our members do not generally issue classes of contracts that have a cash value that could never exceed $50,000, certain of their foreign affiliates do issue contracts that have a very low cash value. Eliminating entire classes of contracts from the scope of Chapter 4 obviously would result in both short-term and long-term cost savings to insurers.

- **For individual contracts that do not exceed the $50,000 threshold, ongoing administrative costs could be significantly reduced by excluding them from U.S. account treatment.** In many cases, it may not be possible to exclude an entire class of contracts from treatment as U.S. accounts, because some of the contracts ultimately could have a cash value over $50,000. However, if any individual contract has a cash value below $50,000, the insurer could postpone obtaining updated account identification information, collecting and reporting associated tax information, and taking the other actions required by Chapter 4 for U.S. accounts until such time, if ever, that the cash value exceeds $50,000.

  One Canadian multinational insurer has conservatively estimated that foregoing those actions would save approximately $17 per contract per year, [13] or approximately $1.5 - $2.2 million annually in Canada alone, due to the high number of its low value contracts. It has estimated that, in Canada, approximately 98% of its individual life insurance contracts and over 50% of its individual annuities have cash values below $50,000. The percentage of contracts with cash values less than $50,000 is even greater for its foreign affiliates, particularly in Asia.

  For smaller insurers, the annual per policyholder cost may be <u>much</u> higher, because they are likely to adopt a manual compliance approach to Chapter 4, rather than incur the substantial costs of developing new software and electronic processes.

  In Canada, the magnitude of the impact of a $50,000 exemption for life insurance and annuity contracts is evidenced by the fact that there are **approximately 9**

[13] That amount includes both the cost of periodically obtaining updated identification information from policyholders and the cost of complying with the additional information collection and reporting required by Chapter 4. It does not include other expenses that would be tied to the number of U.S. accounts, including compliance, external audit, and similar costs.

million individual life and annuity contracts in Canada with cash values less than $50,000.[14] Assuming an annual compliance cost per contract of $15, excluding these policies from treatment as U.S. accounts would save $135 million annually in Canada. Providing a *de minimis* floor for cash value life insurance and annuity contracts would significantly reduce insurers' costs, while not increasing in any material way the likelihood of United States tax evasion.

In recognition of the small risk of possible United States tax evasion associated with low-cash value life insurance and annuity contracts and the substantial cost savings expected to be realized by insurers from excluding such contracts from treatment as U.S. accounts, **we urge you to adopt a *de minimis* cash value test for life insurance and annuity contracts**.

5. <u>Revise Definition of Term Life Insurance Contracts</u>

Prop. Treas. Reg. §1.1471-5(b)(2)(ii) provides that "term life insurance contracts" are excluded from the definition of financial accounts (and therefore from the definition of U.S. accounts) as follows:

> *Term life insurance contracts*. The term *financial account* does not include a life insurance contract, other than a contract held by a transferee for value under section 101(a)(2) (determined without regard to section 101(a)(2)(A) or (B)), **if equal periodic premiums are payable annually or more frequently during the period the contract is in existence**, and the amount payable upon termination of the contract prior to the death of the insured cannot exceed the aggregate premiums paid for the contract, less mortality, morbidity, and expense charges (whether actually imposed or not) for the period or periods of the contract's existence. [Emphasis added.]

This definition is excessively and unnecessarily restrictive because of the requirement for "equal periodic premiums that are payable annually or more frequently during the period the contract is in existence." Many term life contracts provide for increasing or otherwise "unequal" premium payments and therefore could not satisfy that definition. In addition, there are classes of term contracts that have fixed premiums for a lengthy period (*e.g.*, until age 90 or 100), but after which no additional premiums are due. Although we understand that Treasury may be concerned with certain heavily front-loaded contracts, the second prong of the definition ensures that any refunded premiums will not

[14] There are over 13 million individual life insurance contracts in Canada. We estimate that approximately 50% of them are cash value contracts, with 90% of those, or almost 6 million contracts, having a cash value below $50,000. We also estimate that over 3 million individual annuity contracts in Canada, representing approximately 60% of the total number of outstanding annuities, have a cash value less than $50,000. Thus, in Canada alone there are over 9 million life insurance and annuity contracts that have a cash value less than $50,000.

have any imbedded investment earnings. **Because the requirement for "equal periodic premiums that are payable annually or more frequently during the period that the contract is in existence" (i) is unnecessary to achieve the purpose of the regulatory exception and (ii) could result in true term life insurance contracts being treated as U.S. accounts, that requirement should be deleted from the final regulations**.

6. Clarify Definition of "Grandfathered Obligation"

Prop. Treas. Reg. §§1.1471-2(b)(2)(i) and (ii) effectively define a "grandfathered obligation" as any legal agreement in existence on January 1, 2013 that produces or could produce a passthru payment, provided that the agreement has a stated expiration or term. Prop. Treas. Reg. §§1.1471-2(b)(2)(ii)(C) and (D) state that this definition includes a life insurance contract payable on the earlier of a stated age or death and a term certain annuity. However, the Proposed Regulations do not specifically address the status of a life insurance contract payable at death or a lifetime annuity as a grandfathered obligation. Although we recognize that such contracts do not have a term specified in years, they clearly do have a "stated expiration," as death remains an unavoidable event and the remaining length of such a contract necessarily can be actuarially determined. Moreover, we see no policy reason not to include such contracts in the category of grandfathered obligations, as they obviously represent current contractual liabilities of the insurers.

Similar arguments apply to deferred annuity contracts, which are frequently issued through or supported by separate account, segregated fund, or similar structures. In all cases, the length of those contracts is measured by a period of years, the life of the annuitant, or both, and the contracts clearly represent binding obligations of the issuers.

Notwithstanding the fact that all life insurance and annuity contracts would appear to satisfy the requirements of Prop. Treas. Reg. §§1.1471-2(b)(2)(ii), there is some ambiguity in the language of that provision, and we are concerned that the specific references to certain life insurance and annuity contracts in Prop. Treas. Reg. §§1.1471-2(b)(2)(ii)(C) and (D) could lead an IRS agent to claim that those references implicitly exclude other types of such contracts. Accordingly, **we request that the language of Prop. Treas. Reg. §1.1471-2(b)(2)(ii) be clarified to specifically include all life insurance and annuity contracts**.

7. Clarify Definition of "Depository Accounts"

In general, group insurance contracts that provide employee benefits that do not include cash value insurance or annuities, such as health and dental coverage, sickness and disability benefits, prescription drug coverage, and/or non-cash value term life insurance, are outside the scope of Chapter 4. The industry is concerned, however, that certain financial arrangements between the insurer and the employer or group sponsor with respect to those contracts could potentially bring those otherwise-excluded types of

insurance arrangements within Chapter 4 because of the broad definition of "depository account" contained in the Proposed Regulations.

The definition of a "depository account" includes "any amount held by an insurance company under an agreement to pay or credit interest thereon." Prop. Treas. Reg. §1.1471-5(b)(3)(i). In the group insurance context, employers may pre-fund premiums due under their group insurance contracts and receive an interest credit from the insurer for any positive balance until the premiums are actually paid. Additionally, in certain circumstances, an employer/plan sponsor may share in some of the risk under the group contract. In that event, the results of positive experience will be credited to the employer, who may be credited with interest on those amounts until the amounts are withdrawn or are used to pay premiums due under the contract. Other arrangements may involve the employer "self insuring" a risk, with the insurer providing administrative services only. In those cases, the employer may provide the insurer with the necessary funds to pay claims due under the contract. To the extent that the employer pre-funds the estimated liability for those claims, interest may be credited to the employer's account.

Similarly, in the individual insurance context, individual policyholders who own otherwise-excluded types of insurance contracts may make pre-payments to the insurer that will be applied towards premiums that will become due under those contracts and may receive interest on those pre-payments.

None of these arrangements involves the establishment of a "deposit account" for savings or investment purposes or is such an account in any other generally understood sense, but each rather is a financial arrangement connected with an insurance contract that is otherwise exempt from Chapter 4. We do not believe that the intent of the Proposed Regulations is to sweep in arrangements that are incidental to an otherwise-exempt form of insurance. Accordingly, **we recommend that the final regulations clarify that financial arrangements incidental to insurance contracts either are not considered financial accounts or are not considered "depository accounts" merely because they provide for the crediting of interest on (i) prepayments of premiums or other amounts payable by a policyholder or (ii) premium or experience refunds payable to a policyholder**.

C. Exclusion of Retirement and Savings Accounts from Treatment as Financial Accounts

Under the Proposed Regulations, retirement and savings accounts are excluded from treatment as financial accounts (and therefore as U.S. accounts) if they qualify as accounts:

(i) "held solely by one or more [specified] exempt beneficial owners" (Prop. Treas. Reg. §1.1471-5(b)(2)(iii)) ("Treaty-Referenced Accounts");

(ii) constituting specified types of foreign government-regulated or government-registered retirement and pension accounts or savings accounts (Prop. Treas. Reg. §§1.1471-5(b)(2)(i)(A)(*2*) and 1.1471-5(b)(2)(i)(B)) ("Government-Registered Retirement Accounts" or Government-Registered Savings Accounts"); or

(iii) held by a "retirement or pension fund" that constitutes one of two specified types of deemed-compliant FFIs (Prop. Treas. Reg. §§1.1471-5(b)(2)(i)(A)(*1*) and 1.1471-5(f)(2)(ii)) ("Deemed-Complaint Accounts").

As discussed below, however, the Proposed Regulations will not permit most types of Canadian government-registered retirement and savings plans or accounts to satisfy the requirements for even one of these types of excluded accounts, in which case those retirement and savings plans and accounts will fail to be excluded from treatment as U.S. accounts for Chapter 4 purposes.

1. <u>Treaty-Referenced Accounts</u>

Prop. Treas. Reg. §1.1471-5(b)(2)(iii) excludes from the definition of "financial accounts" accounts "held solely by one or more [specified] exempt beneficial owners." For this purpose, a specified exempt beneficial owner includes a "fund" that is:

- established in a country with which the United States has an income tax treaty in force;
- "generally exempt from income taxation" in that country;
- "operated principally to administer or provide pension or retirement benefits"; and
- entitled to benefits with respect to U.S.-source income under the treaty as a resident of the country that satisfies the treaty's limitation on benefits requirement. Prop. Treas. Reg. §1.1471-6(f)(1)(i).

Article XXI(2) of the United States/Canada income tax treaty (the "Treaty") provides that U.S.-source interest or dividends will not be taxable by the United States if they are received by a "trust, company, organization or other arrangement" that is (i) a resident of Canada, (ii) generally exempt from taxation in Canada, and (iii) "operated exclusively to administer or provide pension, retirement or employee benefits."

In our submission to Treasury dated November 1, 2010, we described the characteristics of a number of Canadian government-registered retirement plans, including

"RPPs," "RRSPs," "RRIFs," and "DPSPs" (as defined in that submission).[15] Based on the characteristics of those plans, each of those "trusts . . . or other arrangements" (collectively, "Canadian Retirement Plans") is eligible for treaty benefits.[16] Moreover, each of those arrangements also should satisfy the requirements of clauses (A)-(D) of Prop. Treas. Reg. §1.1471-6(f)(1)(i). However, as we noted in our November 1, 2010 submission, although some Canadian Retirement Plans take the form of true trusts that hold investment assets, others merely consist of those assets. In the context of an annuity contract issued by a Canadian life insurer, for example, a Canadian Retirement Plan may be a trust that owns the contract or it just may be the contract itself.[17] In the case of a trust, it would be easy to conclude that the account (*i.e.*, the annuity) was an account "held by" a "fund," as provided in Prop. Treas. Reg. §§1.1471-5(b)(2)(iii) and 1.1471-6(f)(1)(i). However, even though the non-trust "arrangement" also would satisfy the requirements of the Treaty, it is much less clear that the annuity itself could be considered to constitute a "fund" or that it could satisfy the literal "held . . . by" language of Prop. Treas. Reg. §1.1471-5(b)(2)(iii).

The entire point of the exemption in the Proposed Regulations for treaty-protected retirement arrangements is to exclude from treatment as financial accounts those plans or arrangements that the United States already has concluded should be exempted from the normal taxation rules due to their retirement-related purposes. Accordingly, **we request that you add a specific exception to Prop. Treas. Reg. §1.1471-5(b)(2) that would treat as an exempt financial account any pension or retirement plan or arrangement entitled to treaty benefits under the principles of Prop. Treas. Reg. §1.1471-6(f)(1)(i)**.

2. <u>"Government-Registered" Retirement Accounts</u>

Prop. Treas. Reg. §1.1471-5(b)(2)(i)(A)(*2*) excludes from the definition of "financial accounts" foreign government-regulated or government-registered retirement and pension accounts (collectively, "Government-Registered Retirement Accounts") that satisfy the following requirements:

- Subject to government regulation as a personal retirement account or registered or regulated for the provision of retirement or pension benefits.

[15] Attached as Exhibit A is a summary of the key characteristics of all Canadian government-registered retirement and savings plans.

[16] The technical explanation to the Treaty specifically references RRSPs and RRIFs as treaty-eligible arrangements. Several IRS private letter rulings have concluded that RPPs, DPSPs, and certain other Canadian retirement arrangements also are covered by the Treaty. *See, e.g.*, PLRs 200810013 (Mar. 7, 2008) and 200035027 (June 5, 2000).

[17] Similar results occur in the case of a plan that holds, or consists of, investment assets like a deposit account or certain investment contracts.

- Contributions are deductible by, or excluded from the income of, the holder or taxation of investment income must be deferred (*see* Prop. Treas. Reg. §1.1471-5(b)(2)(i)(F)).

- All of the contributions are employer, government, or employee contributions that are limited to earned income.

- Annual contributions are limited to $50,000 (other than rollovers from the qualified retirement accounts discussed in this section C.2. or section C.3., below, trusts described in Prop. Treas. Reg. §§1.1471-5(b)(2)(i)(A)(*1*) and 1.1471-5(f)(2)(ii), or specified retirement plans (including those discussed in section C.1., above)).[18]

- Limits or penalties apply to early withdrawals and excess contributions.

Although we believe that all Canadian Retirement Plans should be treated as Government-Registered Retirement Accounts and therefore should be excluded from treatment as financial accounts based on the policies implicitly underlying Prop. Treas. Reg. §1.1471-5(b)(2)(i)(A)(*2*), most, if not all, of such plans would be unable to satisfy all of the requirements listed above since:

- Although the maximum annual contribution limits for RPPs and RRSPs are well below $50,000, a contribution for a particular year could exceed $50,000 because of a large "catch up" contribution where less than the maximum contribution was made in prior years.

- The only "limit or penalty" that applies to an early withdrawal from an RRSP or an RRIF (except to the extent that amounts in the plan are "locked in" under Canadian pension legislation) or from a DPSP is the imposition of a current income tax on the withdrawals. It is unclear whether that economic cost would constitute a "penalty."

- There is some ambiguity whether certain Canadian Retirement Plans could satisfy the technical "regulation/registration" test, because they are not established under retirement legislation.

Accordingly, **we recommend that the Proposed Regulations be revised in the following respects with respect to the definition of "retirement accounts"** under Prop. Treas. Reg. §1.1471-5(b)(2)(i)(A)(*2*):

[18] The permissible rollover sources are not entirely clear. Compare the parenthetical language in Prop. Treas. Reg. §1.1471-5(b)(2)(i)(A)(*2*)(*iii*) with the language in Prop. Treas. Reg. §1.1471-5(b)(2)(i)(D). **We urge that you clarify the sources from which permissible rollovers may be made in respect of these categories of government-registered accounts.**

- Provide that contributions of unused prior year contributions, or legally permitted lump-sum contributions, will not be taken into account in applying the annual contribution limit.

- Revise the second clause of Prop. Treas. Reg. §1.1471-5(b)(2)(i)(A)(*2*)(*iii*) to read in part as follows: "limits or penalties (including the immediate taxation of earnings) apply by law of the jurisdiction in which the account is maintained to withdrawals made before reaching a specified retirement age . . .".

- Clarify that the "regulation/registration" test would be satisfied by retirement-oriented accounts that are subject to reporting to government authorities.

Those changes would permit most, if not all, Canadian Retirement Plans to be treated as exempt accounts for Chapter 4 purposes, which would substantially reduce the administrative burden on Canadian FFIs without creating any material risk of United States tax evasion.

3. "Government-Registered" Savings Accounts

Prop. Treas. Reg. §1.1471-5(b)(2)(i)(B) exempts from treatment as "financial accounts" foreign government-regulated savings accounts that satisfy the following requirements:

- Subject to government regulation as a "savings vehicle for purposes other than retirement."

- Contributions are deductible by, or excluded from the income of, the holder or taxation of investment income is deferred (*see* Prop. Treas. Reg. §1.1471-5(b)(2)(i)(F)).

- Contributions are limited by reference to earned income.

- Annual contributions are limited to $50,000.

- Limits or penalties apply to early withdrawals and excess contributions.

In our November 1, 2010 submission to Treasury, we described the characteristics of three types of government-registered, tax-favoured savings plans that are authorized under Canadian law ("Canadian Savings Plans").[19] The first type of such plans are Tax-

[19] Each of these plans also is described in more detail in Exhibit A.

Free Savings Accounts ("TFSAs"), which in the case of insurance-product related accounts, can take the form of either a trust that purchases an annuity contract as an investment or the annuity itself. TFSAs have an extremely low risk of being used for tax evasion by U.S. persons, given their following requirements:

- Contributions can only be made by Canadian residents.
- Contributions are not deductible, but withdrawals are not subject to Canadian tax.
- Must be registered with the Canada Revenue Agency (the "CRA").
- All contributions to and payments from a plan must be reported to the CRA.
- Annual contributions are limited to C$5,000.[20]

Canadian law also provides for two forms of specialized savings vehicles that are required to be registered with the CRA: Registered Education Savings Plans ("RESPs")[21] and Registered Disability Savings Plans ("RDSPs"). They take the form of Canadian trusts and, like TFSAs and Canadian Retirement Plans, have significant restrictions and limitations, as follows:

- required to be registered under Canadian law;
- subject to maximum contribution limits;
- subject to strict reporting and monitoring requirements; and
- only established for specified purposes under their enabling legislation (*i.e.*, RESP withdrawals are expected to be used for supporting the costs of higher education, and RDSP withdrawals are expected to be used by or for the disabled person for which the RDSP was established).

As was the case with Canadian Retirement Plans, we believe that each of the Canadian Savings Plans should be excluded from treatment as a financial account for Chapter 4 purposes. However, none of these plans apparently could satisfy the specific criteria in the Proposed Regulations, given the following:

- Funding is not limited by reference to earned income.

[20] Subject to indexing based on changes to a consumer price index and "catch up" contributions, as described below.

[21] RESPs are similar in purpose and function to "section 529 plans" under U.S. law.

- Contributions theoretically can exceed $50,000 in any year, although other contribution limits exist, as follows:

    - In the case of TFSAs, contributions can exceed the annual C$5,000 limit (and therefore the $50,000 Chapter 4 limit) only as a result of (i) a "catch-up" contribution based on unused contribution room from prior years or (ii) a recontribution of a prior withdrawal (*i.e.*, if a withdrawal is made from a TFSA, an amount equal to the withdrawal later can be recontributed without regard to the C$5,000 annual cap).

    - In the case of RDSPs, although a contribution in any year can exceed $50,000, there is a lifetime contribution limit of C$200,000.

    - In the case of RESPs, although there is a lifetime contribution limit of C$50,000, it is possible to set up a family plan, in which case the contributions to the plan in any year could exceed $50,000 because of the inclusion in the plan of multiple beneficiaries (for example, a grandparent could set up a family plan for all of his or her grandchildren).

- It is unclear whether a TFSA would satisfy the literal requirements for a "tax-favored" account under Prop. Treas. Reg. §1.1471-5(b)(2)(i)(F), as contributions to a TFSA are not deductible, and the income earned by a TFSA simply is never taxed, rather than being subject to deferred taxation.

- It is unclear whether the "limit or penalty" requirement is satisfied, as no limits or penalties apply to early withdrawals from a TFSA, and the only "penalty" applicable to a withdrawal from an RDSP or RESP is the current taxation of the earnings component of that withdrawal. (A surtax is imposed on a withdrawal from an RESP by the contributor, unless the withdrawal is rolled over into an RRSP.)

- It is uncertain whether such plans are "subject to government regulation," given that TFSAs, RESPs, and RDSPs are merely registered with the CRA, rather than being subject to "government regulation."

Accordingly, **we recommend that the Proposed Regulations be revised in the following respects with respect to the definition of "savings accounts"** under Prop. Treas. Reg. §1.1471-5(b)(2)(i)(B):

- Revise the annual contribution limit to permit additional contributions of unused prior year contributions and allow the annual contribution limit not to apply if the fund has a $500,000 or less lifetime limit.

- Provide an exception to the contribution cap for accounts with multiple beneficiaries established for the purpose of funding higher education.

- Delete the earned income requirement. (In this regard, we note that United States section 529 plans have no similar limitation.)

- Revise Prop. Treas. Reg. §1.1471-5(b)(2)(i)(B)(*3*) to read as follows: "Limits or penalties (including the immediate taxation of earnings) apply on withdrawals from the account; and".

- Provide that the "limits or penalties" requirement does not apply to savings accounts with an annual contribution limit (subject to a rule permitting "catch-up" contributions) of $10,000 or less.

- Revise Prop. Treas. Reg. §1.1471-5(b)(2)(i)(F) to read as follows: "For purposes of this paragraph (b)(2), an account is tax-favored if contributions to the account that would otherwise be subject to tax under the laws of the jurisdiction where the account is maintained are deductible or excluded from gross income of the account holder or if the taxation of investment income from the account is deferred (or such income is not subject to tax) under the laws of such jurisdiction, or both."

- Revise the phrase "subject to government regulation as a savings vehicle for purposes other than for retirement" in Prop. Treas. Reg. §1.1471-5(b)(2)(i)(B) to read "subject to government regulation or registration as a savings vehicle for purposes other than for retirement".

Those changes would permit Canadian Savings Plans to be treated as exempt accounts for Chapter 4 purposes, which, as is the case for Canadian Retirement Plans, would substantially reduce the administrative burden on Canadian FFIs without creating any material risk of United States tax evasion.

4. Deemed-Compliant Accounts

Prop. Treas. Reg. §§1.1471-5(b)(2)(i)(A)(*1*) and 1.1471-5(f)(2)(ii) exclude from the definition of "financial accounts" accounts held by a "retirement or pension fund" that constitutes one of two specified types of deemed-compliant FFIs.[22] The specific

[22] Under the regulations, an FFI must be an "entity," which means a "person" other than an individual. Prop. Treas. Reg. §§1.1471-5(d), 1.1471-1(b)(29), and 1.1471-1(b)(17). A "person" includes a "trust, estate, partnership, association, company or corporation." Section 7701(a)(1). Thus, only entities such as trusts can constitute an FFI or deemed-compliant FFI. However, "grantor trusts" generally are disregarded for U.S. federal income tax purposes, in which case the settlor of such a trust (or, in some cases, its beneficiary or some other person) will be treated as owning the trust assets directly. The

requirements for these types of deemed-compliant FFIs (each of which must be organized for the provision of retirement or pension benefits) (collectively, "Deemed Compliant Trusts" or "DC Trusts") are as follows:

Large Deemed Compliant Trusts[23]

- All contributions (other than rollovers from the qualified retirement accounts discussed in sections C.2. and C.3., above, other DC Trusts, or specified retirement funds (including those discussed in section C.1., above)[24]) are employer, government, or employee contributions limited by reference to earned income.

- No single beneficiary has the right to more than 5% of the trust's assets.

- Contributions are deductible or excludible from the beneficiary's income, taxation of the trust's income is deferred, or 50% or more of the contributions (other than the rollovers described above, excluding those from qualified retirement accounts) are from the government and the employer.

Small Deemed Compliant Trusts[25]

- The trust has fewer than 20 participants.

- The trust is sponsored by an employer that is not an investment-fund type of FFI or a passive investment entity.

- Contributions (other than rollovers from the qualified retirement accounts discussed in sections C.2. and C.3., above, other DC Trusts, or specified

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Proposed Regulations appear to require the application of the normal grantor trust rules. *See* Prop. Treas. Reg. §1.1471-5(a)(3)(ii). Due to the rights retained by the settlors of some Canadian retirement trusts, **it appears that a significant number of those trusts may constitute grantor trusts under** U.S. **tax principles, in which case the deemed-compliant rules discussed below would not apply.**

[23] Prop. Treas. Reg. §1.1471-5(f)(2)(ii)(A)(*1*).

[24] The permissible rollover sources are not entirely clear. Compare the parenthetical language in Prop. Treas. Reg. §1.1471-5(f)(2)(ii)(A)(*1*)(*i*) with the language in Prop. Treas. Reg. §1.1471-5(b)(2)(i)(D). **We urge that you clarify the sources of permissible rollovers for these categories of deemed-compliant FFIs.**

[25] Prop. Treas. Reg. §1.1471-5(f)(2)(ii)(A)(*2*).

retirement plans (including those discussed in section C.1., above)[26]) are limited by reference to earned income.

- Trust participants who are not residents of the country in which the trust is organized are not entitled to more than 20% (or more than $250,000) of the assets.

Based on the characteristics of Canadian Retirement Plans, if those plans are implemented through trusts that do not constitute grantor trusts, it appears that many of the plans could qualify as either Large DC Trusts or Small DC Trusts. However, a plan could not qualify as a Small DC Trust if it has 20 or more participants or is not sponsored by an employer, and it could not qualify as a Large DC Trust if any participant has the right to more than 5% of the trust's assets. Although we recognize Treasury's apparent goal of not treating as deemed-compliant retirement plans those plans that either are not sponsored by employers or that give one or more individuals too large a portion of the trust's assets, we believe that the 5% asset limitation applicable to Large DC Trusts is excessively small and is not necessary for the purposes of Chapter 4. As an example, in a trust-sponsored plan with even 50 participants, the 5% limit easily could be exceeded by a few participants if they were more senior or had worked longer than the other participants. Accordingly, **a more reasonable limitation under Prop. Treas. Reg. §1.1471-5(f)(2)(ii)(A)(*1*)(*ii*) would be to permit any single beneficiary of a Large DC Trust to have the right to no more than 10% of the trust's assets, and we urge you to modify the regulation accordingly.**

5. Authorization for IRS to Issue Exclusion Guidance

Our comments in this section are focused on existing Canadian retirement and savings plans and accounts. We note, however, that Canada is considering, and may adopt in the future, other forms of government-registered retirement or savings plans that may depart from whatever technical requirements are set forth in the final regulations. We also note that the same likely is to be true in other jurisdictions. In some cases, it may be clear that the differences between the terms required or permitted by those plans and the terms or requirements applicable to exempt retirement or savings plans in the final regulations are not material and that, from a policy perspective, the new plans also should be exempt. **Because of the difficulty in amending regulations, it would be beneficial to FFIs, Treasury, and the IRS if the IRS had the express authority under the final regulations to exclude from the application of Chapter 4 government-registered plans that have terms that are consistent with the principles underlying Prop. Treas. Reg. §1.1471-5(b)(2)(i), and we urge you to provide that authority in the final regulations**.

[26] The same ambiguity regarding permissible rollover sources that applies to Large DC Trusts also applies to Small DC Trusts.

D. Account Identification

1. Evergreen Government Identification

Prop. Treas. Reg. §1.1471-3(c)(6)(ii)(A) provides that the rules in Treas. Reg. §§1.1441-1(e)(4)(ii)(A)-(C) will govern the period of validity of withholding certificates, *i.e.*, Forms W-8BEN or W-9. For documentary evidence, Prop. Treas. Reg. §1.1471-3(c)(6)(ii)(C) provides a similar three-year rule, although documents with an embedded expiration date would expire for Chapter 4 purposes on the embedded date, notwithstanding that the date occurred prior to the end of the three-year period. Prop. Treas. Reg. §1.1471-4(a) provides that an FFI agreement will incorporate the definitions and requirements set forth in Prop. Reg. §§1.1471-1 through 1.1474-7. Thus, the Proposed Regulations appear to require that documents used to identify an account holder and his or her residence will need to be "renewed" every three years or (if earlier) upon the expiration of the documents, although we understand from public comments of Treasury officials that the "renewal rule" is likely to be clarified so that all documents will be valid for a three-year period even if a document would expire in less than three years.

While we appreciate that Treasury may relax the existing rule in the Proposed Regulations with regard to the need to renew documentation, we nonetheless urge Treasury and the IRS to consider the burden on FFIs if the final regulations contain a requirement that identification documents must be refreshed every three years. Any such requirement would be very costly to apply and would be extremely difficult to implement, particularly in the case of life insurance and annuity contracts. As we have described in our previous comments, after a life insurance or annuity contract is issued, in the vast majority of cases there is little or no direct contact between the issuer and the insured (other than any payments of periodic premiums, which are increasingly electronic in nature) until the occurrence of the insured event. As a result, there is no opportunity for an additional review of documentation, and we have serious doubts that a significant percentage of policyholders could be prevailed upon to provide new documentation to insurers on some periodic basis. In addition, even if that somehow could occur, we do not believe that requiring such redocumentation would result in the identification of any material numbers of new U.S.-resident policyholders.

Instead, **we propose that redocumentation of a policyholder's status would only be required in the event of the discovery of U.S. indicia (such as a U.S. address) as part of the insurer's normal operations**. That proposal would eliminate the costly burden of three-year renewals and also would appropriately address Treasury's Chapter 4 concerns.

2. Establishment of Document Retention Period

Prop. Treas. Reg. §1.1471-4(c)(2)(iv) requires that, for existing accounts, participating FFIs must retain all account identification information collected by the FFI for

six calendar years. The Proposed Regulations do not appear to provide for any document retention period for the information collected for new accounts. **The final regulations should provide a documentation period for the information collected for new accounts, which we recommend be no longer than six calendar years**.

3. Identity of Holder Rules

Prop. Treas. Reg. §1.1471-5(a)(3)(v) contains two special rules for identifying the "holders" of life insurance and annuity contracts that constitute financial accounts. Under the first rule (the "Maturity Rule"), at the maturity of a life insurance or annuity contract, the beneficiary of the contract is considered the holder of the contract for Chapter 4 purposes. Although the consequences of the Maturity Rule are not entirely clear, it presumably means that an insurer must obtain account identification information for each beneficiary of a matured insurance or annuity contract before its pays the beneficiary and otherwise must treat the beneficiary the way that it treated the contract owner prior to maturity. Under the second rule (the "Cash Access Rule"), the contract owner is considered the holder of the contract for Chapter 4 purposes if the owner can access the cash value of a contract or change its beneficiary. In all other cases, the beneficiary is considered the holder of the contract. As is discussed in more detail below, the Maturity Rule imposes an inequitable burden on insurers and will be difficult, if not impossible, to implement in many situations. In addition, the scope of the Cash Access Rule is unclear in certain cases, and it also may create significant Chapter 4 compliance problems.

a. Maturity Rule

The Maturity Rule imposes a burden on life insurers that is not imposed on any other type of FFI. The rule requires that insurers must focus on both the owners and the beneficiaries of their insurance and annuity contracts, even though neither banks, funds, nor other types of FFIs will have to (i) identify the heirs of their account owners or the recipients of amounts paid from those accounts or (ii) treat such heirs or recipients as holders for account identification and Chapter 4 compliance processes.[27] We see no reason why life insurers should be subjected to a unique holder identification rule that requires them, and no other type of FFI, to obtain identification information and possible privacy law waivers from the recipients of amounts paid from their accounts.

Moreover, we do not understand the purpose of the Maturity Rule. It is extremely unlikely that an insurance or annuity contract would be acquired by some person in order to permit United States tax evasion by a U.S. beneficiary with respect to contract proceeds payable at some point in the future. Thus, we believe that the Maturity Rule is unnecessary.

[27] For example, the Proposed Regulations do not require banks or other issuers of deposit accounts to obtain Chapter 4 information and waivers from payees on cheques issued on such accounts before they release funds to the payees or from the heirs of the depositors upon their death before the accounts' funds are released to the heirs.

In this regard, we note that, if proceeds are paid to a beneficiary from an insurance and annuity contract and the beneficiary then uses those proceeds to acquire a new financial account (whether that account is an insurance or annuity contract or a bank or fund account), that new account would be subject to Chapter 4, just as would occur if the payee of an amount from a bank or fund account or the heir of such an account used the proceeds from that account to open a new account. In neither case, however, should an FFI have to perform diligence with respect to someone who merely receives amounts from an account, whether as a beneficiary or heir or as a payee.

Although we object to the Maturity Rule as a policy matter and as inconsistent with current legal standards and industry practice, we also believe that the rule would be unadministerable in many cases. Owners of life insurance and annuity contracts generally are free to change the beneficiaries of those contracts whenever they choose, and consequently there is no way for insurers to collect permanent beneficiary identification at the time a contract is issued, as the policyholder could change the designated beneficiary at any time. (Indeed, in some cases, the beneficiary of such a contract would be determined by a will, a trust document, another document external to the contract, or even local law, in which case the insurer would not even know that a beneficiary had been changed until a claim was made under the contract.)

Thus, even if insurers were to make identification of beneficiaries a condition to the issuance of new insurance or annuity contracts, under the Maturity Rule insurers apparently still would need to obtain identification information from a beneficiary before it could pay out contract proceeds. However, it is entirely possible that a beneficiary would fail to provide that information, because either it objected to doing so or, more likely, it just failed to respond to requests for such information. If the beneficiary did not provide the requested information, we do not believe that insurance regulators would permit insurers to fail to pay out contract proceeds merely because the beneficiary had refused to provide requested Chapter 4 information or a privacy law waiver. Thus, it is not reasonable to expect insurers to retain contract proceeds under those circumstances. Accordingly, insurers are likely in many cases to be unable to implement the Maturity Rule, as they simply would not have the requisite beneficiary information available and would have no way of forcing that information to be provided to them.

b. <u>Cash Access Rule</u>

We also believe that the Cash Access Rule under Prop. Treas. Reg. §1.1471-5(a)(3)(v) is unclear in certain circumstances. We believe that the intent was for the rule to apply in situations where a policyholder establishes an insurance contract for the benefit of a third-party beneficiary and retains no rights or interests for himself under the contract (*i.e.*, similar to the situation where a grantor establishes a trust for the benefit of a third-party beneficiary and retains no control over the trust assets and no rights or reversionary interests to receive any proceeds from the trust).

However, the wording of the Proposed Regulations also could potentially be interpreted to apply to certain other common situations, including:

(i) where an irrevocable beneficiary has been designated,

(ii) where there is a court order in place, for example in the context of a marriage breakdown, that precludes the policyholder from surrendering the contract or changing the beneficiary so long as he remains obligated to make support payments to his former spouse, or

(iii) when the policyholder has assigned the contract to a third-party lender as security for a loan and is precluded by the terms of the security agreement from surrendering the contract or changing the beneficiary.

In each of these cases, so long as these constraints are in place, the policyholder may only access the cash surrender value of the contract or change the beneficiary designation with the consent of the irrevocable beneficiary, the court, or the third-party lender (as the case may be), although he continues to hold an economic interest in the contract.

For example, in the case of a common "irrevocable designation" of a beneficiary under a life insurance contract, the contract owner cannot unilaterally access the cash value of the contract or change the beneficiary, but can do so if the listed beneficiary agrees; and the listed beneficiary can neither access the cash value nor change the beneficiary, but can prevent the contract owner from doing so. In such cases, it does not make sense for the beneficiary to be considered the "holder" for Chapter 4 purposes, as he or she has no ability to access the cash value of the contract. Moreover, given the issues discussed above regarding the potential difficulty in obtaining identification information or privacy law waivers from beneficiaries, if the original beneficiary is considered the owner in such circumstances, but the beneficiary is changed after the original beneficiary has consented to that change, it may be difficult or impossible to get Chapter 4 information or a privacy law waiver from the new beneficiary.

Accordingly, if you do not implement our suggestion below and eliminate both the Maturity Rule and the Cash Access Rule entirely, the regulation at least should be amended to clarify that, under the Cash Access Rule, the beneficiary is considered the holder only in a situation where the policyholder has established the contract for the exclusive benefit of the beneficiary and has retained no rights or interests, including reversionary rights and interests, under the contract.

c. Conclusion

We urge you to abandon both the Maturity Rule and the Cash Access Rule and in their place adopt a rule that treats an insurance or annuity contract owner as the "holder" of the contract for all Chapter 4 purposes.

E. Reporting

Prop. Treas. Reg. §1.1471-4(d)(4)(iv)(C) provides that, with respect to U.S. accounts that are life insurance or annuity contracts, an insurer must report amounts "paid or credited" during the calendar year, including "redemption payments" made. It is unclear whether death and similar payments made under life contracts are included in the scope of this provision. For example, if an account owner is also the beneficiary of a life insurance contract and can receive accelerated death benefits under a living needs provision of the contract, is such amount reportable? In order to minimize the reporting required under Chapter 4 to amounts that conceivably could give rise to tax avoidance by U.S. persons, **reportable payments under Prop. Treas. Reg. §1.1471-4(d)(4)(iv)(C) should not include amounts excludible from income under section 101**.

F. Account Closures

The Proposed Regulations are silent on the circumstances under which a participating FFI must close Recalcitrant Accounts. Because of the contractual nature of life insurance and annuity contracts, there are regulatory and other reasons why it would be difficult, if not legally prohibited, in many jurisdictions for insurers to cancel those contracts merely because the policyholders failed to provide information or consents under Chapter 4. Regulators are likely to be particularly concerned about the possibility that policyholders may not be able to obtain replacement insurance due to changes in the policyholders' health or age. In light of these issues, **the final regulations should not require the cancellation of insurance or annuity contracts that constitute Recalcitrant Accounts. That need is particularly acute in the case of existing contracts**, since they do not include provisions giving insurers any right to cancel such contracts for failures to provide Chapter 4-like information or waivers.

G. Inflation Adjustments

A number of provisions in the Proposed Regulations include specified dollar thresholds or limits. Although we recognize that inflation rates currently are at extremely low levels, that certainly has not always been the case. In order to avoid problems in which inflation results in such thresholds or limits no longer serving their intended functions, **the final regulations should contain an inflation-adjustment mechanism that applies to those amounts**.

H. Coordination of Chapters 3 and 4 for Premium Payments

Under current law, insurance and reinsurance payments made by U.S. persons to foreign insurers and reinsurers are exempt from Chapter 3 withholding to the extent that such premiums are subject to the section 4371 excise tax. Treas. Reg. §1.1441-2(a)(7). Chapter 4 contains no similar exception, and, absent such an exception, such payments

could be considered "withholdable payments" for purposes of Chapter 4, as such premiums are treated as "FDAP" income under Treas. Reg. §1.1441-2(b)(1).[28] Because such payments would still be subject to the section 4371 excise tax, **the final regulations should exclude insurance and reinsurance payments made by U.S. persons to foreign insurers and reinsurers from treatment as withholdable payments under Chapter 4**.

I. Certifications

a. Initial Certification

Prop. Treas. Reg. §1.1471-4(c)(10) requires a "responsible officer" of each participating FFI to certify to the IRS within one year of the effective date of its FFI agreement that (i) the FFI has completed its review of all high-value accounts and (ii) "to the best of the responsible officer's knowledge, after conducting a reasonable inquiry," the FFI did not have any formal or informal practices or procedures in place from August 6, 2011 through the date of such certification to assist account holders in the avoidance of Chapter 4.

Additionally, a responsible officer of the FFI must certify to the IRS within two years of the effective date of its FFI agreement that it has completed the required account identification procedures and documentation requirements for all pre-existing financial accounts or, if it has not obtained the required documentation for any financial account, it treats such account in the manner prescribed in its FFI agreement.

We support the concept of certification of compliance with agreed-upon procedures. However, we recommend that, **in the case of EAGs, FFIs be given the option of providing a single certification from a parent or other member of the EAG, and that the parent or other member be allowed to rely on certifications made to it by other members of the EAG in making the "global" certification**.

We also support requiring a certification with respect to the formal practices and procedures of the FFI. However, we believe that requiring attestation with respect to the "informal practices" of an FFI goes far beyond what a responsible officer reasonably should be expected to certify, particularly with respect to informal actions of the FFI that may have occurred prior to the actual effective date of Chapter 4 (and, indeed, prior to the publication of the Proposed Regulations). Accordingly, **we recommend that the portion of the certification requirement contained in Prop. Treas. Reg. §1.1471-4(c)(10) referring to "informal practices" of an FFI be deleted from the Proposed Regulations**. In the event that you do not adopt that recommendation, certification should only apply with respect to periods commencing after the date that the final regulations are issued.

[28] *See* Prop. Treas. Reg. §1.1473-1(a)(1)(i).

b. <u>Ongoing Certifications</u>

Prop. Treas. Reg. §1.1471-4(a)(6) states that each FFI agreement "will specify a participating FFI's obligation to comply with specified verification procedures." Although the specific details of that obligation are not stated, the Proposed Regulations generally propose the following:

- The FFI agreement will require that the FFI:
    - adopt written policies and procedures governing its due diligence procedures for identifying and documenting account holders and its withholding and reporting requirements under the FFI agreement and
    - conduct periodic reviews of its compliance with these policies and procedures and its Chapter 4 obligations.
- Based on such reviews, a responsible officer of the FFI will periodically certify to the IRS the FFI's compliance with its obligations under the FFI agreement and may be required to provide certain factual information and to disclose material compliance failures.

If the IRS identifies concerns about the compliance of the FFI based on the reporting and certifications provided by the FFI (including cases of suspected patterns of compliance failures) an external audit may be required. However, the FFI agreement will not require predetermined or random external audits to be conducted.

We agree that an internal review and certification process is the appropriate means of verifying compliance with the identification and documentation procedures adopted under an FFI agreement. We also agree that isolated instances of non-compliance should not constitute an "event of default" under an FFI agreement. Similar to the result that occurs under a qualified intermediary agreement (a "QI Agreement"), in any such case, **the IRS should deliver a notice of default to the FFI and provide a reasonable period of time for the FFI to respond to the notice of default and propose a means of curing its non-compliance with the Chapter 4 requirements**.

We also recommend that the IRS require external audits only where patterns of compliance failures are identified, and not as a follow up on an isolated instance of non-compliance. In addition, where an external audit is required, **an FFI should be able to designate the external auditor from an IRS-approved list of external auditors**, similar to provisions under QI Agreements.

Although the Proposed Regulations do not specify when the first ongoing certification must be made, **we recommend that it be required no earlier than two years**

after the effective date of the FFI agreement, thereby paralleling the certification required by Prop. Treas. Reg. §1.1471-4(c)(10).

c. Reviews and Verification Process

In general, **FFI agreements should set out the basic principles of what must be reviewed by FFIs by creating a simplified list of requirements**, which could be based on the general principles of verification set out in QI Agreements. Similarly, **the IRS should issue simplified verification guidance as needed under Chapter 4 to assist FFIs in their verification and certification processes**. We intend to provide further comments on these principles once the draft FFI agreement is available for comment.

J. IGAs

We were very pleased to see the recent Joint Statement by the United States and five European countries regarding the goal of the United States to enter into bilateral IGAs to implement Chapter 4, and we have been further encouraged by subsequent statements made by Treasury representatives concerning the IGA negotiations that are underway between the United States and other countries. **We believe that IGAs or comparable bilateral tax information sharing agreements are the best way of dealing with the conflicts of laws and other concerns that have been raised in regard to complying with Chapter 4**.

As a general proposition, each IGA should be consistent with the terms of the Joint Statement. Accordingly, we would expect that the IGA would provide that account identification and reporting generally would parallel the requirements in the Proposed Regulations, but that reporting (and certifications with respect to Chapter 4 compliance) would only be to the local taxing authority. We also would expect that the IGA would eliminate a participating FFI's obligation to withhold on passthru payments (or on payments to holders of Recalcitrant Accounts) or to close accounts.

We also believe that IGAs should be used in other ways to advance the purposes of Chapter 4, while simultaneously minimizing unnecessary compliance burdens on FFIs. For example, given the problems associated with trying to develop a universal exclusion from financial account treatment for retirement and savings plans and accounts (*see* section C., above), **IGAs are the best way of allowing the United States and each IGA counterparty to identify accounts in that country that have low associated United States tax risk and that therefore should be excluded from treatment as U.S. accounts**. Similarly, IGAs could be used to integrate the account identification processes already used in foreign countries with those contemplated by Chapter 4, allowing FFIs in those countries to minimize the changes needed in their account opening procedures. Accordingly, **IGAs should provide that the identification documentation required by Chapter 4 be based on local AML/KYC rules** (to the extent those rules adequately identify residents of the particular country) **and that FFIs in those jurisdictions therefore do not**

need to obtain additional information from account owners absent the presence of U.S. indicia.

In cases where IGAs are being negotiated with a country, we further recommend that all FFIs in that jurisdiction be treated as deemed-compliant FFIs during the negotiations. That treatment would allow those FFIs to avoid the need to implement Chapter 4 compliance procedures that would be unnecessary upon execution of the IGA. For example, if the Proposed Regulations are not amended to exempt all Canadian government-registered retirement and savings accounts, Canadian FFIs will have to implement in the very near future processes to treat such accounts as U.S. accounts, even though a United States/Canada IGA ultimately may exempt those accounts. Treating all Canadian FFIs as deemed-compliant FFIs while a United States/Canada IGA is being negotiated would allow those FFIs to avoid having to adopt procedures or examine accounts that ultimately might be unnecessary.

Although we recommend the fullest possible use of IGAs, we note that there is already a robust tax information sharing arrangement in place between the United States and Canada. **We urge you to seriously consider whether the Treaty could be used to achieve many of the objectives of an IGA, with less delay than might be required for an IGA to be negotiated and executed**. For example, the two countries should consider whether current tax reporting by Canadian FFIs to the CRA could be expanded to include the identification of accounts with U.S. indicia and possible additional reporting with respect to such accounts, in a way that would satisfy Treasury's desire for information regarding U.S. accounts.

K. Effective Dates

The Proposed Regulations are the first specific Chapter 4 guidance provided to insurers. As noted above, there are a number of provisions of the Proposed Regulations that we recommend be changed in some material respect. Many of those changes will significantly affect how insurers implement Chapter 4, but the insurance industry will not know whether changes will be made or the extent of those changes until the final regulations are issued. Although we recognize that Treasury has a strong desire not to push back effective dates beyond the dates provided in the Proposed Regulations, **we urge you to take into account the potential adverse effect on insurers if the final regulations are not issued on a timely basis and ask that you delay relevant effective dates if that occurs**.

L. Conclusion

We appreciate the opportunity to provide these comments. Please contact the undersigned or our counsel (Michael Miles or Carol Tello, Sutherland Asbill & Brennan LLP, 202/383-0100) if you have any questions about this letter.

Sincerely yours,

Original signed by

Peggy McFarland, C.A.
Director, Corporate Taxation

Appendix A

Retirement and Savings Accounts Registered under the Canadian Income Tax Act

A. Registered Pension Plan (RPP)

Product description:

- Employer-sponsored pension plan.
- Generally a group plan but employer can sponsor an individual pension plan.
- May be structured as a Trust or as a group annuity contract issued to employer with employees as plan "members".

Government Regulation

- Subject to income tax legislation and must be registered with the CRA.
- Subject to provincial pension legislation.
- All contributions and withdrawals must be reported to the CRA.
- Amount of withdrawals limited by pension legislation.

Contribution Limits and Taxation:

- Limits on allowable contributions, based on employment income and comprehensive retirement savings system limits. Contributions are limited either by need based on actuarial certification (defined benefit plans) or by annual contribution limits (defined contribution/money purchase plan).
- Maximum contribution to a money purchase RPP is $22,970 for 2011; contribution to a defined benefit RPP is the amount required to fund a maximum annual benefit of $2,552 per year of service.
- In addition, there is a comprehensive limit in the Income Tax Act on amounts contributed to registered retirement plans by or on behalf of a member, so a contribution to an RPP will reduce or eliminate available contribution "room" under those other plans.
- Contributions must be made by employer; employee contributions may also be allowed, depending on the plan.
- Additional restrictions are imposed on individual pension plans.
- Contributions are tax deductible.
- Penalty tax applies to contributions that exceed the regulated limit.

Growth Taxation:

- No current tax on income earned/accrued within the plan.
- No reporting of deferred income earned.

Withdrawal Limits and Taxation:

- Generally lump-sum withdrawals are not allowed under pension legislation.
- All withdrawals are subject to withholding tax at source and are fully taxed in year of withdrawal.
- Withdrawal amounts will be governed by provincial pension legislation, the Income Tax Act, and the terms of the plan.
- Withdrawal/pension income received by a Canadian resident is reported to CRA and member on form T4A – includes full amount of withdrawal and amount of tax withheld in the year.
- Withdrawal/pension income received by a non-resident is reported to CRA and member on form NR4 – includes full amount of withdrawal and amount of tax withheld.

B. Registered Retirement Savings Plan (RRSP)

Product description:

- Personal/individual retirement savings vehicle.
- Individual plans, but may be offered in a group plan arrangement to allow for employer contributions.
- May be offered as a deposit account, an annuity contract, an investment contract, or a trust for the contributor which holds qualified investments.
- Plans (both individual and group arrangement) must be registered with CRA at the individual plan "member" level.

Government Regulation:

- Subject to income tax legislation and must be registered with the CRA at the individual level.
- All contributions and withdrawals must be reported to the CRA.

Contribution Limits and Taxation:

- Annual contribution limits are based on earned income from employment and self-employment and comprehensive retirement savings system limits as well as unused contribution room in respect of prior years.
- Maximum contribution to an RRSP is $22,450 for 2011: contribution to an RRSP will not be allowed to the extent of contributions to other registered retirement plans under the comprehensive retirement savings system limits in the Income Tax Act.
- Penalty tax imposed on excess contributions.
- Contributions may be made by individuals and/or their employer.
- Contributions are tax-deductible.

Growth Taxation:
- No current tax on income earned/accrued within the plan.
- No reporting of deferred income earned.

Withdrawal Limits and Taxation:
- No limits/restrictions on withdrawals.
- All withdrawals are fully taxed in year of withdrawal and are subject to withholding tax at source.
- Plan must be converted to a retirement income plan by the end of the calendar year in which the individual attains age 71.
- Withdrawals by a Canadian resident are reported to CRA and holder on form T4RSP – includes full amount of withdrawal and amount of tax withheld if a lump-sum payment.
- Withdrawals by a non-resident are reported to CRA and holder on form NR4 – includes full amount of withdrawal and amount of tax withheld.

C. Registered Retirement Income Fund (RRIF)

Product description:
- Retirement income vehicle arranged between a carrier and an individual that must pay out a minimum amount each year.
- May be a deposit account, an annuity contract, an investment contract or a trust for the contributor/annuitant which holds qualified investments.
- Created with transfers from other registered plans.

Government Regulation
- Subject to income tax legislation and must be registered with the CRA.
- All withdrawals must be reported to the CRA.

Contribution Limits and Taxation
- Contributions restricted to transfers from other registered retirement plans (most generally RRSPs, but transfers from RPPs and other registered retirement plans are allowed) – no "new money" contributions allowed.

Growth Taxation:
- No current tax on income earned/accrued within the plan.
- No reporting of deferred income earned.

Withdrawals:
- No limits/restrictions on withdrawals.
- Minimum annual withdrawal required based on age and fund balance at beginning of year.

- All withdrawals are fully taxed in year of withdrawal
- Withdrawals by a Canadian resident are reported to CRA and holder on form T4RIF – includes full amount withdrawn and any amount of tax withheld (withholding tax required where withdrawals exceed the prescribed minimum withdrawal).
- Withdrawals by a non-resident are reported to CRA and holder on form NR4 – includes full amount of withdrawal and amount of tax withheld (withholding tax required on all withdrawals).

D. Pooled Registered Pension Plan (PRPP) - Proposed

Product description:

- Group pension plan intended to provide benefits of grouped plans to employees of small employers, self-employed individuals and employees of non-participating employers
- May be structured as a Trust or as a group annuity contract with individuals as plan "members".

Government Regulation

- A PRPP will be subject to income tax legislation and will be required to be registered with the CRA.
- A PRPP will be subject to federal or provincial pension legislation.
- All contributions and withdrawals will be required to be reported to the CRA.
- Amount of withdrawals will be limited by pension legislation.

Contribution Limits and Taxation:

- Annual contribution limits are based on earned income from employment and self-employment and comprehensive retirement savings system limits as well as prior unused contribution room.
- Maximum contributions will be integrated with the RRSP contribution limits ($22,450 for 2011): contributions to a PRPP will not be allowed to the extent of contributions to other registered retirement plans under the comprehensive retirement savings system limits in the Income Tax Act.
- Penalty tax will apply on excess contributions.
- Contributions may be made by individual plan members and/or employers.
- Contributions are tax-deductible.

Growth Taxation:

- No current tax on income earned/accrued within the plan.
- No reporting of deferred income earned.

Withdrawal Limits and Taxation:

- Generally lump-sum withdrawals will not be allowed under pension legislation.
- Withdrawal amounts will be governed by federal or provincial pension legislation, the Income Tax Act, and the terms of the plan.
- All withdrawals will be subject to withholding tax at source and will be fully taxed in year of withdrawal.
- Withdrawal/pension income received by Canadian residents and non-residents, and amount of tax withheld, will be reported to CRA and the member.

E. Deferred Profit Sharing Plan (DPSP)

Product description:

- Employer-sponsored savings plan.
- Generally a group plan but employer can sponsor an individual plan
- Must be structured as a trust.

Government Regulation:

- Subject to income tax legislation and must be registered with the CRA.
- All contributions and withdrawals must be reported to the CRA.

Contribution Limits and Taxation:

- Contributions determined with reference to employer profits.
- Annual limits on the amount contributed on behalf of each employee, based on employee earnings and comprehensive retirement savings system limits.
- Maximum contribution to a DPSP is $11,485 for 2011: contribution to a DPSP will reduce available RRSP contribution room under the comprehensive retirement savings system limits under the Income Tax Act.
- Contributions must be made by employer, no employee contributions allowed.
- Contributions are tax deductible to employer.

Growth Taxation:

- No current tax on income earned/accrued within the trust.
- No reporting of deferred income earned.

Withdrawal Limits and Taxation:

- Withdrawals do not have to be deferred until retirement or paid as a life pension.

- Plan must require withdrawal of a member's vested interest by the end of the calendar year in which the individual attains age 71.
- All withdrawals are subject to withholding tax at source and are fully taxed in year of payment.
- Withdrawals received by Canadian residents are reported to CRA and resident on form T4A – includes full amount of withdrawal in the year and amount of tax withheld.
- Withdrawals received by non-residents are reported to CRA and non-resident on form NR4 – includes full amount of withdrawal and amount of tax withheld.

F. Tax Free Savings Account (TFSA)

Product description:
- Personal/individual savings vehicle
- Contributor must be a Canadian resident who is 18 years of age or older.
- Individual plans but may be offered in a group arrangement.
- May be a deposit account, an annuity contract, or a trust for the contributor which holds qualified investments.
- Plan is registered with CRA at the individual plan "member" level.

Government Regulation:
- Subject to income tax legislation and must be registered with the CRA.
- All contributions and withdrawals must be reported to the CRA.

Contribution Limits and Taxation:
- Contributions limited by the Income Tax Act.
- Annual contribution limit is $5,000 per year plus unused contribution room from prior years plus the amount of any withdrawals from the plan in prior years.
- Contributions may be made by individuals only. Penalty tax imposed on excess contributions and contributions made while non-resident.
- Contributions are NOT tax-deductible.

Growth Taxation:
- No current tax on income earned/accrued within the plan.
- No reporting of income earned.

Withdrawal Limits and Taxation:
- No limits/restrictions on withdrawals.
- No income tax in year of withdrawal.

- Withdrawals reported to CRA annually

G. Registered Education Savings Plan (RESP)

Product description:

- Plan to promote savings for post-secondary education usually for children and grandchildren
- Plan may be for one individual or it may be a family plan with multiple related beneficiaries. Group plans are also available.
- Beneficiary must be a Canadian resident in year of contribution
- Some government grants available to plan.
- The plan must be structured as a trust.

Government Regulation

- Subject to income tax legislation and must be registered with the CRA.
- All contributions and withdrawals must be reported to the CRA.

Contribution Limits and Taxation

- Lifetime limit of $50,000 per beneficiary – contributions only allowed until age 21 of beneficiary.
- Government grants to a maximum of $7,200 may be available and are not taxed in year of contribution.
- Contributions are not tax deductible.

Growth Taxation:

- Earnings grow tax-deferred within plan.
- Limited deferral period (generally a maximum of 35 years).

Withdrawal Limits and Taxation:

- Withdrawals to beneficiary permitted to fund expenses supporting the costs of post-secondary education
- Withdrawal of original contributions not taxable.
- Amounts representing growth in plan and government grants are taxed upon withdrawal in the hands of the student who is enrolled in a qualifying post-secondary program.
- Taxable portion of withdrawals reported to the student on Form T4A.
- If student does not attend a qualifying post-secondary program, plan must be collapsed and growth can be returned to contributor where it will be taxed as normal income with a 20% additional tax imposed, or it can be transferred into the contributor's RRSP if he/she has available contribution room up to a $50,000 lifetime limit.

H. Registered Disability Savings Plan (RDSP)

Product description:

- Savings intended for parents and others to save for the long-term financial security of a disabled individual.
- Individual plan
- Beneficiary must be Canadian resident in year of contribution and qualify for the disability tax credit (i.e. loss of activities of daily living).
- The plan must be structured as a trust.
- Some government income-tested matching contributions available to plan.

Government Regulation

- Subject to income tax legislation and must be registered with the CRA.
- All withdrawals must be reported to the CRA.

Contribution Limits and Taxation:

- Contributions permitted until the end of the year in which the beneficiary attains age 59.
- No annual contribution limit, but $200,000 lifetime limit in respect of a particular individual.
- Government matching contributions excluded from taxable income in year of contribution.
- Contributions are not tax-deductible.

Growth Taxation:

- No current tax on income earned/accrued within the plan
- No reporting of deferred income earned

Withdrawal Limits and Taxation:

- Payments must begin by the end of the year in which the beneficiary attains age 60.
- Maximum withdrawals based on age and life expectancy.
- Government matching contributions and investment income earned in the plan included in income for tax purposes when paid to the beneficiary.
- Payments to Canadian residents reported on T4A.