



Advancing Standards™

February 19, 2013

Tax Policy Branch
Department of Finance
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Re: Submission on Draft Technical Amendments to the "Prohibited Investment" Rules under Part XI.01 of the *Income Tax Act* - RRSPs and RRIFs

The Portfolio Management Association of Canada (PMAC), through its Industry, Regulation and Tax Committee, is pleased to have the opportunity to submit the following comments regarding in response to the Department of Finance's package of draft legislative proposals (the "Draft Legislation") relating to a number of technical changes to the *Income Tax Act* (the "Act") and the *Income Tax Regulations* that was released on December 21, 2012.

Following our letters of December 13, 2011, March 8, 2012, August 29, 2012 and past discussions with the Department of Finance staff where we discussed our concerns with the "prohibited investment" rules (the "Rules") under Part XI.01 of the Act, we are very pleased that some of our concerns with these Rules have been addressed by the Draft Legislation and we applaud the government's ongoing effort to ensure that tax legislation is clear and reflects the underlying policy intent.

In particular, we support the amendment to the definition of a "prohibited investment" which will narrow the definition such that investments in entities with which you (or any entity in which you have a significant interest) do not deal at arm's length is repealed. This would ensure that the Rules do not apply in circumstances where the plan holder both lacks a significant interest in the Issuer in question and deals at arm's length with the Issuer. While, we continue to believe that a "related persons" test would provide more certainty regarding the application of the Rules, we welcome this revision to the definition of a "prohibited investment".

Notwithstanding that the Draft Legislation does modify the impact of some of the Rules on portfolio managers, we continue to seek clarity around whether a plan holder who

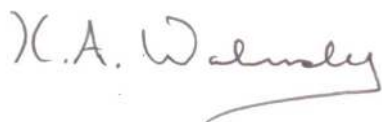
holds a *controlling interest* in a fund manager, could be considered not to deal at arm's length with funds managed by that fund manager, and thus an investment in such a fund could be a prohibited investment. We continue to have concerns with the application of the arm's length test in this context. We note that the Canada Revenue Agency has issued no definitive guidance as to how one would go about determining if the manager and the fund deal at arm's length. We still believe there is room for further clarity regarding the application of the arm's length test generally in order to provide more certainty regarding the application of the Rules. Similarly, there is still difficulty in trying to determine whether the 10% threshold is triggered. For example, an individual and fund manager, may not know what investments relatives such as siblings, parents, children and in-laws have made. Moreover, privacy laws may prevent financial intermediaries from disclosing information necessary to determine ownership thresholds. Consequently, portfolio managers may not be able to determine whether the 10% rule may be triggered by a client, thereby having potentially disastrous results for the client. We recommend that the Department of Finance issue some guidance around these issues.

We believe the Draft Legislation is a step in the right direction and we will continue to monitor the application and impact of the Rules on our Members. As learned from the initial introduction of these Rules, situations may continue to arise that were not contemplated by the Rules and that fall outside the scope of the Department of Finance's policy objectives. In this regard, we recommend that Finance continue its willingness to review these unintended consequences if and when they arise.

We would be pleased to discuss the comments in this submission. If you have any questions regarding our submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018 or Julie Cordeiro at (416) 504-1118 ext 202.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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