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SUBMITTED VIA EMAIL

Re: Draft Certificates W-8IMY, W-8ECI and W-8EXP (collectively, the “Draft Forms”)

The Canadian financial services sector welcomes the opportunity to comment on the Draft Forms¹. This submission has been prepared jointly by the Canadian Bankers Association, the Investment Funds Institute of Canada, and the Investment Industry Association of Canada (descriptions of each association are included in Attachment A).

Similar to our previous submission dated July 16, 2012, providing comments on the draft forms W-8BEN and W-8BEN-E, our recommendations in this submission are predominantly technical in nature. However, we would also like to reiterate the underlying theme of balancing complexity, compliance burden and risk. In particular, the complexity of the entity classifications under the proposed regulations directly impacts the operational complexity of the Draft Forms, especially the revised Form W-8IMY. With respect to the draft Form W-8IMY (and to a certain extent, the W-8EXP and W-8ECI), we recognize that foreign entities must identify the conditions that are

¹ Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding (W-8IMY); Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States (W-8ECI); Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding (W-8EXP).

satisfied by the entity, by completing categories listed on the face of the form itself. As with the draft Form W-8BEN-E, we also believe that it will be extremely difficult for many of these entities to determine which portion of the W-8IMY form is relevant and requires completion. As such, we have made a number of comments throughout this submission recommending that the IRS provide clear instructions. Without clear and adequate instructions, entities completing these forms will look to financial institution (FI) staff (located at the FI that is requesting the form) to assist them with the completion of the forms, and in particular, determining which portion of the form to complete. **We strongly believe that it is not appropriate for FIs to determine or to assist with the determination of the entity/accountholder's status for U.S. tax purposes.**

Furthermore, the three-year expiration date of the Draft Forms W-8EXP and W-8ECI makes them difficult to use for documentation. **As recommended in previous submissions, we believe that it would greatly assist with the implementation of the requirements of both Chapter 3 and Chapter 4 if the three-year expiry date is eliminated, requiring that the Draft Forms be renewed only when information provided on the forms results in a change in Chapter 3 or Chapter 4 status.** This is supported by the new language that has been placed into the certification section of each of the Draft Forms, that a new form will be submitted "if any certification on the form becomes incorrect".

Given that Canada is a bilingual country, we also reiterate our previously made point that the Draft Forms will need to be understood and completed by people who do not speak English or for whom English is a second language, and as such we believe it will be important to have translated versions of all W-8 forms and the instructions available in all major languages. We would appreciate receiving clarification as to whether the IRS will provide or sanction translated versions of the W-8 forms and instructions and recommend that as part of the "intergovernmental agreement" (IGA) process with potential Partner Countries, a translated version of the W-8 forms and the instructions should be made available in the local language. In jurisdictions where there is not an IGA, there will need to be a process to ensure the availability of an IRS-sanctioned translation of the W-8 forms and instructions.

We also recommend that completion of the Foreign tax identifying number (TIN) (required on line 8 of the draft W-8IMY and line 7 of the draft W-8ECI and W-8EXP) remain optional for W-8s collected by FIs, as it is currently on all W-8 forms. The extra cost and effort associated with collecting and recording Foreign TINs provides no additional information or benefit to the IRS, but does increase the potential for recalcitrant accountholders if they fail to complete the line.

Legal considerations also apply for any individuals that may be completing a form (for example, an individual completing the draft Form W-8ECI). As outlined in detail in our submission dated July 16, 2012, the Foreign TIN for individuals in Canada is the Canadian Social Insurance Number (SIN). There are strict rules governing when the SIN can be requested, how it must be requested and whether it can be provided to third parties. Under Canadian privacy law, financial institutions cannot require an individual to consent to the collection, use or disclosure of personal information unless it is required for a specific and legitimate purpose, and unless an FI can demonstrate that the SIN is required by Canadian law, an individual cannot be denied a product or service on the grounds of refusal to provide a SIN (in this case, the refusal to provide a W-8 form with a Foreign TIN included).

We understand that these draft forms are subject to change, and greatly appreciate that the IRS has provided them as quickly as possible to allow the financial industry time to review and provide constructive feedback. However, it is difficult to provide useful comments on how the draft forms can best accommodate information that must be collected for the purposes of both Chapter 3 and Chapter 4 without a greater understanding of how these two regimes (and more importantly, entity status under these regimes) will be consolidated, how IGAs will affect implementation (including a possible reduction in the number of entity status classifications) in Canada and other

countries, and without having access to the draft instructions accompanying the forms. Further review and comment on the draft instructions by the financial industry will be critically important to reduce future problems encountered by FIs, accountholders and the IRS upon implementation.

Also, we urge Treasury and the IRS to continue to consult with the financial industry on an ongoing basis, and to provide guidance as soon as possible on further timeline extensions for FATCA implementation. Currently, all of the draft W-8 forms released for review carry a revision date of “December 2012”. It is unclear how finalized W-8 forms containing new sections for collection of information under FATCA can be released for use in December 2012, when FIs operating in countries with IGAs (and, we would recommend, FIs operating under FFI agreements that have been consistently amended to match the implementation dates under the IGAs) will not be required to document new accounts for FATCA purposes until January 1, 2014. Will FIs be expected to use the new revised forms or to continue to use existing forms until the date of implementation? This confusion will lead to a number of operational and training issues for FIs, and will further complicate the process for clients – especially for individuals. ***We recommend that the IRS make it clear that FIs will continue to use existing W-8 forms until the date of FATCA implementation, either under regulations or an IGA, with any further extensions incorporated into this implementation date.***

We would be pleased to speak with you further about our recommendations and, more generally, about FATCA and its impact on Canadian financial institutions and their clients.

Sincerely,

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TECHNICAL COMMENTS AND RECOMMENDATIONS

Draft Form W-8IMY

General recommendations:

1. We are concerned that the number and complexity of the certifications made on the W-8IMY form for FATCA purposes will result in confusion for entities completing the form and could result in errors or misclassifications. We urge the IRS to provide clear guidance that the portions of the draft W-8IMY that collect information specifically for FATCA purposes will not form part of the Qualified Intermediary (QI) audit, and that the FIs receiving the W-8IMY will not be held responsible for a misclassification or error on the W-8IMY form completed by an entity for either QI or FATCA purposes, where the FI has no reason to believe that an error or misclassification has been made. We also urge the IRS to make it clear in the instructions and on the face of the form itself that FIs providing the W-8IMY to entities for completion will not be expected to make the determination of the entity classification.
2. We note that the list of forms under the heading “Do not use this form for” does not include the new draft form W-8BEN-E. We assume that this is an oversight, and that the W-8BEN-E will be included in the final version of the form.
3. Throughout the form the phrase “has provided, or will provide” has been used with respect to documentation, however, there are no instructions or guidance with respect to how and when the information will be provided (if it was not already provided with the completed Form). We would appreciate some clarity on this in the accompanying instructions to follow.

Part I, Line 2: We are concerned about the inconsistency between the various IRS forms with respect to the use of abbreviations. For example, country codes are used in Box 16 of the current 1042-S, and could similarly be used (on an optional basis) on the W-8BEN and W-8IMY forms. A recommendation to this effect was made by IRPAC in 2007. We also note that the instruction “do not abbreviate” has not been added to Line 2 of the draft W-8ECI and W-8IMY (see our comments below), creating further inconsistencies. We recommend that the IRS consider removing the restriction on abbreviations, and provide clear guidance in the forthcoming instructions as to how this line is to be completed. We also ask that the IRS make it clear in guidance that:

1. FIs providing this form for completion are not required to engage in any additional due diligence where country of incorporation or organization provided by the taxpayer on the form does not match permanent residence or mailing address; and
2. FIs providing this form for completion will not have the forms rejected during the FI’s FATCA review or QI audit for misspelling of the full country name or the use of an abbreviation (country code or otherwise).

Part I, Lines 3 & 4: We also recommend that the IRS provide clear guidance in the instructions about the completion of Lines 3 and 4. In particular, it is not clear what is intended by the box in Line 4 marked “Other” with the instruction “Must Enter Code”. There is no reference to instructions to determine what “Code” is required to be entered. Similarly, there is an instruction in Line 4 to “Check one box only unless otherwise indicated”; however, there is no “indication” of when the entity may check more than one box. We also note that this is inconsistent with Line 4 of the draft W-8BEN-E form.

Part I, Lines 5 & 6: See our comments above for Line 2 with respect to country abbreviations. In the case of permanent and mailing addresses, other information collected on the form or in connection with the account will generally remove any ambiguity that may exist with respect to a country abbreviation used in isolation. An FI will need to know an entity's country of residence or country associated with a mailing address for administrative purposes and the use of an abbreviation on a W-8 should not create any confusion. We also ask that the IRS consider allowing "in care of" addresses to be used on the form because a number of entities do use these addresses, and they are not strictly prohibited under FATCA (they are U.S. indicia if they are the sole address).

Part I, Line 7: We note that an entity completing the form may have more than one U.S. TIN (for example, both an FFI-EIN and a QI-EIN), but there is only enough room on the line for one number to be listed. We assume this means that only one number must be listed, but would appreciate confirmation to be provided in the instructions.

Part I, Line 8: As described in our covering letter, it is not clear why a Foreign TIN is now required on Form W-8IMY. We recommend that Line 8 remain optional on forms gathered by FIs, as it is on the current Form W-8IMY. We also recommend that IRS provide clear guidance in the forthcoming instructions as to how this line is to be completed where an entity has more than one Foreign TIN. Similar to Line 2, we also recommend that FIs are not required to engage in any additional due diligence or validation check with respect to the Foreign TIN provided by the entity, nor include the Foreign TIN on any reporting submitted to the IRS. Please also see our comments above with respect to the use of the Canadian SIN.

Part II, Lines 10b & 10c: The current version of Form W-8IMY (Line 9c) contains an option for a QI to assume Form 1099 reporting and backup withholding responsibilities. This box has been removed from the Draft Form W-8IMY. We request clarification on what this means. Is a QI assuming primary withholding responsibility automatically assuming backup withholding and 1099 reporting responsibilities? Alternatively, is a QI no longer allowed to assume backup withholding and 1099 reporting responsibilities?

Part IV, Line 13, Line 14: The instructions on the Form state that the entity completing the Form must check either box 13 or box 14, certifying that it is a "U.S. branch of a participating FFI", but it is not clear how this section should be completed by an entity that is a U.S. branch of an FI operating in a country with an IGA – which would not technically be considered a "participating FFI".

We note also that the word "certificate" is missing from the phrase "withholding certificate" in the second bullet point in Line 14.

Draft Form W-8ECI

General Recommendations:

1. As discussed above, the three-year expiry date should be removed and the requirement to renew the forms should be limited to changes in circumstances that result in a change in Chapter 3 or Chapter 4 status.
2. We recommend that additional guidance be provided in the instructions about who must complete the Form W-8ECI, particularly in light of the removal of the "disregarded entity" box from Line 3.

Part I, Line 2: As noted above, the instruction "Do not abbreviate" has not been included on Line 2 of the draft Forms W-8ECI and W-8EXP, leading to an inconsistent approach to the W-8 forms.

We believe that a consistent approach allowing country abbreviations on all forms should be adopted. Please see our comments on the draft Form W-8IMY, Part I, Line 2, above.

Part I, Line 4: See our comments above on Line 2 with respect to country abbreviations. We see no reason why the country codes used in Box 16 of the current 1042-S could not optionally be used in a similar way on the Forms W-8EXP or W-8ECI. We also ask that the IRS consider allowing “in care of” addresses to be used on the form because a number of accountholders do use these addresses, and they are not strictly prohibited under FATCA (they are U.S. indicia if they are the sole address).

Part I, Line 5: Technology has made it entirely possible for a business earning income effectively connected with the conduct of a trade or business in the United States to operate without a business address in the United States. As such, we recommend that Line 5 be made optional, and that the IRS provide further instructions for foreign persons on how to complete this line where they are operating without a business address in the United States (particularly if completion of the line remains mandatory).

Part I, Line 7: See our comments in our covering letter and above on the draft Form W-8IMY, Line 6 with respect to Foreign TINs. We recommend that Line 8 remain optional, as it is on the current W-8 Forms.

Part I, Line 9: We recommend that more guidance be provided in the instructions to the form as to how this line should be completed. It is not clear from the instruction on the face of the form how specific the foreign person completing the form should be, especially with respect to the addition of “each payment of gross proceeds from the sale of property that can produce U.S. FDAP income that is effectively connected with the conduct of a trade or business in the United States”. We assume that only general categories of income or payments should be listed, and that a specific list of payments is not required, but would appreciate confirmation of this in more detailed instructions. To require a listing of all payments would be administratively unwieldy, and would also have implications on the certification of the form itself (see comments in the following section below).

Part II, Certification: We appreciate the addition of the capacity check-box (certifying capacity to sign for the entity identified on Line 1 of the form) that has been added to the draft Forms W-8ECI and W-8EXP, and recommend that this check-box be added to the Form W-8BEN-E (and removing the capacity line on the Form W-8BEN-E that would require signatory to write in his/her capacity).

As mentioned above in comment made on Part I, Line 9, we recommend that the IRS provide additional clarity around the information required with respect to income and payments that are effectively connected with the conduct of a trade or business in the U.S. We note that if the Form W-8ECI requires a great deal of specificity with respect to income or payments to be itemized under Line 9, this could theoretically require the foreign person to submit a newly certified Form W-8ECI every time a payment is made – a situation that would be operationally complex and confusing for the account holder. As such, we recommend that the IRS require only a listing of general categories of income or payments under Line 9, and provide confirmation in the instructions that a new form is not required to be filed every time the foreign person receives a payment.

Draft Form W-8EXP

General recommendations:

1. As discussed above, the three-year expiry date should be removed and the requirement to renew the forms should be limited to changes in circumstances that result in a change in Chapter 3 or Chapter 4 status.

Part I, Line 2: As noted above, the instruction “Do not abbreviate” has not been included on Line 2 of the draft Forms W-8ECI and W-8EXP, leading to an inconsistent approach to the W-8 forms. We believe that a consistent approach allowing country abbreviations on all forms should be adopted. Please see our comments on the draft Form W-8IMY, Part I, Line 2, above.

Part I, Line 4: See our comments above on Line 2 with respect to country abbreviations. We see no reason why the country codes used in Box 16 of the current 1042-S could not optionally be used in a similar way on the Forms W-8EXP or W-8ECI. We also ask that the IRS consider allowing “in care of” addresses to be used on the form because a number of entities do use these addresses, and they are not strictly prohibited under FATCA (they are U.S. indicia if they are the sole address).

Part I, Line 7: See our comments in our covering letter and above on the draft Form W-8IMY, Line 6 with respect to Foreign TINs. We recommend that Line 8 remain optional, as it is on the current W-8 Forms.

Part III, Certification: We appreciate the addition of the capacity check-box (certifying capacity to sign for the entity identified on Line 1 of the form) that has been added to the draft Forms W-8ECI and W-8EXP, and recommend that this check-box be added to Form W-8BEN-E (and removing the capacity line on the Form W-8BEN-E that would require signatory to write in his/her capacity).

ATTACHMENT A

Participating Associations

Canadian Bankers Association

The Canadian Bankers Association (CBA) works on behalf of 53 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 267,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

Investment Funds Institute of Canada

The Investment Funds Institute of Canada is the national association of the Canadian mutual funds industry. Our members include fund managers, distributors and industry service organizations (including accounting, legal and other service providers). The Canadian mutual fund industry is comprised of investment fund managers that sponsor, manage and administer funds, and dealer and broker firms that distribute funds' securities. As of May 2012, the mutual fund industry in Canada represented about CAD \$789 billion in total assets under management in highly-regulated, publicly offered mutual funds.

Investment Industry Association of Canada

The Investment Industry Association of Canada (IIAC) is a member-based professional association with over 180 members representing 95% of IIROC registered organizations (IIROC is the national self regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada). IIAC advances the growth and development of the Canadian investment industry, acting as a strong, proactive voice to represent the interests of our members and the investing public.