

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
INVESTMENT INDUSTRY ASSOCIATION OF CANADA]

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**Re: Implications of the Foreign Account Tax Compliance Act (FATCA) on the Capital Markets  
Business Sector**

Dear Sirs:

The Investment Industry Association of Canada (IIAC) is writing this letter to thank you for discussing the recommendations in our letter dated November 23, 2011, and to follow up with a further recommendation with respect to the grandfathering date of March 18, 2012 and extensions of implementation time generally.

As mentioned in our previous letter, if the passthru payment provisions of FATCA apply to Master Agreements, participating foreign financial institutions (PFFIs) with capital markets businesses will be forced to re-open negotiations with counterparties with respect to existing Master Agreements, and to develop withholding systems related to payments made pursuant to Master Agreements. All of the Master Agreements that do not contain FATCA provisions will need to be renegotiated or PFFIs will be economically motivated to cease or dramatically restrict the transactions they will enter into with a number of counterparties after the legislated grandfathering date of March 18, 2012. Amending thousands of Master Agreements will take a considerable amount of time and resources, and there will be only a very small window of time after the anticipated release of draft regulations (end of 2011) for renegotiating contracts where transactions will be confirmed after the grandfathering date.

*As such, we recommend that Treasury exercise its general authority for rulemaking under the FATCA legislation to extend the grandfathering date to no earlier than JULY 1, 2013 ~ the effective date of FFI Agreements provided in Notice 2011-53.* Requiring potential FFIs to re-negotiate Master Agreements before FFI Agreements are effective seems an extremely onerous requirement, especially when FFIs do not know the terms that will be included in the final FFI Agreements.

*However, we still believe that PFFIs should be entitled to transact under pre-2013 Master Agreements for a two-year period (until July 1, 2015) while the PFFI renegotiates its Master Agreements to update them with the necessary FATCA withholding tax provisions ~ which could be achieved by an extension to the grandfathering date to 2015.* During this grace period, no withholding should apply to payments made pursuant to a Master Agreement, regardless of whether the counterparty opens a new account or otherwise provides documentation to the PFFI during this time frame.

Given the volume of new regulatory requirements within the industry affecting capital markets products (e.g. G20, Dodd-Frank, Volcker) which may require further changes relating to the clearing and settlement of capital markets financial products, and other requirements to restructure large portions of the capital markets sector, *a further two-year grace period should be provided (to July 1, 2017) to allow PFFIs time to coordinate and build any withholding systems that are found to be necessary.*

We would also like to continue to engage in dialogue with you to further discuss our other recommendations, which we believe should be implemented in addition to the time extensions mentioned above. We re-iterate our other recommendations from our previous letter:

1. Guidance should be released that provides for symmetry in the application of FATCA to Foreign Financial Institutions (FFIs) and United States Financial Institutions (USFIs), particularly with respect to passthru payments.
2. Guidance should be provided as soon as possible to identify any payments under Master Agreements that are *not* included in the scope of the passthru payment provisions. As a starting point, we recommend that transactions in certain financial products, such as notional principal contracts, derivatives, securities lending and sale/repurchase (repos), *where the financial products clearly do not have U.S. referenced assets*, be excluded from the passthru payment provisions.

We look forward to discussing these matters more fully. Please contact me if you have any questions.

Yours sincerely,

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