



THE INVESTMENT FUNDS INSTITUTE OF CANADA  
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA  
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**VIA FACSIMILE (613) 992-4450**

November 6, 2002

Mr. Brian Ernewein  
Director  
Tax Legislation Division – Tax Policy Branch  
Department of Finance  
L'Esplanade Laurier, 17<sup>th</sup> Floor  
140 O'Connor Street  
Ottawa, ON K1A 0G5

Dear Mr. Ernewein:

**Re: Regulation 4801 under the Income Tax Act**

We are writing to request that an amendment be made to the coming into force provisions of the amendment to Regulation 4801 under the *Income Tax Act* (Canada) made by SOR/2001-216 which added subparagraph (a)(ii) effective for trusts established after 1999. Specifically, we request that the coming into force provision be amended so that subparagraph (a)(ii) apply to (i) a trust established after 1999, and (ii) after 1999, to a trust established before 2000 provided such trust elects to have the provision apply to it. This issue is of interest to a number of our members which manage pooled funds which are not offered to the public by way of a prospectus.

We understand, based on discussions with officials of your department, that the coming into force provision of subparagraph (a)(ii) of Regulation 4801 was the subject of considerable analysis. The conclusion was that a retroactive or retrospective amendment might confer mutual fund trust status on existing trusts which may have adverse tax consequences to them.

We respectfully submit that this concern could be addressed by making subparagraph (a)(ii) also apply, in the case of a trust established before 2000, only if the trust elects to have the provision apply to it and only for the 2000 and subsequent taxation years. For those pre-2000 trusts which would suffer adverse tax consequences by reason of acquiring mutual fund trust status, they would simply not make an election to have the amended provision apply.

We also note that a pre-2000 trust which sought mutual fund trust status could take steps to issue units to an investor pursuant to a prospectus exemption that would require the delivery of an offering memorandum to a provincial securities regulator. The Canada Customs and Revenue Agency has consistently taken a position that the delivery of such an offering memorandum to an

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investor and to a provincial securities regulator would satisfy the requirements necessary in order for units of the trust to be “qualified for distribution to the public” as contemplated by Regulation 4803(2)(a). Since mutual fund trust status could be achieved by taking such a step, it seems appropriate to us from a tax policy perspective that mutual fund trust status be obtained by making an election as contemplated herein.

Members of our Tax Steering Committee would be pleased to discuss this issue with you further.

Thank you for considering this request.

Yours very truly,

John Mountain  
Vice President  
Regulation