CANADIAN FORUM FOR FINANCIAL MARKETS
FORUM CANADIEN DES MARCHÉS FINANCIER
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Michael McGonnell
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Department of Finance Canada
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Ottawa ON K1A 0G5
Delivered via email: Michael.McGonnell@fin.gc.ca

Dear Mr. McGonnell:

RE: NEW SUBPARAGRAPHS 150(1.31)(h)(i)(ii) OF THE INCOME TAX ACT

The Canadian Forum for Financial Markets (CFFiM)/Forum Canadien des Marchés Financiers (FCMFi) (formerly the Investment Industry Association of Canada) is dedicated to moving forward proposals to demonstrably grow healthy, competitive financial markets in Canada.

As a solutions partner, we provide constructive analysis to drive capital raising, modernize regulation, and foster growth – strengthening national competitiveness to meet the challenges ahead.

CFFiM very much appreciates the Department of Finance's willingness to understand our members' concerns. As detailed in our September 12, 2025 and September 11, 2024 submissions and discussions, securities are frequently issued in the name of the investor's securities dealer or custodian (acting as nominee for the investor). This results in a bare trust arrangement in respect of securities issued in nominee name, where the securities dealer or custodian acts as bare trustee for the investor (i.e., the client of the securities dealer or custodian).

Thank you for introducing proposed new paragraph 150(1.31)(h) of the *Income Tax Act* (Canada) to exempt securities dealers and custodians from the bare trust reporting requirement (the Securities Bare Trust Exemption) as set out in the *Notice of Ways and Means Motion to introduce a bill entitled An Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025*.

We would like to highlight a few technical challenges with the current drafting of proposed new paragraph 150(1.31)(h) and offer some proposed recommendations for consideration and refinement as follows:

ISSUE #1: PERMISSIBLE SECURITIES HELD IN NOMINEE NAME

For the Securities Bare Trust Exemption to apply, proposed new subparagraph 150(1.31)(h)(i) of the *Income Tax Act* requires that the only property in the bare trust arrangement be property described in proposed new clauses 150(1.2)(b.1)(iii)(A) to (I) of the Act, namely:

a) Money, including deposits in a Canadian financial institution as defined in subsection 270(1) of the Act;

b) A guaranteed investment certificate issued by a Canadian bank, trust company or credit union incorporated under the laws of Canada or of a province;

c) A debt obligation described in paragraph (a) of the definition fully exempt interest in subsection 212(3) of the Act;

d) Debt obligations issued by (i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada, (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada, or (iii) an authorized foreign bank that are payable at a branch in Canada of the bank;

e) A share, debt obligation or right listed on a designated stock exchange;

f) A share of the capital stock of a mutual fund corporation;

g) A unit of a mutual fund trust;

h) An interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a) of the Act); and

i) An interest as a beneficiary under a trust, all the units of which are listed on a designated stock exchange.

While the above list captures many of the investment types held in nominee name by securities dealers, it is not exhaustive. For example, a mutual fund may not qualify as a "mutual fund trust" for purposes of the Act because such a mutual fund fails to satisfy the requirement in paragraph 4801(b) of the Income Tax Regulations of having at least 150 unitholders, each holding a sufficient number of units of the fund with an aggregate fair market value of at least $500.

CFFiM respectfully requests that Finance Canada:

- Entirely remove the requirement in proposed new subparagraph 150(1.31)(h)(i) of the Act that the bare trust arrangement hold only property from a particular list of "permissible" investments. As outlined in our September 12, 2025 submission, there is no policy rationale for limiting the properties held in a bare trust arrangement in order to be exempt from bare trust reporting. Specifically:

    - Finance Canada should not be concerned about tax evasion in respect of securities issued in nominee name, since there is already a requirement that information on income and gains of the bare trust be reported in order for the Securities Bare Trust Exemption to apply (as described below); and

- Finance Canada should not be concerned about money laundering or terrorist financing regardless of which securities are issued in the name of the securities dealer or custodian (as nominee), since the nominee is already subject to obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

In other words, the policy objectives behind the exemption of securities dealers and custodians from the bare trust reporting regime are not hindered by removing the list of permissible investments in proposed new subparagraph 150(1.31)(h)(i) of the Act.

ISSUE #2: ISSUANCE OF INFORMATION RETURNS OF NOMINEE NAME SECURITIES

For the Securities Bare Trust Exemption to apply, proposed new subparagraph 150(1.31)(h)(ii) of the *Income Tax Act* requires that "an information return is issued in respect of all of the income and gains of the trust to all of the beneficiaries of the trust [emphasis added]".

In the context of investments in mutual funds, the obligation to issue an information return to the beneficial owner of the nominee-name mutual fund securities may be the responsibility of either the securities dealer or the mutual fund. For example, in Technical Interpretation #2016-0673361E5, the Canada Revenue Agency confirmed that T5008 tax slips (which report gains arising from redemptions of mutual fund securities) may be issued by either the securities dealer or the mutual fund, as applicable.

For a securities dealer to benefit from the Securities Bare Trust Exemption, the dealer must ensure that proposed new subparagraph 150(1.31)(h)(ii) is met by confirming that a tax slip was, in fact, issued to the securities dealer's client who is the beneficial owner of the units. As described above, there are instances where the securities dealer is not responsible for the issuance of the applicable information returns which report the applicable income or gains from the securities issued in nominee name.

Accordingly, CFFiM respectfully requests that Finance Canada:

- Amend proposed new paragraph 150(1.31)(h)(ii) to remove the requirement that an information return to be issued, for the reasons noted above.

- Instead, adopt a requirement that there is merely an obligation to issue the tax slip. This recommendation is modelled on proposed new subparagraph 150(1.31)(d)(iii) of the *Income Tax Act* which must be met for certain bare trusts involving partnership property to be exempt from the trust reporting rules (i.e., Partnership Bare Trust Exemption). Specifically, the Partnership Bare Trust Exemption applies if, inter alia, a partner is merely "required […] to make an information return for a fiscal period of the partnership"— whether such partner actually complies with such filing requirement is not relevant to the Partnership Bare Trust Exemption, presumably because the non-compliance with such filing requirement is already subject to existing penalties under the *Income Tax Act*.

PROPOSED LEGISLATIVE SOLUTION

CFFiM respectfully requests that Finance Canada make the revisions to the Securities Bare Trust Exemption as described in our recommendations above.

To implement such recommendations, we suggest revising the Securities Bare Trust Exemption in proposed new paragraph 150(1.31)(h) of the *Income Tax Act* as follows:

> **150(1.31)** Subsection (1.3) does not apply to a trust for a taxation year if
> […]
> **(h)** the trustee is a registered securities dealer acting in that capacity or a trust company regulated under the laws of Canada or a Province acting as an *investment entity* (as defined in subsection 270(1)), if there is a requirement under the Act or the *Income Tax Regulations* for an information return to be issued in respect of all of the income and gains of the trust to all of the beneficiaries of the trust.

We would be happy to discuss our comments and recommendations at your convenience.

Respectfully submitted,

Canadian Forum for Financial Markets (CFFiM)/
Forum Canadien des Marchés Financiers (FCMFi)

NOTE: The Explanatory Notes for the *Notice of Ways and Means Motion* do not fully capture the Securities Bare Trust Exemption as currently drafted in the *Notice of Ways and Means*. Suggested revisions are as bolded below:

- The Explanatory Notes for proposed new subsection 150(1.31) of the *Income Tax Act* indicates that "new subsection 150(1.31) provides that subsection 150(1.3) does not apply to a trust that meets one of the exceptions listed in paragraphs (a) to **(g)** [emphasis added]". This should be amended to include the exemption in paragraph 150(1.31)**(h)** relating to the Securities Bare Trust Exemption; and
- The Explanatory Notes for the requirement in proposed new subparagraph 150(1.31)(h)(i) indicates that "the only property in the trust is described in clauses (1.2)(b.1)(iii)(A) to **(H)** [emphasis added]". This is inconsistent with the *Notice of Ways and Means*, where subparagraph 150(1.31)(h)(i) requires that the only property in the bare trust arrangement is described in proposed new clauses 150(1.2)(b.1)(iii)(A) to **(I)** of the *Income Tax Act* in order for the Securities Bare Trust Exemption to apply.