Diplomatic notes exchanged regarding the September 21, 2007, signing of the protocol to the US-Canada income tax convention.

Note No. JLAB-0111

Excellency,

I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and to propose on behalf of the Government of Canada the following:

In respect of any case where the competent authorities have endeavored but are unable to reach a complete agreement under Article XXVI (Mutual Agreement Procedure) of the Convention regarding the application of one or more of the following Articles of the Convention: IV (Residence) (but only insofar as it relates to the residence of a natural person), V (Permanent Establishment), VII (Business Profits), IX (Related Persons), and XII (Royalties) (but only (i) insofar as Article XII might apply in transactions involving related persons to whom Article IX might apply, or (ii) to an allocation of amounts between royalties that are taxable under paragraph 2 thereof and royalties that are exempt under paragraph 3 thereof), binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. In addition, the competent authorities may, on an ad hoc basis, agree that binding arbitration shall be used in respect of any other matter to which Article XXVI applies. If an arbitration proceeding (the "Proceeding") under paragraph 6 of Article XXVI commences, the following rules and procedures shall apply:

1. The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article XXVI and these rules and procedures, as modified or supplemented by any other rules and procedures agreed upon by the competent authorities pursuant to paragraph 17 below.

2. The determination reached by an arbitration board in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.

3. Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.

4. The requirements of subparagraph 7(d) of Article XXVI shall be met when the competent authorities have each received from each concerned person a notarized statement agreeing that the concerned person and each person acting on the concerned person's behalf, shall not disclose to any other person any information

received during the course of the Proceeding from either Contracting State or the arbitration board, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive notarized statement.

5. Each Contracting State shall have 60 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration board. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as chair of the board. If either Contracting State fails to appoint a member, or if the members appointed by the Contracting States fail to agree upon the third member in the manner prescribed by this paragraph, a Contracting State shall ask the highest ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD) who is not a citizen of either Contracting State, to appoint the remaining member(s) by written notice to both Contracting States within 60 days of the date of such failure. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the chair of the board.

6. The arbitration board may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article XXVI or this note.

7. Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the chair of the arbitration board, a proposed resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting position paper, for consideration by the arbitration board. Copies of the proposed resolution and supporting position paper shall be provided by the board to the other Contracting State on the date on which the later of the submissions is submitted to the board. In the event that only one Contracting State submits a proposed resolution within the allotted time, then that proposed resolution shall be deemed to be the determination of the board in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a reply submission to the board within 120 days of the appointment of its chair, to address any points raised by the proposed resolution or position paper submitted by the other Contracting State. Additional information may be submitted to the arbitration board only at its request, and copies of the board's request and the Contracting State's response shall be provided to the other Contracting State on the date on which the request or the response is submitted. Except for logistical matters such as those identified in paragraphs 12, 14 and 15 below, all communications from the Contracting States to the arbitration board, and vice versa, shall take place only through written communications between the designated competent authorities and the chair of the board.

8. The arbitration board shall deliver a determination in writing to the Contracting States within six months of the appointment of its chair. The board shall adopt as its determination one of the proposed resolutions submitted by the Contracting States.

9. In making its determination, the arbitration board shall apply, as necessary: (1) the provisions of the Convention as amended; (2) any agreed commentaries or explanations of the Contracting States concerning the Convention as amended; (3) the laws of the Contracting States to the extent they are not inconsistent with each other; and (4) any OECD Commentary, Guidelines or Reports regarding relevant analogous portions of the OECD Model Tax Convention.

10. The determination of the arbitration board in a particular case shall be binding on the Contracting States. The determination of the board shall not state a rationale. It shall have no precedential value.

11. As provided in subparagraph 7(e) of Article XXVI, the determination of an arbitration board shall constitute a resolution by mutual agreement under this Article. Each concerned person must, within 30 days of receiving the determination of the board from the competent authority to which the case was first presented, advise that competent authority whether that concerned person accepts the determination of the board. If any concerned person fails to so advise the relevant competent authority within this time frame, the determination of the board shall be considered not to have been accepted in that case. Where the determination of the board is not accepted, the case may not subsequently be the subject of a Proceeding.

12. Any meeting(s) of the arbitration board shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.

13. The treatment of any associated interest or penalties shall be determined by applicable domestic law of the Contracting State(s) concerned.

14. No information relating to the Proceeding (including the board's determination) may be disclosed by the members of the arbitration board or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. The Contracting States shall ensure that all members of the arbitration board and their staffs sign and send to each Contracting State notarized statements, prior to their acting in the arbitration proceeding, in which they agree to abide by and be subject to the confidentiality and nondisclosure provisions of Articles XXVI and XXVII of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

15. The fees and expenses of members of the arbitration board shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators, as in effect on the date on which the

arbitration proceedings begin, and shall be borne equally by the Contracting States. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.

16. For purposes of paragraphs 6 and 7 of Article XXVI and this note, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be:

a) in the United States, the information required to be submitted to the U.S. competent authority under Revenue Procedure 2006-54, section 4.05 (or any applicable analogous provisions) and, for cases initially submitted as a request for an Advance Pricing Agreement, the information required to be submitted to the Internal Revenue Service under Revenue Procedure 2006-9, section 4 (or any applicable analogous provisions), and

b) in Canada, the information required to be submitted to Canadian competent authority under Information Circular 71-17 (or any applicable successor publication).

However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

17. The competent authorities of the Contracting States may modify or supplement the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article XXVI to eliminate double taxation.

If the above proposal is acceptable to your Government, I further propose that this Note, which is authentic in English and in French, and your reply Note reflecting such acceptance shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

Please accept, Excellency, the assurance of my highest consideration.

Maxime Bernier
Minister of Foreign Affairs

Excellency,

I have the honour to acknowledge receipt of your Note No. JLAB-0111 dated September 21, 2007, which states in its entirety as follows:

> Excellency,
>
> I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and to propose on behalf of the Government of Canada the following:
>
> In respect of any case where the competent authorities have endeavored but are unable to reach a complete agreement under Article XXVI (Mutual Agreement Procedure) of the Convention regarding the application of one or more of the following Articles of the Convention: IV (Residence) (but only insofar as it relates to the residence of a natural person), V (Permanent Establishment), VII (Business Profits), IX (Related Persons), and XII (Royalties) (but only (i) insofar as Article XII might apply in transactions involving related persons to whom Article IX might apply, or (ii) to an allocation of amounts between royalties that are taxable under paragraph 2 thereof and royalties that are exempt under paragraph 3 thereof), binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. In addition, the competent authorities may, on an ad hoc basis, agree that binding arbitration shall be used in respect of any other matter to which Article XXVI applies. If an arbitration proceeding (the "Proceeding") under paragraph 6 of Article XXVI commences, the following rules and procedures shall apply:
>
> 1. The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article XXVI and these rules and procedures, as modified or supplemented by any other rules and procedures agreed upon by the competent authorities pursuant to paragraph 17 below.
> 2. The determination reached by an arbitration board in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.
> 3. Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.
> 4. The requirements of subparagraph 7(d) of Article XXVI shall be met when the competent authorities have each received from each concerned

person a notarized statement agreeing that the concerned person and each person acting on the concerned person's behalf, shall not disclose to any other person any information received during the course of the Proceeding from either Contracting State or the arbitration board, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive notarized statement.

5. Each Contracting State shall have 60 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration board. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as chair of the board. If either Contracting State fails to appoint a member, or if the members appointed by the Contracting States fail to agree upon the third member in the manner prescribed by this paragraph, a Contracting State shall ask the highest ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD) who is not a citizen of either Contracting State, to appoint the remaining member(s) by written notice to both Contracting States within 60 days of the date of such failure. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the chair of the board.

6. The arbitration board may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article XXVI or this note.

7. Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the chair of the arbitration board, a proposed resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting position paper, for consideration by the arbitration board. Copies of the proposed resolution and supporting position paper shall be provided by the board to the other Contracting State on the date on which the later of the submissions is submitted to the board. In the event that only one Contracting State submits a proposed resolution within the allotted time, then that proposed resolution shall be deemed to be the determination of the board in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a reply submission to the board within 120 days of the appointment of its chair, to address any points raised by the proposed resolution or position paper submitted by the other Contracting State. Additional information may be submitted to the arbitration board only at its request, and copies of the board's request and the Contracting State's response shall be provided to the other Contracting State on the date on which the request or the response is submitted. Except for logistical matters such as those

identified in paragraphs 12, 14 and 15 below, all communications from the Contracting States to the arbitration board, and vice versa, shall take place only through written communications between the designated competent authorities and the chair of the board.

8. The arbitration board shall deliver a determination in writing to the Contracting States within six months of the appointment of its chair. The board shall adopt as its determination one of the proposed resolutions submitted by the Contracting States.

9. In making its determination, the arbitration board shall apply, as necessary: (1) the provisions of the Convention as amended; (2) any agreed commentaries or explanations of the Contracting States concerning the Convention as amended; (3) the laws of the Contracting States to the extent they are not inconsistent with each other; and (4) any OECD Commentary, Guidelines or Reports regarding relevant analogous portions of the OECD Model Tax Convention.

10. The determination of the arbitration board in a particular case shall be binding on the Contracting States. The determination of the board shall not state a rationale. It shall have no precedential value.

11. As provided in subparagraph 7(e) of Article XXVI, the determination of an arbitration board shall constitute a resolution by mutual agreement under this Article. Each concerned person must, within 30 days of receiving the determination of the board from the competent authority to which the case was first presented, advise that competent authority whether that concerned person accepts the determination of the board. If any concerned person fails to so advise the relevant competent authority within this time frame, the determination of the board shall be considered not to have been accepted in that case. Where the determination of the board is not accepted, the case may not subsequently be the subject of a Proceeding.

12. Any meeting(s) of the arbitration board shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.

13. The treatment of any associated interest or penalties shall be determined by applicable domestic law of the Contracting State(s) concerned.

14. No information relating to the Proceeding (including the board's determination) may be disclosed by the members of the arbitration board or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. The Contracting States shall ensure that all members of the arbitration board and their staffs sign and send to each Contracting State notarized statements, prior to their acting in the arbitration proceeding, in

which they agree to abide by and be subject to the confidentiality and nondisclosure provisions of Articles XXVI and XXVII of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

15. The fees and expenses of members of the arbitration board shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators, as in effect on the date on which the arbitration proceedings begin, and shall be borne equally by the Contracting States. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.

16. For purposes of paragraphs 6 and 7 of Article XXVI and this note, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be:

    a) in the United States, the information required to be submitted to the U.S. competent authority under Revenue Procedure 2006-54, section 4.05 (or any applicable analogous provisions) and, for cases initially submitted as a request for an Advance Pricing Agreement, the information required to be submitted to the Internal Revenue Service under Revenue Procedure 2006-9, section 4 (or any applicable analogous provisions), and

    b) in Canada, the information required to be submitted to Canadian competent authority under Information Circular 71-17 (or any applicable successor publication).

    However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

17. The competent authorities of the Contracting States may modify or supplement the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article XXVI to eliminate double taxation.

If the above proposal is acceptable to your Government, I further propose that this Note, which is authentic in English and in French, and your reply Note reflecting such acceptance shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the

Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

Please accept, Excellency, the assurance of my highest consideration.

I am pleased to inform you that the Government of the United States of America accepts the proposal set forth in your Note. The Government of the United States of America further agrees that your Note, which is authentic in English and in French, together with this reply, shall constitute an Agreement between the United States of America and Canada, which shall enter into force on the date of entry into force of the Protocol amending the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and shall be annexed to the Convention as Annex A thereto, and shall therefore be an integral part of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

Note No. JLAB-0112

Excellency,

I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention").

In the course of the negotiations leading to the conclusion of the Protocol done today, the negotiators developed and agreed upon a common understanding and interpretation of certain provisions of the Convention. These understandings and interpretations are intended to give guidance both to the taxpayers and to the tax authorities of our two countries in interpreting various provisions contained in the Convention.

I, therefore, have the further honor to propose on behalf of the Government of Canada the following understandings and interpretations:

1. Meaning of undefined terms

For purposes of paragraph 2 of Article III (General Definitions) of the Convention, it is understood that, as regards the application at any time of the Convention, and any protocols thereto by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities otherwise agree to a common meaning pursuant to Article XXVI (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention, and any protocols thereto apply, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

2. Meaning of connected projects

For the purposes of applying subparagraph (*b*) of paragraph 9 of Article V (Permanent Establishment) of the Convention, it is understood that projects shall be considered to be connected if they constitute a coherent whole, commercially and geographically.

3. Definition of the term "dividends"

It is understood that distributions from Canadian income trusts and royalty trusts that are treated as dividends under the taxation laws of Canada shall be considered dividends for the purposes of Article X (Dividends) of the Convention.

4. Deletion of Article XIV (Independent Personal Services)

It is understood that the deletion of Article XIV (Independent Personal Services) of the Convention confirms the negotiators' shared understanding that no practical distinction can be made between a "fixed base" and a "permanent establishment", and that independent personal services of a resident of a Contracting State, to the extent that such resident is found to have a permanent establishment in the other Contracting State with respect to those services, shall be subject to the provisions of Article VII (Business Profits).

5. Former permanent establishments and fixed bases

It is understood that the modifications of paragraph 2 of Article VII (Business Profits), paragraph 4 of Article X (Dividends), paragraph 3 of Article XI (Interest) and paragraph 5 of Article XII (Royalties) of the Convention to refer to business having formerly been carried on through a permanent establishment confirm the negotiators' shared understanding of the meaning of the existing provisions, and thus are clarifying only.

6. Stock options

For purposes of applying Article XV (Income from Employment) and Article XXIV (Elimination of Double Taxation) of the Convention to income of an individual in connection with the exercise or other disposal (including a deemed exercise or disposal) of an option that was granted to the individual as an employee of a corporation or mutual fund trust to acquire shares or units ("securities") of the employer (which is considered, for the purposes of this Note, to include any related entity) in respect of services rendered or to be rendered by such individual, or in connection with the disposal (including a deemed disposal) of a security acquired under such an option, the following principles shall apply:

(*a*) Subject to subparagraph 6(b) of this Note, the individual shall be deemed to have derived, in respect of employment exercised in a Contracting State, the same proportion of such income that the number of days in the period that begins on the day the option was granted, and that ends on the day the option was exercised or disposed of, on which the individual's principal place of employment for the employer was situated in that Contracting State is of the total number of days in the period on which the individual was employed by the employer; and

(*b*) Notwithstanding subparagraph 6(a) of this Note, if the competent authorities of both Contracting States agree that the terms of the option were such that the grant of the option will be appropriately treated as transfer of ownership of the securities (e.g., because the options were in-the-money or not subject to a substantial vesting period), then they may agree to attribute income accordingly.

7. Taxes imposed by reason of death

It is understood that,

(*a*) Where a share or option in respect of a share is property situated in the United States for the purposes of Article XXIX B (Taxes Imposed by Reason of

Death) of the Convention, any employment income in respect of the share or option shall be, for the purpose of clause 6(a)(ii) of that Article, income from property situated in the United States;

(*b*) Where property situated in the United States for the purposes of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention is held by an entity that is a resident of Canada and that is described in subparagraph 1(b) of Article IV (Residence) of the Convention, any income out of or under the entity in respect of the property shall be, for the purpose of subparagraph 6(a)(ii) of Article XXIX B (Taxes Imposed by Reason of Death), income from property situated in the United States; and

(*c*) Where a tax is imposed in Canada by reason of death in respect of an entity that is a resident of Canada and that is described in subparagraph 1(b) of Article IV (Residence) of the Convention, that tax shall be, for the purpose of paragraph 7 of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention, imposed in respect of property situated in Canada.

8. Royalties – information in connection with franchise agreement

It is understood that the reference in subparagraph 3(c) of Article XII (Royalties) of the Convention to information provided in connection with a franchise agreement shall generally refer only to information that governs or otherwise deals with the operation (whether by the payer or by another person) of the franchise, and not to other information concerning industrial, commercial or scientific experience that is held for resale or license.

9. With reference to Article VII (Business Profits)

It is understood that the business profits to be attributed to a permanent establishment shall include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment. The principles of the OECD Transfer Pricing Guidelines shall apply for purposes of determining the profits attributable to a permanent establishment, taking into account the different economic and legal circumstances of a single entity. Accordingly, any of the methods described therein as acceptable methods for determining an arm's length result may be used to determine the income of a permanent establishment so long as those methods are applied in accordance with the Guidelines. In particular, in determining the amount of attributable profits, the permanent establishment shall be treated as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to be attributed to a permanent establishment by allocating the institution's total equity between its various offices on the basis of the proportion of the financial institution's risk-weighted assets attributable to each of them. In the case of an insurance company, there shall be attributed to a permanent establishment not only premiums earned through the permanent establishment, but that portion of the insurance company's overall investment income from reserves and surplus that supports the risks assumed by the permanent establishment.

10. Qualifying retirement plans

For purposes of paragraph 15 of Article XVIII (Pensions and Annuities) of the Convention, it is understood that

(*a*) In the case of Canada, the term "qualifying retirement plan" shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the Protocol: registered pension plans under section 147.1 of the Income Tax Act, registered retirement savings plans under section 146 that are part of a group arrangement described in subsection 204.2(1.32), deferred profit sharing plans under section 147, and any registered retirement savings plan under section 146 or registered retirement income fund under section 146.3 that is funded exclusively by rollover contributions from one or more of the preceding plans; and

(*b*) In the case of the United States, the term "qualifying retirement plan" shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the Protocol: qualified plans under section 401(a) of the Internal Revenue Code (including section 401(k) arrangements), individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), section 408(p) simple retirement accounts, section 403(a) qualified annuity plans, section 403(b) plans, section 457(g) trusts providing benefits under section 457(b) plans, the Thrift Savings Fund (section 7701(j)), and any individual retirement account under section 408(a) that is funded exclusively by rollover contributions from one or more of the preceding plans.

11. Former long-term residents

The term "long-term resident" shall mean any individual who is a lawful permanent resident of the United States in eight or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of Canada under the Convention, or as a resident of any country other than the United States under the provisions of any other U.S. tax treaty, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.

12. Special source rules relating to former citizens and long-term residents

For purposes of subparagraph 2 (b) of Article XXIX (Miscellaneous Rules) of the Convention, "income deemed under the domestic law of the United States to arise from such sources" shall consist of gains from the sale or exchange of stock of a U.S. company or debt obligations of a U.S. person, the United States, a State, or a political subdivision thereof, or the District of Columbia, gains from property (other than stock or debt obligations) located in the United States, and, in certain cases, income or gain derived from the sale of stock of a non-U.S. company or a disposition of property contributed to such non-U.S. company where such company would be a controlled foreign corporation with respect to the person if such person had continued to be a U.S. person. In addition, an individual who exchanges property that gives rise or would give rise to U.S.-source income for property that gives rise to foreign-source income shall be treated as if he or

she had sold the property that would give rise to U.S. source income for its fair market value, and any consequent gain shall be deemed to be income from sources within the United States.

13. Exchange of Information

It is understood that the standards and practices described in Article XXVII (Exchange of Information) of the Convention are to be in no respect less effective than those described in the Model Agreement on Exchange of Information on Tax Matters developed by the OECD Global Forum Working Group on Effective Exchange of Information.

14. Limitation on Benefits

The United States and Canada are part of the same regional free trade area and, as a result, the Convention reflects the fact that publicly traded companies resident in one country may be traded on a stock exchange of the other country. Nevertheless, the Contracting States agree that in making future amendments to the Convention, they shall consult on possible modifications to subparagraph 2(c) of Article XXIX A (Limitation on Benefits) of the Convention (including, modifications necessary to discourage corporate inversion transactions).

If the above proposal is acceptable to your Government, I further propose that this Note, which is authentic in English and in French, and your reply Note reflecting such acceptance shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex B thereto and shall therefore be an integral part of the Convention.

Please accept, Excellency, the assurance of my highest consideration.

Maxime Bernier
Minister of Foreign Affairs

Excellency,

I have the honour to acknowledge receipt of your Note No. JLAB-0112 dated September 21, 2007, which states in its entirety as follows:

> Excellency,
>
> I have the honor to refer to the Protocol (the "Protocol") done today between Canada and the United States of America amending the Convention with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention").
>
> In the course of the negotiations leading to the conclusion of the Protocol done today, the negotiators developed and agreed upon a common understanding and interpretation of certain provisions of the Convention. These understandings and interpretations are intended to give guidance both to the taxpayers and to the tax authorities of our two countries in interpreting various provisions contained in the Convention.
>
> I, therefore, have the further honor to propose on behalf of the Government of Canada the following understandings and interpretations:
>
> *1. Meaning of undefined terms*
>
> For purposes of paragraph 2 of Article III (General Definitions) of the Convention, it is understood that, as regards the application at any time of the Convention, and any protocols thereto by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities otherwise agree to a common meaning pursuant to Article XXVI (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention, and any protocols thereto apply, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.
>
> *2. Meaning of connected projects*
>
> For the purposes of applying subparagraph (*b*) of paragraph 9 of Article V (Permanent Establishment) of the Convention, it is understood that projects shall be considered to be connected if they constitute a coherent whole, commercially and geographically.
>
> *3. Definition of the term "dividends"*
>
> It is understood that distributions from Canadian income trusts and royalty trusts that are treated as dividends under the taxation laws of Canada shall be considered dividends for the purposes of Article X (Dividends) of the Convention.

4. Deletion of Article XIV (Independent Personal Services)

It is understood that the deletion of Article XIV (Independent Personal Services) of the Convention confirms the negotiators' shared understanding that no practical distinction can be made between a "fixed base" and a "permanent establishment", and that independent personal services of a resident of a Contracting State, to the extent that such resident is found to have a permanent establishment in the other Contracting State with respect to those services, shall be subject to the provisions of Article VII (Business Profits).

5. Former permanent establishments and fixed bases

It is understood that the modifications of paragraph 2 of Article VII (Business Profits), paragraph 4 of Article X (Dividends), paragraph 3 of Article XI (Interest) and paragraph 5 of Article XII (Royalties) of the Convention to refer to business having formerly been carried on through a permanent establishment confirm the negotiators' shared understanding of the meaning of the existing provisions, and thus are clarifying only.

6. Stock options

For purposes of applying Article XV (Income from Employment) and Article XXIV (Elimination of Double Taxation) of the Convention to income of an individual in connection with the exercise or other disposal (including a deemed exercise or disposal) of an option that was granted to the individual as an employee of a corporation or mutual fund trust to acquire shares or units ("securities") of the employer (which is considered, for the purposes of this Note, to include any related entity) in respect of services rendered or to be rendered by such individual, or in connection with the disposal (including a deemed disposal) of a security acquired under such an option, the following principles shall apply:

(*a*) Subject to subparagraph 6(b) of this Note, the individual shall be deemed to have derived, in respect of employment exercised in a Contracting State, the same proportion of such income that the number of days in the period that begins on the day the option was granted, and that ends on the day the option was exercised or disposed of, on which the individual's principal place of employment for the employer was situated in that Contracting State is of the total number of days in the period on which the individual was employed by the employer; and

(*b*) Notwithstanding subparagraph 6(a) of this Note, if the competent authorities of both Contracting States agree that the terms of the option were such that the grant of the option will be appropriately treated as transfer of ownership of the securities (e.g., because the options were in-the-money or not subject to a substantial vesting period), then they may agree to attribute income accordingly.

7. Taxes imposed by reason of death

It is understood that,

(*a*) Where a share or option in respect of a share is property situated in the United States for the purposes of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention, any employment income in respect of the share or option shall be, for the purpose of clause 6(a)(ii) of that Article, income from property situated in the United States;

(*b*) Where property situated in the United States for the purposes of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention is held by an entity that is a resident of Canada and that is described in subparagraph 1(b) of Article IV (Residence) of the Convention, any income out of or under the entity in respect of the property shall be, for the purpose of subparagraph 6(a)(ii) of Article XXIX B (Taxes Imposed by Reason of Death), income from property situated in the United States; and

(*c*) Where a tax is imposed in Canada by reason of death in respect of an entity that is a resident of Canada and that is described in subparagraph 1(b) of Article IV (Residence) of the Convention, that tax shall be, for the purpose of paragraph 7 of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention, imposed in respect of property situated in Canada.

8. Royalties – information in connection with franchise agreement

It is understood that the reference in subparagraph 3(c) of Article XII (Royalties) of the Convention to information provided in connection with a franchise agreement shall generally refer only to information that governs or otherwise deals with the operation (whether by the payer or by another person) of the franchise, and not to other information concerning industrial, commercial or scientific experience that is held for resale or license.

9. With reference to Article VII (Business Profits)

It is understood that the business profits to be attributed to a permanent establishment shall include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment. The principles of the OECD Transfer Pricing Guidelines shall apply for purposes of determining the profits attributable to a permanent establishment, taking into account the different economic and legal circumstances of a single entity. Accordingly, any of the methods described therein as acceptable methods for determining an arm's length result may be used to determine the income of a permanent establishment so long as those methods are applied in accordance with the Guidelines. In particular, in determining the amount of attributable profits, the permanent establishment shall be treated as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to

be attributed to a permanent establishment by allocating the institution's total equity between its various offices on the basis of the proportion of the financial institution's risk-weighted assets attributable to each of them. In the case of an insurance company, there shall be attributed to a permanent establishment not only premiums earned through the permanent establishment, but that portion of the insurance company's overall investment income from reserves and surplus that supports the risks assumed by the permanent establishment.

10. Qualifying retirement plans

For purposes of paragraph 15 of Article XVIII (Pensions and Annuities) of the Convention, it is understood that

(*a*) In the case of Canada, the term "qualifying retirement plan" shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the Protocol: registered pension plans under section 147.1 of the Income Tax Act, registered retirement savings plans under section 146 that are part of a group arrangement described in subsection 204.2(1.32), deferred profit sharing plans under section 147, and any registered retirement savings plan under section 146 or registered retirement income fund under section 146.3 that is funded exclusively by rollover contributions from one or more of the preceding plans; and

(*b*) In the case of the United States, the term "qualifying retirement plan" shall include the following and any identical or substantially similar plan that is established pursuant to legislation introduced after the date of signature of the Protocol: qualified plans under section 401(a) of the Internal Revenue Code (including section 401(k) arrangements), individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), section 408(p) simple retirement accounts, section 403(a) qualified annuity plans, section 403(b) plans, section 457(g) trusts providing benefits under section 457(b) plans, the Thrift Savings Fund (section 7701(j)), and any individual retirement account under section 408(a) that is funded exclusively by rollover contributions from one or more of the preceding plans.

11. Former long-term residents

The term "long-term resident" shall mean any individual who is a lawful permanent resident of the United States in eight or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of Canada under the Convention, or as a resident of any country other than the United States under the provisions of any other U.S. tax treaty, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.

12. Special source rules relating to former citizens and long-term residents

For purposes of subparagraph 2 (b) of Article XXIX (Miscellaneous Rules) of the Convention, "income deemed under the domestic law of the United States to arise from such sources" shall consist of gains from the sale or exchange of stock of a U.S. company or debt obligations of a U.S. person, the United States, a State, or a political subdivision thereof, or the District of Columbia, gains from property (other than stock or debt obligations) located in the United States, and, in certain cases, income or gain derived from the sale of stock of a non-U.S. company or a disposition of property contributed to such non-U.S. company where such company would be a controlled foreign corporation with respect to the person if such person had continued to be a U.S. person. In addition, an individual who exchanges property that gives rise or would give rise to U.S.-source income for property that gives rise to foreign-source income shall be treated as if he or she had sold the property that would give rise to U.S. source income for its fair market value, and any consequent gain shall be deemed to be income from sources within the United States.

13. Exchange of Information

It is understood that the standards and practices described in Article XXVII (Exchange of Information) of the Convention are to be in no respect less effective than those described in the Model Agreement on Exchange of Information on Tax Matters developed by the OECD Global Forum Working Group on Effective Exchange of Information.

14. Limitation on Benefits

The United States and Canada are part of the same regional free trade area and, as a result, the Convention reflects the fact that publicly traded companies resident in one country may be traded on a stock exchange of the other country. Nevertheless, the Contracting States agree that in making future amendments to the Convention, they shall consult on possible modifications to subparagraph 2(c) of Article XXIX A (Limitation on Benefits) of the Convention (including, modifications necessary to discourage corporate inversion transactions).

If the above proposal is acceptable to your Government, I further propose that this Note, which is authentic in English and in French, and your reply Note reflecting such acceptance shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex B thereto, and shall therefore be an integral part of the Convention.

Please accept, Excellency, the assurance of my highest consideration.

I am pleased to inform you that the Government of the United States of America accepts the proposal set forth in your Note. The Government of the United States of America

further agrees that your Note, which is authentic in English and in French, together with this reply, shall constitute an Agreement between the United States of America and Canada, which shall enter into force on the date of entry into force of the Protocol amending the Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital done at Washington on 26 September 1980, as amended by the Protocols done on 14 June 1983, 28 March 1984, 17 March 1995, and 29 July 1997 (the "Convention"), and shall be annexed to the Convention as Annex B thereto, and shall therefore be an integral part of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.