

25th Floor
700 W Georgia St

Vancouver, BC
Canada V7Y 1B3

Tel 604 684 9151
Fax 604 661 9349

www.farris.com

Reply Attention of: Joseph J. Arvay, Q.C.
Direct Dial Number: (604) 661-9338
Email Address: jarvay@farris.com

Our File No.: 88888

February 13, 2014

VIA EMAIL

Dear Blaze

Re: Canada/US Agreement regarding *Foreign Account Tax Compliance Act* (“FATCA”)

As you know on February 5, 2013 the Canadian government announced that it had entered into an agreement with the United States government for reciprocal exchange of certain taxpayer information regarding accounts with financial institutions under the Canada/US tax treaty in order to avoid application of the US FATCA legislation to Canadian financial institutions. The Canadian government has also published draft legislation that would give the agreement the force of Canadian domestic law and a series of amendments to the *Income Tax Act* to enforce compliance.

Assuming the proposed legislation comes into force, Canadian financial institutions will be faced with a number of new requirements to collect information and provide it to the Canada Revenue Agency (“CRA”). For pre-existing individual accounts with balances greater than \$50,000 as of June 30, 2014 other than registered accounts, these financial institutions will have to determine whether the account-holder is a “US Person”, determined according to a lengthy set of criteria. For lower value individual accounts, such a review will have to be completed by June 30, 2016. If an account is determined to be held or controlled by a US Person, there will be a regular reporting obligation to CRA in respect of the account. For accounts with balances over \$1 million, additional information-gathering and reporting steps are required. For accounts held by an entity, similar screening to determine if the entity is controlled by a US Person will have to take place, with a \$250,000 threshold for the first year review instead of the \$50,000 threshold for individual accounts. All newly opened accounts will require determination of whether the holder is or is controlled by a US Person, with the attendant reporting obligations if it is.

You have asked us for our opinion as to whether a challenge to any proposed legislation would have a reasonable prospect of success. Our initial review of the proposed legislation indicates that there may be serious questions as to whether it would withstand constitutional scrutiny once enacted. We question whether the proposed legislation is compliant with the *Canadian Charter of Rights and Freedoms*, or whether it violates protections under the *Charter* against discrimination on the basis of national origin or citizenship, against unreasonable search and seizure and against deprivation of liberty except in

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accordance with the principles of fundamental justice. We also question whether the proposed legislation falls validly under the federal jurisdiction over taxation, or whether instead it is in substance regulation of financial institutions – in which case federal jurisdiction is limited to regulating banks but not provincially regulated financial institutions such as credit unions.

In order to answer those questions a proper opinion needs to be prepared. We are prepared to provide this opinion to you for a fee of \$15,000 plus applicable taxes.

Please let us know if you would like us to proceed.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



Joseph J. Arvey, Q.C.

JJA/DXG