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Toronto ON M5V 3J7

Your file / Votre référence

Our file / Notre référence
2013-051456

December 9, 2014

Dear Mr. Anderson:

**Re: Advance Income Tax Ruling - Hollinger Canadian Publishing Holdings Co.
(B/N 89386 8612)**

This is in reply to your letter of December 3, 2013, in which you requested an advance income tax ruling on behalf of the above-named taxpayer. We also acknowledge the additional information provided in your letter dated September 16, 2014.

We understand that, to the best of your knowledge and that of the taxpayer, none of the issues involved in this ruling is:

- (i) in an earlier return of the taxpayer or a related person,
- (ii) being considered by a tax services office or taxation centre in connection with a previously filed tax return of the taxpayer or a related person,
- (iii) under objection by the taxpayer or a related person,
- (iv) before the courts, or
- (v) the subject of a ruling previously issued by the Directorate to the taxpayer or a related person.

This letter is based solely on the facts and proposed transactions described below. The documentation submitted with your request does not form part of the facts and proposed transactions and any references thereto are provided solely for the convenience of the reader.

Unless otherwise stated, all references to a statute are to the *Income Tax Act* (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended to the date of this letter, (the "Act"), and all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

Definitions

In this letter, the following terms have the meanings specified:

“**A Plans**” means the hospital, major medical and dental plans between Canco and the Administrator established as a cost-plus arrangement to provide Benefits for Covered Persons;

“**Act**” means the *Income Tax Act* (Canada);

“**Actuary**” means Mercer (Canada) Ltd., the actuary retained by Canco;

“**Administrator**” means The Manufacturers Life Insurance Company;

“**Available Cash Pool**” means the cash and cash equivalent assets of Canco, as more specifically defined in the CCAA Plan;

“**B Plans**” means the hospital and major medical plans between Canco and Insurer B established to provide Benefits for Covered Persons;

“**Benefits**” means the right of Covered Persons for payment, reimbursement or coverage arising in connection with any of the Plans involving Canco (and its affiliates) whether in relation to hospital, medical, dental, disability, life insurance or other benefit, obligation or payment to which such person (or others who may be entitled to claim under or through such person) might be entitled;

“**C Plan**” means the hospital and major medical plan between Canco and Insurer C established to provide Benefits for Covered Persons;

“**C Health Plan**” has the meaning given to it in paragraph 9;

“**Canco**” means Hollinger Canadian Publishing Holdings Co.;

“**CCAA**” means the *Companies' Creditors Arrangement Act* (Canada);

“**CCAA Plan**” means the Plan of Compromise and Arrangement of Canco pursuant to the CCAA dated May 24, 2012, which was approved by the Court on July 31, 2012, together with all schedules, and as same may be amended;

“**Claim**” or “**Claims**” means a right or claim of any person against Canco in connection with any indebtedness, liability or obligation of any kind that may be permitted in accordance with the CCAA Plan and includes claims of Covered Persons relating to the termination of the Plans, as described in paragraph 19;

“**Claims Report**” means the Claims report described in paragraph 19 prepared by the Actuary;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

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“**Covered Persons**” means the Dependants and the Former Employees;

“**CRA**” means the Canada Revenue Agency;

“**Dependant**” or “**Dependants**” means a spouse, common-law partner, child or other beneficiary who is entitled to benefits under one or more of the Plans, as described in the Plan documents;

“**Former Employees**” means retired and/or disabled former employees of Canco (or its current and former affiliates) who are entitled to benefits under one or more of the Plans;

“**General Claims**” has the meaning given to it in paragraph 15;

“**Initial Order**” means the Court Order dated December 10, 2009, as amended;

“**Insurer B**” means PBC Health Benefits Society o/a Pacific Blue Cross;

“**Insurer C**” means SSQ Life Insurance Company Inc.;

“**Life Insurance Plan**” has the meaning given to it in paragraph 9;

“**Monitor**” means Ernst & Young Inc. in its capacity as the court-appointed Monitor pursuant to the Initial Order;

“**OPEB**” has the meaning given to it in paragraph 2;

“**OPEB Claims**” has the meaning given to it in paragraph 15;

“**Payment**” has the meaning given to it in paragraph 29 and “**Payments**” means all of the Payments to be made to the Former Employees;

“**Pension Plans**” has the meaning given to it in paragraph 2;

“**Pension Plan Claims**” has the meaning given to it in paragraph 15;

“**Plan**” or “**Plans**” means any or all of the A Plans, the B Plans and the C Plan as the context requires;

“**Private health services plan**” or “**PHSP**” has the meaning given to it under the Act;

“**Proceedings**” means the proceedings commenced on December 10, 2009 by Canco under the CCAA;

“**Representative Counsel**” means Koskie Minsky LLP in its capacity as court-appointed representative for the Covered Persons;

“**Settlement Amount**” has the meaning given to it in paragraph 28;

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“**Settlement Date**” refers to the date on which the final Payments will be paid to Former Employees, which is expected to occur in the last quarter of 2014 or the first quarter of 2015; and

“**Termination Date**” means August 31, 2011.

Our understanding of the facts, proposed transactions and the purpose of the proposed transactions is as follows:

Facts

1. Canco is an unlimited liability company existing under the laws of Nova Scotia. It is a taxable Canadian corporation. Canco’s Business Number is 89386 8612. Its affairs are administered by the Toronto Centre Tax Services Office of CRA, and it files its returns with the Sudbury Tax Centre.
2. Canco formerly operated directly and indirectly (through affiliates) a newspaper, magazine and information business, which included the Southam newspaper chain. Canco disposed of its businesses prior to the date of the Initial Order¹ and, for some period of time, it has had no ongoing business activity. The ongoing operation of Canco consists primarily of the administration of two unfunded retirement plans and certain other post-employment benefits plans that include the Plans (collectively the “**OPEBs**”) and six registered pension plans (the “**Pension Plans**”) for in excess of 3,000 former employees.
3. Canco is a wholly owned direct and indirect subsidiary of Chicago Newspaper Liquidation Corp. (formerly known as Sun-Times Media Group Inc.), which sold substantially all of its assets in the course of U.S. Chapter 11 proceedings and is in the process of liquidation in accordance with U.S. bankruptcy law procedures.
4. The Plans require Canco, Insurer B or Insurer C, as applicable, to indemnify Covered Persons for covered hospital, medical and dental charges incurred by such Covered Persons.
5. The Former Employees are almost exclusively individuals resident in Canada for purposes of the Act. The Covered Persons are the only people entitled to benefits under the Plans. As of the Termination Date, there were over 1,100 Former Employees entitled to benefits under the Plans. The average age of the Former Employees is approximately 79 years.
6. The Plans comprise the A Plans, the B Plans and the C Plan as described below.
7. The A Plans comprise three administrative services only plans that were administered by the Administrator as agent for Canco in the ordinary course of its business of providing benefits coverage for Covered Persons in respect of

¹ The majority of such assets were sold in 2002 and the remaining newspaper assets were sold in 2006.

hospital, medical and dental claims. Pursuant to such A Plans, Canco is required to reimburse the Administrator for claims paid by the Administrator as agent and also to pay the Administrator an administrative fee.

(a) Plan ASO 83497 dated May 26, 2004 provides hospital and major medical coverage to Covered Persons who are either an "employee" or a "dependant", as provided for under the Plan documents. Approximately 940 Former Employees were covered by this Plan. Certain relevant terms of Plan ASO 83497 provide as follows:

- Benefits: the Plan provides coverage for hospital charges and major medical charges (including charges for drugs, health care facilities, medical transport, medical supplies and services, dental services, physician and nursing services, paramedical practitioner services by licensed, certified or registered paramedical practitioners when operating within their fields of expertise, vision care, hearing care) on the terms and conditions of and as set forth in the Plan. Certain charges are excluded such as charges for cosmetic treatments (other than surgery or treatment for accidental injuries which is commenced within 90 days of the accident and, for certain Former Employees, sclerotherapy and drugs that are not Health Canada approved.
- Employee: a person who has been retired from the employer and who is a resident of Canada.
- Dependant: a "spouse" or "child" who is a resident of the same country in which the employee resides.
- Spouse: a person who either (A) is married through an ecclesiastical or civil ceremony to an employee or (B) although not legally married to an employee, continuously cohabits with the employee in a conjugal relationship which is recognized as such in the community in which they reside for a period of at least 12 months. The term conjugal relationship shall be deemed to include a conjugal relationship between partners of the same sex.
- Child: a person who (A) is unmarried, (B) is a natural child, stepchild, legally adopted child, or foster child, of an employee or such employee's spouse, and (C) is less than 21 years old or if he relies upon the employee for support and is in regular full time attendance at an accredited institute of learning is less than 25 years old. Certain divisions covered under this Plan amend the 21 year age restriction to 22 (or 23) years of age. Certain divisions covered under this Plan provide for continued coverage beyond the 25 year limit provided the support and full-time attendance criteria are met. Any mentally or physically disabled child who was covered up to the maximum age shall remain covered beyond such age provided the child, upon reaching the maximum age and thereafter, is incapable of self-

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sustaining employment and totally relies upon the employee for support and maintenance.

(b) Plan ASO 83172 dated June 15, 2004 provides hospital and major medical coverage to Covered Persons who are either an "employee" or a "dependant", as provided for under the Plan documents. Approximately 115 Former Employees were covered by this Plan. Certain relevant terms of Plan ASO 83172 provide as follows:

- Benefits: the Plan provides coverage for hospital charges and major medical charges (including charges for drugs, health care facilities, medical transport, medical supplies and services, dental services, physician and nursing services, paramedical practitioner services by licensed, certified or registered practitioners working within their recognized field of expertise, vision care, hearing care, extra provincial medical coverage, manuasist benefits for persons having a medical emergency while travelling outside of their normal province of residence) on the terms and conditions of and as set forth in the Plan. Certain charges are excluded such as charges for cosmetic treatments (subject to limited exceptions) and drugs that are not Health Canada approved.
- Disability Benefits: the Plan also provides for disability benefits payable to "a totally disabled employee". The Plan documents provide that such benefits were treated as being taxable to the recipient.
- Employee: a person who has been retired from the employer and who is a resident of Canada and certain non-retired employees.
- The definitions of "Dependant" and "Spouse" are as described above for Plan ASO 83497.
- Child: a person who (A) is unmarried, (B) is a natural child, stepchild, legally adopted child, or foster child, of an employee or such employee's spouse, and (C) is less than 21 years old or if he relies upon the employee for support and is in regular full time attendance at an accredited institute of learning is less than 25 years old. Certain children resident in Quebec may be covered beyond the 25 year limit provided the support and full-time attendance criteria are met. Disabled children are included as described for Plan ASO 83497.

(c) Plan ASO 83173 dated June 15, 2004 provides dental coverage to Covered Persons who are either an "employee" or a "dependant", as provided for under the Plan documents. Approximately 35 Former Employees were covered by this Plan. Certain relevant terms of this Plan provide as follows:

- The definitions of Employee; Dependant; Spouse; and Child are as described above for Plan ASO 83172.

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- Benefits: the Plan provides coverage for dental charges recommended as being necessary by a dentist, a physician or denturist and performed by a dentist or denturist (including charges for diagnostic services, preventive services, restorative services, endodontic services, periodontic services, prosthodontic services, surgical services, adjunctive services, orthodontic services, dentures and services) on the terms and conditions of and as set forth in the Plan. Certain charges are excluded such as charges for cosmetic treatments (subject to limited exceptions) and treatments not generally recognized by the dental profession as being effective, essential or appropriate.
8. The B Plans comprise two group insurance plans written by Insurer B in the ordinary course of its business of providing insured benefits coverage to Covered Persons in respect of hospital, medical and dental claims.
- (a) Plans 038753/038857 dated February 1, 2002 and renewed subsequently provide for extended health care and dental coverage to Covered Persons who are either a “member” or a “dependant”, as provided for under the Plan documents. Approximately four (4) Former Employees were covered by these Plans. Certain relevant terms of Plans 038753/038857 provide as follows:
- Benefits: the Plan provides coverage for hospital charges and major medical charges (including charges for medical transport, drugs/medicines, medical professional and nursing services, dental accident services, medical supplies and services, medical equipment, vision care, extra provincial coverage) on the terms and conditions of and as set forth in the Plan. The Plan also provides for dental coverage (including charges for preventative and restorative services, major restorative services, orthodontic services). The Plan provides for a series of exclusions.
 - Member: a person who retired from employment with the employer or who is no longer employed due to a disability and who is enrolled in a government plan and meets eligibility requirements.
 - Dependant: a “spouse” of the member or “child”.
 - Spouse: a person who is legally married to the Member or a person of the opposite sex who has been residing with the Member in a common-law relationship for at least 1 year (or 2 years in the case of Plan Group 038753) and publicly represented as the Member's spouse.
 - Child: an unmarried child born to the Member (or Spouse) or a stepchild, legally adopted child, or legal ward who is under 21 years of age who is living with and is financially dependent on the Member (or Spouse), and under 25 years of age if the unmarried child is also in full-time attendance at a recognized educational institute. An unmarried disabled child of any age who is living with and financially

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dependent on the Member (or Spouse) and who is incapable of self-sustaining employment is also included as a Child.

(b) Plan 048387 dated May 1, 1991 and renewed subsequently provides for extended health care and family assistance coverage to Covered Persons who are either a "member" or a "dependant", as provided for under the Plan documents. Approximately ten (10) Former Employees were covered by this Plan. Certain relevant terms of this Plan provide as follows:

- Benefits: the Plan provides coverage for hospital charges and major medical charges (including charges for medical transport, drugs/medicines, nursing services, paramedical practitioner services performed by a person that is licensed, certified or registered to practice the relevant profession, or where no such authority exists, has a certificate of competency from the professional body which establishes standards of competence) dental accident services, medical supplies and services, medical equipment, and extra provincial and travel assistance coverage) on the terms and conditions of and as set forth in the Plan. The Plan also provides for employee and family assistance coverage including professional counselling, on the terms set forth in the Plan. The Plan provides for a series of exclusions.
- The definitions of Member and Dependant are as described above for Plans 038753/038857.
- Spouse: a person who is legally married to the Member or a person who has been residing with the Member in a common-law relationship and publicly represented as the Member's spouse.
- Child: an unmarried child born to the Member (or Spouse) or a stepchild, legally adopted child, or legal ward who is under 21 years of age who is financially dependent on the Member (or Spouse), and under 25 years of age if the unmarried child is also in full-time attendance at a recognized educational institute. Disabled children are included as described for Plans 038753/038857.

9. The C Plan comprises a single group insurance plan (policy 48950) dated August 1, 2009 written by Insurer C in the ordinary course of its business of providing insured benefits coverage. Coverage under the C Plan is provided to Covered Persons who are either a retired employee or a "spouse" or a dependent "child" of a covered retired employee, as provided for under the Plan documents. Approximately 55 Former Employees were covered by this Plan. The C Plan includes two separate plans. A life insurance plan that provides for a maximum life insurance death benefit of \$5,000 to a "totally disabled employee" (the "**Life Insurance Plan**"), and Health Care Insurance Plan (the "**C Health Plan**"). The Life Insurance Plan and the C Health Plan were administered as separate plans. Certain relevant terms of the C Health Plan are as follows:

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- **Benefits:** the Plan provides coverage for hospital charges and major medical charges (including charges for prescription drugs, health care professional services, medical transport, medical supplies and services, dental accident services, vision care, travel/trip insurance) on the terms and conditions of and as set forth in the Plan. Certain charges are excluded such as charges for aesthetic treatments (subject to limited exceptions).
- **Spouse:** an individual who (A) is married to a retired employee through a civil union or other recognized marriage or (B) lives with the retired employee on a regular basis who has been designated as a spouse to Insurer C and where a child has been born of such union or (C) has been living with the retired employee on a regular basis for at least 12 months and who has been designated as a spouse to Insurer C.
- **Child:** a person who is supported by the covered retired employee or their Spouse and who is (A) unmarried, (B) a child over whom a covered retired employee or their Spouse exercises parental authority (or would exercise if a minor), and (C) under age 21, or under age 26 and a full-time student in an accredited educational institution. Certain children suffering from a functional impairment and meeting other criteria as set out in the Plan are also included as a child.

10. The Plans are “private health services plans” for purposes of the Act.

11. Pursuant to the terms of the Initial Order: (A) Canco was granted a stay of proceedings by the Court in respect of its creditors and other persons pursuant to the CCAA, (B) the Monitor was appointed to monitor the business and financial affairs of Canco during the Proceedings, (C) Canco was authorized to cease making payments to its creditors in respect of claims existing prior to the commencement of the Proceedings, provided that Canco was authorized to make certain payments notwithstanding this general prohibition including payment of ongoing contributions to the Pension Plans, payment of Benefits (as described below) and payment for any goods and services received by Canco after the date of the Initial Order, (D) Canco continued to act as the administrator of the Plans, (E) persons performing administrative services in respect of such Plans were directed to continue providing such services, (F) Canco was ordered to continue, following the date of the Initial Order, making payments to the Covered Persons under such Plans (and continued to do so until the Termination Date pursuant to the OPEB Claims Procedure Order described in paragraph 19).

12. The Proceedings and the protections afforded under the Initial Order have since been extended to the CCAA Termination Date as defined in the Court order of July 31, 2012, subject to further Orders of the Court.

13. Canco was insolvent prior to January 1, 2012.

14. Representative Counsel was appointed by the Court pursuant to the Initial Order as the representative of the Covered Persons pursuant to the terms of the Initial

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Order and, *inter alia*, was granted the power to deal with any government agency as the representative of such Covered Persons.

15. Claims against Canco include claims with respect to the Pension Plans sponsored by Canco ("**Pension Plan Claims**"), claims with respect to the OPEBs including the Plans ("**OPEB Claims**") and claims of other general creditors ("**General Claims**").
16. Pursuant to the Claims Procedure Order dated April 15, 2010 a Claims process was undertaken by Canco to ascertain what Claims (other than in respect of the OPEBs and the Pension Plans (and certain other matters described in the Order)) existed against Canco. Claims in respect of the OPEBs (including the Plans) were addressed separately (refer to paragraph 19). The Claims of general creditors that were identified through this process are not material.
17. The majority of Canco's creditors therefore consist of its former employees, with claims under the Pension Plans and OPEBs.
18. Pursuant to the Court Order dated April 15, 2010, Canco, Representative Counsel and the Monitor conducted a retiree audit survey process in relation to the OPEB Claims, including validating the identification and other pertinent information of the Former Employees (and Dependents) having Claims in respect of the Plans.
19. Pursuant to the OPEB Claims Procedure Order of the Court dated July 28, 2011: (A) the Benefits under the Plans were suspended and Canco's obligations thereunder were terminated as of the Termination Date (with a 30 day grace period for pre-termination charges to be submitted) and (B) the Actuary was ordered, in consultation with Representative Counsel (and its actuarial advisor) to prepare a "**Claims Report**" setting forth the amount of the OPEB Claims including the Claims of each Former Employee (and relevant Dependant) in respect of the Plans (and termination of coverage thereunder).
20. The Actuary prepared the Claims Report and following discussions of the report among Canco, the Actuary, the Monitor and Representative Counsel, the Actuary provided the Claims Report on June 6, 2012.
21. Based upon the figures from the Claims Report, the Monitor prepared an OPEB Claim Notice for each Covered Person (substantially in the form approved by the Court) setting forth the amount of the Covered Person's OPEB Claim. The OPEB Claim Notice was given to Representative Counsel. The OPEB Claim Notice is final and binding on the Covered Person, although persons with an OPEB Claim Notice had the opportunity to dispute such a notice and the OPEB Claim.
22. Canco, in consultation with the Monitor and Representative Counsel, negotiated the CCAA Plan. The CCAA Plan is intended to permit an orderly windup of the relevant pension and OPEB plans, and the distribution of Canco's remaining assets to its creditors.

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23. The CCAA Plan is directed at the claims of all of Canco's creditors (excluding certain unaffected claims as described in the CCAA Plan). The CCAA Plan contemplates two classes of affected creditors: (i) a class for the Pension Plan Claims and (ii) a class for the OPEB Claims and the General Claims.
24. Pursuant to the Creditors' Meeting Order dated June 8, 2012, a separate creditors meeting was directed to be held for each class of affected creditors to consider and approve the CCAA Plan. If the CCAA Plan is approved by the requisite majorities of the affected creditors, Canco will apply to the Court for an order approving the CCAA Plan and, once approved, it will be binding on the affected creditors including the Covered Persons.
25. On or about October 1, 2013, the Pension Plans were wound-up and annuities have been purchased in satisfaction of the Pension Plan Claims.
26. The CCAA Plan was approved by the affected creditors and the Court.

Proposed Transactions

27. On or before the Settlement Date and in accordance with and subject to the CCAA Plan, the Available Cash Pool of Canco will be applied to satisfy affected Claims (and will be used to pay certain unaffected Claims), all in accordance with the terms of the CCAA Plan and any relevant Court orders.
28. The aggregate payment to be received by all Former Employees (and any Dependant holding a Claim in accordance with the Proceedings) in respect of their Claims in relation to the Plans is referred to as the "**Settlement Amount**". The Former Employees (and Dependents) are not expected to fully recover the face value of their Claims, based upon the estimated Claims to be paid in priority and the Available Cash Pool of Canco. The balance of the Former Employees' (and relevant Dependents') Claims in respect of the Plans will be settled and discharged in accordance with the CCAA Plan.
29. Each Former Employee (and Dependant where relevant) will receive one or more payments on account of their Claim for termination of coverage under the Plans (other than the Claim for termination of coverage of the Life Insurance Plan) (the "**Payment**") in an amount equal to their pro-rata share (based upon their Claim as a percentage of all such Claims) of the aggregate Settlement Amount. Former Employees with a Claim under the Life Insurance Plan will also receive a separate payment in respect of such Claim.
30. The Monitor may act or assist as disbursing agent on behalf of Canco in respect of the Payments to be made to Former Employees (and Dependents). The Monitor will have no discretion and is required to make such Payments in accordance with the CCAA Plan and any further orders of the Court.
31. Representative Counsel will advise each Former Employee (and any Dependant) receiving a Payment that for purposes of calculating the non-refundable medical

expense tax credit under section 118.2, neither the Former Employee (or Dependant where relevant) nor their spouse or common-law partner can include any amounts that would otherwise be qualifying medical expenses until such time as their cumulative medical expenses incurred since the termination of the Plans exceed the amount of the Payment received.

Purpose of the proposed transactions

32. The purpose of the payment of the Settlement Amount is to settle and resolve the Former Employees' (and any Dependents') Claims in respect of the Plans in accordance with the CCAA Plan, since Canco is not continuing to fund the Plans following the Termination Date.

Rulings Given

Provided that the preceding statements constitute a complete and accurate disclosure of all of the relevant facts, proposed transactions, and purposes of the proposed transactions, and there are no other transactions that may be relevant to the rulings given, our rulings are as follows:

- A. The Payment received from Canco by each Former Employee and Dependant as described in paragraph 29 above will not be taxable under the Act in accordance with CRA's previous administration of the rules regarding lump-sum amounts received in lieu of health and dental coverage as described in the CRA's questions and answers relating to the 2011 Federal budget.
- B. Canco will not be required to withhold any amounts from the Payment under subsection 153(1) nor will Canco be required to report the Payment on an information return.

The above advance income tax rulings are based on the Act and Regulations in their present form and do not take into account any proposed amendments thereto. The rulings are subject to the general limitations and qualifications set out in Information Circular 70-6R5, *Advance Income Tax Rulings*, dated May 17, 2002, and are binding on the CRA provided that the proposed transactions are completed within 6 months of the date of this letter.

Caveats

Except as expressly stated, these advance income tax rulings do not imply that the CRA has confirmed, reviewed, or made any determination in respect of any tax consequences relating to the facts, the proposed transactions, or any transaction or event taking place either prior or subsequent to the implementation of the proposed transactions, whether described in this letter or not, other than those specifically described in the rulings given above. For greater certainty, the CRA has not confirmed or made a determination in respect of:

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- (a) whether the Plans qualify as a PHSP, or
- (b) whether Canco was insolvent prior to January 1, 2012.

Yours truly,



Neill Thomas-Wilkinson, CPA, CA
Manager
Business and Employment Income Section
Business and Employment Division
Income Tax Rulings Directorate

