THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

February 21, 2008

Hon. Jim Flaherty, PC, MP
Minister of Finance
Department of Finance
Esplanade Laurier, East Tower
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Minister,

RE: Excess Business Holdings

I am writing on behalf of the National Charities and Not-for-Profit Law Section of the Canadian Bar Association (the CBA Section) to ask that you remove the detailed and unnecessarily complex excess business holdings rules from the *Income Tax Act* and replace them with a regime requiring enhanced reporting of public and private equity owned by private foundations.

The excess business holdings regime was introduced in Bill C-28 and passed into law by Parliament on December 14, 2007. It is intended to apply to the ownership of public and private company equity by private foundations. A number of problems were not addressed before the Bill was enacted. We are requesting that amendments be made to the *Income Tax Act* as soon as possible.

In our discussions with Finance Canada officials, we have asked for concrete examples of abuses of the *Income Tax Act* by private foundations that have arisen as a result of their owning interests in excess of 2% of the issued and outstanding shares of any class of a corporation. Although the officials have indicated they are aware of such abuses, no solid examples have been provided to us. There are many experienced practitioners in the CBA Section and we are simply unaware of any abuses that have arisen specifically because of excess business holdings.

We therefore question the need for an onerous, complex and unwieldy system, particularly as it applies to publicly listed securities. Securities regimes across Canada ensure that those holding a material interest in publicly listed companies are not able to abuse or self-deal with corporation assets in a manner prejudicial to the public company shareholders. These protections require disclosure of holdings and material transactions. The information disclosed is available to the public and to the Canada Revenue Agency for audit purposes.

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We also question the application of the rules to private equity. The *Income Tax Act* currently contains an extensive regime applicable to private equity to address perceived abuses in connection with gifts of private equity to or ownership of private equity by private foundations. There is simply no need for these additional complex rules.

We urge you to consult with those who are financially fortunate to have a private foundation and ask whether they can make sense of these rules. We suggest you will find that those faced with these rules are not only baffled, but are frustrated that the government would introduce measures that increase the cost of operations and create such headaches for private foundations.

In our view, a regime that provides for disclosure of public and private equity interests on the Form T-3010A (or an equivalent form) is more appropriate.

We urge you to revisit the reasons for introducing these rules and implement a regime that does not impose a punitive burden on private foundations where no abuses exist.

Thank you for the opportunity to make these representations. We would be pleased to discuss these representations with you and your officials at your convenience.

Yours very truly,

(original signed by Kerri Froc for Susan Manwaring)

Susan Manwaring
Chair, National Charities and Not-for-Profit Law Section

cc: Karen Hall, Chief, Charities, Finance Canada