



CANADA REVENUE
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REGISTERED MAIL

Canadian Amateur Football Association
2255 St-Laurent Blvd., Unit 100
Ottawa, ON, K1G 4K3
Attention: Mr. Barry Gunther, President

BN: 116989732RR0001

September 4, 2008

**Subject: Revocation of Registration
Canadian Amateur Football Association**

Dear Mr. Barry Gunther,

The purpose of this letter is to inform you that on August 30, 2008, the effective date of revocation, a notice revoking the registration of Canadian Amateur Football Association (the "Organization") was published in the *Canada Gazette*. Effective on that date, the Organization ceased to be a registered charity.

As a result of the revocation of the Organization's registration, the Organization is no longer exempt from tax under Part I of the *Income Tax Act* (the "ITA") pursuant to section 149(1)(f) of the ITA as a registered charity. The consequences of the revocation of the Organization's registration are:

- 1) The loss of the Organization's tax-exempt status as a registered charity. Thus, according to section 150 of the ITA, the Organization must file a return of income with the Minister of National Revenue (the "Minister") that is in prescribed form and that contains prescribed information, without notice or demand for the return, for each taxation year of the Organization.
- 2) The Organization is no longer permitted to issue official donation receipts for income tax purposes. Gifts made to the Organization are not allowable as a tax credit to individual donors as provided by section 118.1(3) of the ITA or as a deduction for corporate donors under section 110.1(1) (a) of the ITA. ~

3) Under section 188 of the ITA, the Organization must, on or before the day in a taxation year that is one year from the date of the Notice of Intention to Revoke the Charity's registration,

(a) pay a tax under Part V of the ITA for the year; and

(b) file with the Minister a return, Form T2046 *Tax Return Where Registration of a Charity is Revoked*, (a copy of which is enclosed) in prescribed form and containing prescribed information, without notice or demand therefor.

Section 188(2) of the ITA stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the ITA by the Organization.

Additionally, the organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the date the organization is revoked as per *Income Tax Regulation* 5800.

Furthermore, the organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the "ETA"), effective the date of revocation. As a result it may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Should you have any questions regarding these matters, you may contact the undersigned at (613) 957-8682.

Yours sincerely,



Danie Huppe-Cranford
Director
Compliance Division
Charities Directorate

Enclosure



CANADA REVENUE
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JUL 23 2008

REGISTERED MAIL

Canadian Amateur Football Association
2255 St-Laurent Blvd, Unit 100
Ottawa, ON K1G 4K3

BN: 116989732 RR0001

File #:0495325

Attention: Mr. Barry Gunther, President

**Subject: Notice of Intention to Revoke
Canadian Amateur Football Association**

Dear Mr. Gunther:

I am writing further to our letter dated February 22, 2008 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the "Minister") should not revoke the registration of the Canadian Amateur Football Association (the "RCAAA") in accordance with subsection 168(1) of the *Income Tax Act* (the "ITA").

We have now reviewed and considered your written response dated April 30, 2008. However, notwithstanding your reply, our concerns with respect to the RCAAA's non-compliance with the requirements of the *ITA* for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Consequently, for the reasons mentioned herein and in our letter dated February 22, 2008, I wish to advise you that, pursuant to the authority granted to the Minister in 168(1) (c) and 168(1) (d) of the *ITA*, which has been delegated to me, I propose to revoke the registration of the Charity. By virtue of subsection 168(2) of the *ITA*, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa, Ontario K1A 0L5

Notice is hereby given, pursuant to paragraphs 168(1)(c), and 168(1)(d) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under 168(2) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Business Number
116989732 RR0001

Name
Canadian Amateur Football Association
Ottawa, Ontario

Should you wish to appeal this Notice of Intention to Revoke, in accordance with subsection 180(1) of the *ITA*, a written Notice of Appeal must be filed with the Federal Court of Appeal within **30 days** from the day this letter was mailed.

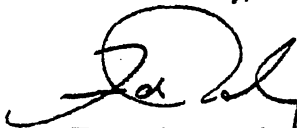
Please note that, notwithstanding the fact that the RCAA may have filed a Notice of Appeal, a copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of **30 days** from the day this letter was mailed. The RCAA's registration will be revoked on the date of publication. If the RCAA files an appeal and is ultimately successful its registration will be reinstated.

Consequences of Revocation:

As of the effective date of revocation the RCAA **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Charity would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *ITA*, respectively.

If you have any questions regarding this matter please contact Mr. Blaine Langdon, A/Manager, Compliance Division at (613) 946-2400.

Yours sincerely,



Terry de March
Director General
Charities Directorate

Attachments:

- CRA letter dated February 22, 2008
- Appendix "A"
- Appendix "B"

Canadian Amateur Football Association (CAFA)

**RCAAA Audit for the fiscal period
April 1, 2004 to March 31, 2006**

COMMENTS ON REPRESENTATIONS OF April 30, 2008

Seriousness of Non-Compliance:

As described in the balance of this appendix, and in our letter of February 22, 2008, it is the position of the Canada Revenue Agency that the Canadian Amateur Football Association (CAFA) is in serious breach of the requirements of registration under the *Income Tax Act* (the "ITA") and its registration should be revoked.

Our audit has revealed that CAFA has issued official donation receipts for \$109,474,920 yet retained a mere \$1,330,386 of the cash contributed. Our audit has concluded that the remainder of the funds flowed through CAFA's accounts to an offshore investment account, to give the illusion that they were received and held by CAFA, but these were, in fact, immediately used to repay the Lenders. These facts, in our view, demonstrate that CAFA has participated in and facilitated an abusive tax shelter arrangement which, in our view, is ground for revocation in and of itself.

Issuance of Official Donation Receipts:

We have reviewed your response of April 30, 2008, and remain of the view that during the audit period CAFA has issued receipts for gifts or donations otherwise than in accordance with the ITA and the regulations.

A RCAA is entitled, under the Act, to issue receipts for gifts that it receives. However, before a RCAA can issue a tax receipt, it is incumbent on the RCAA to determine whether the transaction qualifies as a "gift" at law. A RCAA, which issues a receipt for a transaction which does not qualify as a gift at law, can be revoked under paragraph 168(1)(d) of the Act.

a) **No Animus Donandi**

It remains the view of the CRA that the vast majority of the transactions involving the RCAA do not qualify as gifts as they lack the requisite *animus donandi* – or "intent to give" – that a donor transfer property to a RCAA and impoverish him or herself as a result. Participants in these arrangements fully intend to recoup the full amount of their "donation" plus an additional 67-94% return through a series of pre-meditated and artificial transactions.

In your letter you assert that from the RCAA's perspective, the organization simply issued receipts for funds it received from the donors and that the advantage that is received from a tax credit or deduction is not considered a benefit citing *Paradis v. R.*, [1997] 2 C.T.C. 2557 (T.C.C.) and *Friedberg v. R.* (1991), 92 D.T.C. 6031 (fed. C.A.) as jurisprudence supporting the organizations actions.

We do not dispute the definition of a gift as cited in *Friedberg v. R.* (1991), 92 D.T.C. 6031 (fed. C.A.), however we would also refer you to *McPherson v. the Queen* (2006), TCC 648 a current case relating to a tax shelter arrangement: At paragraph 21, the Honourable Justice L.M. Little cites: *The Queen v. Burns*, 88 DTC 6101 Mr. Justice Pinard said at page 6105:

I would like to emphasize that one essential element of a gift is an intentional element that the Roman law identified as *animus donandi* or liberal intent (see Mazeaud, *Leçon de Droit Civil*, tome 4ième, 2ième volume, 4ième édition, No. 1325, page 554). The donor must be aware that he will not receive any compensation other than pure moral benefit; he must be willing to grow poorer for the benefit of the donee without receiving any such compensation.

We would also draw your attention to the comments of Justice Bowie in *Webb v. The Queen* (2004) UDTc 148

[16] Much has been written on the subject of charitable donations over the years. The law, however, is in my view quite clear. I am bound by the decision of the Federal Court of Appeal in *The Queen v. Friedberg*, among others. These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative.

[17] The circumstances that I have referred to lead me to conclude that there was nothing donative at all about Mr. Webb's payment to ABLE. His intention was to receive a tax credit for a charitable donation, as well as a substantial refund of the amount he had given, such that when the two were aggregated they would exceed the \$30,000 for which he wrote the cheque.

[18] I was referred in argument to the recent decision of Madam Justice Campbell in *Doubinin v. The Queen* and her statement in the first sentence of paragraph 18 where she said:

He is not part of a tax evasion scheme, and although he may have been motivated by potential tax benefits, I do not believe that this can be equated to consideration for a gift because tax benefits are not considered a benefit.

...

I do not read Madam Justice Campbell as purporting there to extend what was said by Mr. Justice Linden in *Friedberg* to suggest that a scheme entered into whereby a person would be put in a position to claim tax credits for charitable donations in excess of the donations actually made, by the issuing of false receipts or by the kickback of part of the donation, to be a normal transaction and something that would not be considered a benefit within the context of the definition of what constitutes a gift.

As above, and per our previous letter, the arrangement which CAFA participated in promised donors a positive return on investments by making donations. The arrangement promised participants the opportunity to achieve this by receiving loans that, through a series of related "investments" and the purchase of an "insurance policy", would not need to be repaid. CAFA knew that the donors were receiving receipts valued at almost 4 times the amount actually contributed out-of-pocket. It is clear that the scheme in which CAFA participated was mass-marketed as an opportunity to profit from the tax system by making an out-of-pocket payment and receiving a non-repayable loan – with CAFA issuing a receipt for both amounts.

In your letter you allege that CAFA had no knowledge of any assurances or guarantees given to the borrowers that the loans would never be repaid, however CAFA was in possession of documents that clearly outline the program as presented to donors whereby the donor directed funds to the Specialty Insurance Ltd to establish an investment contract and insurance policy which together would generate sufficient funds to re-pay the loan in 10 years. As outlined in our previous letter, the rates of return that would need to be achieved on a sustained basis were clearly "ambitious", particularly when compared to the low rates of return the tax shelter was providing to CAFA on its own investments.

It is acknowledged that the money for which CAFA issued receipts flowed through its bank accounts. However, as our audit has revealed, these funds were required to be transferred offshore to conceal the ultimate use of these funds – that these funds were used to repay the Lenders. Despite the representations made by the promoters of the tax shelter arrangement, who were engaged by CAFA to fundraise on its behalf, it is clear that the loans were not repaid by the investment contracts and specialty insurance, but were repaid out of the donations to CAFA. As such, we remain of the view that these transactions lack the requisite *animus donandi* to be considered gifts as the donors did not give gratuitously but knew they were to receive "loans" that through a series of artificial transactions they were not liable to repay.

We would note that CAFA is fully aware of this arrangement and is an active participant in these schemes. CAFA has produced material used for promotional purposes by the promoters of these arrangements. CAFA pays fees to the promoters of these arrangements as referral fees. Through the method these schemes are promoted and its own participation in these arrangements CAFA knew, or ought to have known, the means by which this was promoted and what was represented to donors. CAFA knew or ought to have known how its own participation in this arrangement facilitated this abusive arrangement – by agreeing to issue receipts for 100% of an amount transferred to it, while agreeing to transfer 99% of the donation to an offshore account it had no access or ownership over. As such, the receipts issued by CAFA were clearly not in respect of valid gifts as the funds received were essentially "kicked back" to repay loans on behalf of donors. Whether or not we are to believe CAFA was ignorant of these transactions, this is simply not an acceptable defense. CAFA's conduct is clearly designed to facilitate this scheme and it has taken no prudent actions to verify the authenticity of the transactions to which they have lent their tax receipting privileges to.

As such, it remains our view that the RCAA issued receipts for transactions that do not qualify as gifts at law. For this reason alone it remains our view that CAFA has issued receipts other than in accordance with the ITA and there are grounds for revocation of its registered status under paragraph 168(1)(d).

(b) Receipts were issued for property that was not donated to CAFA

It is worth noting that, upon drawing CAFA's attention to the fact that the funds which are represented as belonging to CAFA as investments were in fact repaid to the Lender, that the only response provided by CAFA was to disavow knowledge of these transactions. *Per* our previous letter, the lack of care and concern CAFA has demonstrated towards the \$109 Million purportedly donated to it is alarming in and of itself.

In your letter you indicate that CAFA did not transfer any of the donated funds to the Lender and simply issued receipts. In our view, CAFA's conduct in this arrangement is clearly unacceptable and designed to facilitate these transactions – whether or not CAFA was, in fact, itself directly involved in the transfer of the funds back to the Lender. CAFA issued receipts for in excess of \$109 million in donations. It was entitled to retain a meagre 1% of these amounts. CAFA, for its part in the arrangement, agreed and did, in fact, transfer 99% of all donations to an offshore account in Bermuda to which it had no access. It is from this account that funds were returned to the Lender. (See appendix "B" for an example of one transaction)

Per our previous letter, CAFA took no steps to safeguard its property and understood it would receive only 1% of the total "donated".¹ It is telling that despite the care CAFA takes in safeguarding its own investments, pursuing a modest investment strategy, with respect to the \$109 million received through the tax shelter arrangements, the RCAA relinquished all control and direction over these funds to an offshore entity. Despite receiving a meagre .22% rate of return on these "investments" and a steadily eroding principle amount, the RCAA continued to participate in this program. As noted in our previous letter, CAFA was required by a predetermined series of transaction to transfer 99% of all "receipted" funds to an account held by Trafalgar Trading Limited (TTL) in return for a potential income stream with no recourse or rights to those funds. As stipulated on page 8 of our letter of February 22, 2008, CAFA's notes in the Financial Statements clearly indicate that the organization understood the nature of the property for which they issued receipts.

It is clear that, despite the fact that the money flowed through CAFA's account, the RCAA understood that it was only entitled to keep 1% of the total donations. Our audit has concluded that the funds purportedly held offshore on behalf of CAFA have substantially all been repaid to the Lender and other related parties. It is our position that CAFA has issued receipts for property which was not donated to it for use in its programs but, as part of its participation in this program, was required to be sent offshore, and was subsequently repaid to the Lenders. In our view, the RCAAs conduct has been structured to accommodate these transactions – either knowingly or through wilful blindness. Given the complete lack of due diligence CAFA has demonstrated in safeguarding the \$109 million in funds for which CAFA has issued official tax receipts, it is simply not an acceptable defence for CAFA to deny knowledge of the circular and abusive transactions in which the RCAA has participated.

As such, it remains our view that the RCAA issued receipts for abusive transactions not actually donated to the RCAA, but designed to give the illusion that property has been donated to the RCAA. For this reason alone it remains our view that CAFA has issued

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¹ For example, *per* our previous letter it is interesting to note that despite the fact that [REDACTED] contract provides for compensation of 33% of total donations, [REDACTED] was paid solely on the 1% received.

receipts other than in accordance with the ITA and there are grounds for revocation of its registered status under paragraph 168(1)(d).

(c) Receipts not issued for full value of the property donated

Although this was raised in the initial letter we are not relying on it as grounds for revocation. However, we remain alarmed by the fact that the RCAA would enter into an arrangement where it was required to issue a receipt for 100% of an amount but, as part of its arrangement with the tax shelter promoters gave up access and rights to \$109 Million in funds in return for 1% of the full amount and a percentage of the income to be generated by the investment over a period of 20 years.

Our audit has concluded that even were we to accept that the funds received by CAFA were actually placed in offshore investments, which we do not, in our view this is further evidence that the funds were never beneficially owned by CAFA during the period under audit. Further CAFA's return on investment was a meagre .22% and that the average loss on the capital would have been 1.25% annually.

It is also equally clear from CAFA's own Financial Statements that it understood that the funds collected by the promoters were not for its use, but instead 99% of the funds were to be placed into "investments" which would generate royalty payments over a period of 20 years.

(d) Receipts included amounts that represented limited recourse debt

It is the position of the CRA that CAFA participated in a tax shelter arrangement, which was structured as a limited recourse debt as defined in proposed section 143.2(6.1). We bring to your attention proposed subsection 143.2(6.1) as defined in the 2006 Department of Finance Technical notes:

A limited recourse debt includes the unpaid principal of any indebtedness for which recourse is limited, even if that limitation applies only in the future or contingently. It also includes any other indebtedness of the taxpayer, related to the gift or contribution, if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness. For example, if a donor (or any other person mentioned below) enters into a contract of insurance whereby all or part of a debt will be paid upon the occurrence of either certain or contingent event, the debt is a limited recourse debt in respect of a gift if it is in any way related to the gift. Such indebtedness is also a limited-recourse debt if it is owned by a person dealing non-arm's length with the taxpayer or by a person who holds an interest in the taxpayer.

In your letter you state: "As part of its due diligence process, the Board of Directors of CAFA sought and obtained a legal opinion regarding compliance of the donation program with the Act. The author of the legal opinion opined that the loans granted to the donors would likely be considered to be a limited-recourse loan. However, the opinion obtained by Parklane Financial Group from [REDACTED] stated that the loan would not be a limited recourse debt providing that the interest on the loan was paid when due."

Per our previous letter, it is unfortunate that CAFA chose to ignore the advice of its own legal counsel, for which it paid, in favour of the legal opinion presented by the tax shelter promoter. For the reasons expressed in our previous letter, the CRA remains of the view that the amounts received by the RCAA are amounts which meet the definition of a limited-recourse debt. It is clear that the debts offered to the donors were, as represented by the promoters², an unpaid amount for which there was a "guarantee, security, or similar indemnity or covenant" in respect of the indebtedness. As noted above, in an example of proposed subsection 248(32), the option of a donor to satisfy or pay a loan by assigning or transferring to another person a property (**including the rights under an insurance policy**) that has less economic value than the amount of loan outstanding would reduce the amount of the gift.

For this reason alone it remains our view that CAFA has issued receipts other than in accordance with the ITA and there are grounds for revocation of its registered status under paragraph 168(1)(d).

Filing Information returns

The audit revealed that that the RCAA did not prepare a T4A for either [REDACTED] or [REDACTED]. The issue was addressed in a prior audit in 2002, at which time the organization was made aware of the requirement of Regulation 200(1).

In your letter you state: "since both [REDACTED] and [REDACTED] are independent contractors, CAFA's bookkeeper did not issue T4 Slips." The representations assume that an independent contractor does not require an information return. Regulation 200(1) states:

Every person who makes a payment described in subsection 153(1) of the ITA (other than an annuity payment in respect of an interest in an annuity contract to which subsection 201(5) applies) shall make an information return in prescribed form in respect of the payment unless an information return in respect of the payment has been made under sections 202, 214, 237 or 238.

Furthermore, section 153(1) states:

Every person paying at any time in a taxation year

(g) fees, commissions or other amounts for services, other than amounts described in subsection 115(2.3) or 212(5.1),

Based on the evidence available to us, both [REDACTED] and [REDACTED] were remunerated in an employment capacity rather than as independent contractors. Additionally, if we accepted the fact the amount paid was to independent contractors, the RCAA failed to issue a T4A slip reporting the self-employment income earned by both [REDACTED] and [REDACTED].

As such, it remains our view that CAFA has failed to file an information return as and when required under this ITA and there are grounds for revocation of its registered status under paragraph 168(1)(c).

.../7

² In this section we are considering the loans as they were represented. As above, our audit has concluded the amounts were in fact repaid on behalf of the donors using the same funds purportedly donated to CAFA.

Late Filing of T2052 Information Return:

Although this was raised in the initial letter we are not relying on it as grounds for revocation. However, contrary to the representations made, the RCAA must file the Registered RCAA Information and Public Information Form (form T2052) without notice or demand within six months from the end of each fiscal period. It is the responsibility of the RCAA to obtain the appropriate returns and schedules.

Additional Arguments

CAFA's submissions raise a number of additional arguments against the revocation of their status. Specifically, the RCAA notes that the donation program in which it has participated has provided much needed funding (approximately \$100,000 of income annually) and that revocation of registration would be detrimental to the sport of football.

The *Income Tax Act* provides RCAAs with the unique privilege of issuing tax receipts, which a donor can claim on his or her tax return, on the presumption that where funds are donated, the RCAA actually receives and actually uses an equivalent amount in their programs. In the case at hand, our audit has concluded that CAFA has issued in excess of \$109 million in donation receipts on behalf of an abusive arrangement in which leveraged donations were flowed through the account of the RCAA, to an offshore account and immediately returned to the Lender. CAFA was entitled to retain a meagre 1% of all donations that it received upfront and received .22% per annum from its "investments"³.

In its letter CAFA suggests "the financial crisis faced by many RCAAs is what leads to the proliferation of the various donation programs." In our view, this fact is simply not a defence for the issuance of \$109 million in official donation receipts in return for a 1% commission. We would draw your attention that the \$100,000 in annual funding (\$2 million over 20 years) pales in comparison to the fact that the tax receipts issued by CAFA represent a loss to Canadians of approximately \$31 Million dollars in forgone federal tax alone.

While it is regrettable that the RCAA has chosen to participate in an abusive program, in our view the conduct of CAFA is too serious to consider its continued registration under the Act.

³ Since the vast majority of funds sent offshore were immediately repaid to the Lender with commissions to related parties, these amounts can logically only have been paid out of the left-over donor cash.



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Canadian Amateur Football Association
2255 St-Laurent blvd, Unit 100
Ottawa, ON K1G 4K3

Attention: Mr. Barry Gunther, president

BN: 116989732 RR0001

File #: 0495325

DATE: February 22, 2008

Subject: Audit of the Canadian Amateur Football Association

Dear Mr. Gunther:

This letter is further to the audit of the books and records of the Canadian Amateur Football Association ("CAFA") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered Canadian amateur athletic association (the "RCAAA") for the period from April 1, 2004 to March 31, 2006.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the "ITA") or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Issuing official donation receipts other than in accordance with the Income Tax Act or its regulations	ITA 168(1)(d)
2.	Remuneration and Benefits Reporting	Regulation 200(1), ITA 6(1)(a)
3.	Late Filing of T3010A Information Return	149.1(14)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to RCAAAs and to provide CAFA with the opportunity to address our concerns. In order for a RCAA to retain its registration, it is required to comply with the provisions of the ITA and common law applicable to RCAAAs. If these provisions are not complied with, the Minister of National Revenue may revoke CAFA's registration in the manner prescribed in section 168 of the ITA.

The balance of this letter describes the findings of the audit in further detail.

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Participation in Various Tax Shelter Gifting Arrangements

The audit revealed that, during the periods under review, CAFA participated in the following tax shelters/donation arrangements:

- Trafalgar Donations Program – 2004
- Equigenesis - 2004
- Donations Program – Parklane – 2004 and 2005

A brief description of the two first tax shelters/donation arrangements is provided in Appendix "A".

We note that each of these arrangements has involved CAFA issuing tax receipts for some form of property such as the sub-trust units in the 2005 program while receiving only a small fraction of actual cash "in-hand". Our audit revealed that CAFA issued receipts for \$42,190,798 in 2005 and \$45,574,979 in 2006 while it received a meagre \$986,807. It is our view that, through its participation in each of these programs, CAFA has issued receipts otherwise than in accordance with the ITA and its regulations. However, since the focus of our audit was primarily on CAFA's participation in the Donations Program – Parklane, we will limit our comments to that tax shelter gifting arrangement in particular.

Overview - Donations Program – Parklane – 2004 and 2005

As we understand from the materials obtained during the course of the audit, the Parklane program in which CAFA participated was marketed as follows. We have provided a more detailed appendix of the typical transactions involved in this scheme at Appendix A:

Using a hypothetical \$10,000 "donation" as an example, a participant in this tax shelter arrangement would only be required to personally contribute \$2,790. The participant would subsequently "borrow" \$11,200 from a pre-arranged lender - Plaza Capital Finance Corp. (the "Lender"). These amounts, a total of \$13,990, are held by an escrow agent in trust on the donors' behalf prior to orders from CAFA for disbursement.

The loans secured by participants bear interest at the rate of 3% and have a ten-year term. Interest must be paid within 60 days of December 31st, each year.

Each participant directs the escrow agent to deposit \$10,000 of the \$13,990 held in trust in a [REDACTED] account in CAFA's name. For a 10,000 donation, CAFA would be required to direct the [REDACTED] to transfer \$9,900 to Trafalgar Trading Limited pursuant to a Royalty Agreement, which entitled the Association from 60% to 80% of any monthly profits based on the year and type of Royalty Agreement and at which point a fee of approximately \$600 is transferred to Parklane Financial Group from

Trafalgar Trading Limited. Each of these transactions would occur within a 24-hour period. As such, for a \$10,000 "donation", CAFA would only receive \$100 of cash that is freely at its disposal. It is important to note that per the CAFA audited financial statements only \$235,637 (.22%) has been earned for \$109,474,920 in receipts with an average annual loss of 1.25% on the capital investment. Based on this rate of return, CAFA will receive a total of \$3,819,500 for the investments over a 20-year period and the capital would erode to \$54,318,650 for a net loss of \$24,948,600.

Given the facts as known by CRA, the "net loss" is substantially more due to the facts of the arrangement noted below whereby only \$159.80 per \$1000 receipt (see appendix B) is, in fact, potentially invested. Based on these figures, the actual capital after 20 years would likely only be \$17,945,590 for a net loss of \$49,323,910.

The participant directs the escrow agent to pay \$336 to the Lender in payment of the first year's interest on the loan.

The participant also directs the escrow agent to remit the remaining \$3,654 to Specialty Insurance Limited as payment of the premium for a Policy of Insurance. Pursuant to this policy, Specialty Insurance Limited agrees to pay to the donor an amount equal to the difference between the expected annual rate of growth of 6.054% and the actual rate of growth under the investment contract agreement between Specialty Insurance Limited and Trafalgar Trading Limited. The insurance is payable only if the annual rate of growth under the investment contract is less than 6.054% per year.

It is represented that the investment contract and the insurance policy together will generate a minimum of \$11,200 in 10 years (thereby paying off the loan advanced to the participants). Based on the leveraged amount a rate of return of 9.8% would be required to accomplish the repayment.

The end result of these transactions is that, in the case of a \$10,000 donation:

- the participant is "out-of-pocket" \$2,790,
- CAFA issues a donation receipt to the participant for \$10,000,
- CAFA receives \$100 and an unknown future "revenue-stream", and
- the majority of the funds are transferred to corporations connected to the promoters or returned to the lender (see appendix A).

Issuing official donation receipts other than in accordance with the Income Tax Act or its regulations

Gifts:

It is our position that CAFA has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts.

No Animus Donandi

Under the common law, a gift is a voluntary transfer of property without consideration. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.

Our position is the donations received by CAFA from participants are not true gifts under section 118.1 of the ITA. In our view it is clear that the primary motivation of the donor is to profit through the tax credits so obtained through a series of artificial transactions and a minimal monetary investment. It is our view that CAFA was aware, or ought to have been aware, that it was participating in a scheme designed to produce inappropriate tax benefits through an artificial manipulation of the tax incentive.

In support of this position, we note that:

- The promotional material for the Donations Program - Parklane promises the donor will receive a tax credit at the highest marginal tax rate for the combined value of the gifts and provides charts calculating the donors return on cash investment of at least 67% and as high as 94%. Participants in this arrangement, in return for a minimal participation fee, received a "loan" with full and prior knowledge that this loan would never have to be repaid;
- Transactions are pre-arranged, pre-determined and co-ordinated by the promoters and other pre-arranged third parties. The RCAA has no interaction or involvement with donors seemingly whatsoever;
- Minimal information is provided to the prospective "donors" as to how the "donations" would benefit CAFA, or to the activities of CAFA they are supporting;
- The donor receives an official donation receipt for the 28% cash contribution and the 72% loan amount of the donation guaranteed by an insurance policy in the 2004 Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities. The donor receives an official donation receipt for the 25% cash contribution and the 75% trust unit value in the 2005 Donations Canada program;

- CAFA never truly receives the funds "donated". While the funds are deposited temporarily in CAFA's bank account, as a part of participation CAFA is obligated to immediately transfer 99% of the funds deposited to a company directly connected to the promoter;
- The transactions are carefully arranged, as described in appendix A to create the illusion of property being donated to CAFA and invested. In actual fact, these funds followed a circular flow and ended up back in the hands of the lender (minus applicable fees to participants). CAFA received a 1% fee for its participation;
- CAFA also received a minimal "investment stream", for its participation in the arrangement.

It is clear that the primary purpose and result of these transactions was to provide the participant a donation tax credit that exceeded the cost of participation. In essence, the arrangement is one whereby the promoters, the RCAAA and the individual donors created the illusion of property, but in reality this involved "purchasing" receipts for a fraction of the receipt's face value (i.e., that the only property involved in the scheme was the participation fee).

As above, the participants "donated" to CAFA with the clear intent to take advantage of the tax system through an artificial series of transactions. CAFA was aware, or ought to have been aware, of the motivations of the participants as it had full access to the promotional materials and information about the scheme in which it participated. In return for a participation fee, the participants secured "loans" which they knew they would never have to repay and donated these to CAFA. CAFA, for its part, issued receipts for the full value of the funds transferred - even though it was obligated to immediately transfer 99% of these funds to an offshore company. In our view, the primary motivation of the donor in these transactions was to profit from the tax system by a combination of the tax credits available for donations and the artificial loan transaction.

In our view these transactions are not true gifts in the sense contemplated by section 118.1 of the ITA. In this regard, these transactions lack the requisite *animus donandi* to be considered gifts. These transactions were, in our opinion, primarily motivated by the donor's intent to enrich him/herself rather than an intent to make a gift to RCAAA. As such, it is our position that RCAAA was not entitled to issue receipts for the property transferred to it.

It is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with this ITA subsection 118.1, which is cause for revocation by virtue of paragraph 168(1)(d).

Property donated

Existence of the property:

It is our view that the property represented as being donated is not *actually* property that has been donated to CAFA.

As above, and as detailed in appendix A, the Parklane donation arrangement involved participants themselves contributing a mere 28% of the property purportedly donated to CAFA with the remainder consisting of a loan which is never repaid by the participant. CAFA receives funds but must mandatorily transfer 99% of these to an offshore entity, 93% as an "investment" and 6% as referral fee to which it has no access and receives little, if any, return.

In fact, it appears that these funds are not actually held as investments on behalf of CAFA but the majority of these funds were, in fact, immediately returned to the original lender or paid out as fees to the participants. As such, it is our view that CAFA has issued receipts for property that was not donated to it but that exists as little more than notations on paper as investments "owned" by CAFA. CAFA participated in a scheme that, through a circular series of transactions, was designed to create the illusion of property being donated to CAFA while in actuality the majority of the funds were either consumed by fees to be paid to the participants or returned to the lender.¹

CAFA's part in this scheme was, as before, to receive funds from "donors", issue tax receipts for the full amount of the property transferred to its bank account, and immediately transfer these amounts received in a bank account off-shore. CAFA had no control over the property "donated" and had no access to the investments. CAFA could not even verify, for the purposes of its own internal audit, the values associated with the offshore investment as indicated in the notes to the financial statements given that the auditors have written down the off-shore account to \$1 per agreement. Rather than reasonably seek out prudent investments with the property donated to it, CAFA was obligated to send money to an offshore investment with uncertain and low rates of return.²

In our view CAFA participated in a scheme designed to create the illusion of property being donated and issued receipts for property, which was not beneficially transferred to it. CAFA was either aware, or ought to have been aware, of the fact that its role in the arrangement whereby it issued receipts for property which would flow through its accounts but to which it had no present or even future ownership of. The funds that are

¹ See appendix B – paragraphs 24-26 for detailed description

² GIC average rates from 2004 to 2007 as per <http://www.bankofcanada.ca> were 1 yr: 2.39%, 3yr: 2.74% and 5yr: 3.05% which would have produced a revenue of \$1,950,770 at the 1 yr avg. rate or \$963,963 more than current investment.

represented as donated, owned and invested by CAFA were returned to the lender. As such the Association was not entitled to issue a receipt for the amounts contributed (in this case with reference to the insurance policy and loan or the trust units) and in this regard it is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with this ITA, which is cause for revocation by virtue of paragraph 168(1)(d).

Nature of the Property:

As above, it is our view that CAFA improperly issued receipts for transactions that were not gifts and for property that it was not, in fact, beneficially entitled to. We are of the view that the offshore investments that CAFA purports to have exist largely only notionally on paper. However, even were we to agree that the gifts were valid gifts to CAFA, and the property held in investments existed, it would still be our view that CAFA issued receipts other than in accordance with the ITA.

As above, the property that was donated to CAFA was immediately transferred to an offshore investment company. Based on our review, there is no indication that the principal amount of this property will ever revert to CAFA. As such, it appears that CAFA is only entitled to a potential "income stream" associated with the property.

In our view, even if we were to accept that the property was validly donated to CAFA (which we do not) it is the income interest in the property, which should have been tax receipted and not the full value of the funds transferred to CAFA. While CAFA does receive certain funds from participants, other than the immediate 1% to which it is entitled, it is *required* to transfer these funds to the offshore investment company. CAFA is never entitled to the property itself but to the income from the property – if there is any. In our view, while it is being represented that the full value of the property is being donated, it is simply a limited income interest in the property that is being donated.

We acknowledge that the restriction on access to the property is a condition of CAFA's participation in the Parklane donations program, and not one *explicitly* set by the donor. However, viewing the "donation" as a pre-arranged transaction, the restrictions so imposed make it clear that it is the income stream, which is donated and to which CAFA is entitled, not the full value of the property. Participants pay a fee to participate in the donation program. The participants have no interaction with CAFA. Participants obtain a loan from a non-arm's length company knowing fully that, provided they follow the instructions, they will not have to repay the "loan". One of the instructions is that they transfer these funds to a participating organization. The participating organization is obligated through the agreement to transfer 99% of these funds to the offshore investment company. The participating organization is thereafter entitled to income from the investments (when there is any) but not the principal amount.

As such, it is our view that, were we to accept this as a valid gift of property, due to the nature of the pre-arranged transaction that what has, in fact, been gifted to CAFA would not be the full value of the property temporarily transferred to its account, but the investment income. Furthermore, we are of the view that CAFA was, in fact, fully aware of the nature of said property as management states the following per the notes to the financial statements (2007):

"As per the Donations Programs, the Association paid fees and entered into a royalty agreement with Trafalgar Trading Limited for a cost in the amount of \$21,618,280. The contributions made to The Trafalgar Global Index Futures Program – Series A of 2004, 2005, and 2006, gives the Association ***the right to receive royalty payments over a period of 20 years***. These royalty payments will be based on a formula, as specified in the agreement, on the amount contributed to the Trafalgar Trading Limited.

The contributions made in 2004 The Trafalgar Global Index Futures Program – Series B investment program gives the Association the right to receive revenue on the investment over a period of 20 years, based on a formula defined in the agreement.

The future benefit and income that ***could be received by the Association from these investments are presently not known***. Given the uncertainties associated with the realizable value resulting from these contributions and investments, the assets resulting from these agreements have been recorded at a nominal value in the financial statements." *(emphasis added)*

In our view, a professional valuator should have valued this income stream and the tax receipts issued accordingly. In this regard, even if the Association had issued a receipt for the valuation amount it would not have been in accordance with proposed subsections 248(31), (32) and (34) regarding limited recourse debts.

It is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with ITA subsection 110.1 and 118.1, which is cause for revocation by virtue of paragraph 168(1)(d).

Application of proposed subsections 248(31), (32) and (34) regarding limited recourse debts

As above, even if we were of the opinion that the payments made by participants to CAFA constituted "gifts", which, in our view is not the case, in 2003 the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a RCAA and receive some advantage in return, however the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the

donor). We would note that, although still proposed, once passed into law, these subsections apply retroactively to the fiscal periods currently under review.³ It is our view that the participants each received an advantage, as defined at proposed subsection 248(32), as a result of the cash contribution to CAFA, in the form of receiving a limited-recourse, low-interest debt. A limited-recourse debt is broadly defined to include any unpaid amounts if there is a guarantee, security, or similar indemnity or covenant in respect of the debt. The value of this advantage should have been deducted from the eligible amount of the gift.

It is our view that a limited-recourse debt within the meaning of section 143.2(6.1) was provided to participants in the Parklane donation program and, as such, subsection 248(32) applies to reduce the eligible amount of the gift for income tax purposes. A limited-recourse debt is broadly defined to include any unpaid amounts if there is a guarantee, security, or similar indemnity or covenant in respect of the debt. The value of this advantage should have been deducted from the eligible amount of the gift. In our view, CAFA was aware of this loan, having been provided the promotional materials relating to the program, and accordingly was obligated to reduce the eligible amount of each gift recorded on the tax receipt. In the report dated June 6, 2005 from [REDACTED] to [REDACTED], it is clear that your own legal council is of the opinion that the 2005 Donation program constitutes a limited-recourse debt. [REDACTED] states: "In my view, the insurance policy could be interpreted to be an indemnity or a covenant in respect of the loan. Accordingly, in my view, the loan granted to the donor by Plaza Capital Finance Corp. would likely be considered to be a limited-recourse loan."

Under proposed subsection 248(34), the taxpayer, if we were to accept that a gift had been made to CAFA, may have been eligible for a tax receipt for payments towards the principal of the loan, but was not entitled to a tax receipt for the *entire* amount purportedly donated.⁴ This subsection generally provides that the gift portion of any transaction involving a limited recourse debt is deemed to be no more than the amount of the initial cash payment. A taxpayer may, additionally, claim a gift with respect to a repayment of the principal amount of the limited-recourse debt in the year it is paid. As such CAFA was not entitled to issue a receipt associated with the limited recourse debt (in this case with reference to the promissory note) and in this regard it is our view that CAFA has issued a receipt for a gift or donation otherwise than in accordance with this Act, which is cause for revocation by virtue of paragraph 168(1)(d).

³ Subsections 248(31), (32), and (34) apply in respect of gifts made on or after February 19, 2003.

⁴ Again, given the fact that the majority of out-of-pocket funds were paid out to participants and the "loans" were immediately repaid to the lender, it is our view that these transactions were not true gifts to the charity.

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Seriousness of the Offence:

The CRA has serious concerns about the participation of RCAAAs in these arrangements. It is the CRA's view that these gifting arrangements provide minimal benefit for the programs of RCAAAs as compared to the values of tax receipts being issued. The *Income Tax Act* provides RCAAAs the privilege of issuing tax receipts to allow them to solicit donations from taxpayers for use in their programs. However, in the case at hand it appears that CAFA participated in a tax shelter arrangement by lending its tax receipting privileges in return for a small percentage of the face value of the receipts so issued. It is interesting to note that since its participation in the program, its issuance of receipts have increased from approximately \$51,000 in 2002, 2003, and 2004 to \$45 Million in 2005, \$42 Million in 2006 and \$21 Million in 2007.

We would note, in this regard that the effects of CAFA's participation in this program have resulted in CAFA issuing receipts for \$109,474,920 yet actually receiving only \$1,330,386 from this "program". In our view, this represents a serious abuse of the RCAAAs' receipting privileges.

Furthermore, issuing donation receipts for amounts that are not gifts, or that contain inaccurate values or false information, is a serious offence. In light of the volume of the receipts so issued by CAFA we are of the view that this is cause for the revocation of its registered status.

Examining the overall participation of CAFA at face value in this arrangement, the allocation of the property received, as "donations" would be approximately as follows:

Profit for CAFA	1%
Fundraising fee	6%
Investment	<u>93%</u>
	100%

As above, this situation is compounded by the fact that, based on our review, the majority of funds represented exist as "investments" only notionally on paper as they were used to repay the "lender" in this situation.

Additionally, we are dismayed to learn that even of the 1% profit earned by CAFA, 33% of this is in fact paid to [REDACTED] CEO as consulting fees. This, of course, means that only 0.67% of the donations tax receipted by CAFA are actually received by CAFA. It is, of course, interesting to note that [REDACTED] fee is not based on the total donation to CAFA (which the terms of his contract would suggest would be appropriate) but is instead solely on the 1%. This to us, as in the above discussion, suggests that CAFA was fully aware that the remaining 99% was not, in fact, donated to CAFA.

Due Diligence:

We note with concern, with respect to this particular issue, that it fully appears that CAFA's directors have demonstrated a complete lack of due diligence with respect to receipting practices. While this is not a ground for revocation itself, it is our view that it is a contributing factor to the aforementioned non-compliance.

Audit Findings:

- CAFA signed a letter of intent to participate on June 30, 2003 after the initial presentation of May 2, 2003;
- CAFA did not request the opinion of their legal counsel, auditors (Cloutier & Brisebois) or CRA before participating;
- Prior to August 2007, [REDACTED] acting as CEO and Fundraising consultant had sole signing authority;
- A fax dated May 12, 2005 between [REDACTED] (CAFA) and [REDACTED] (Cloutier Brisebois), the CAFA auditor, indicates that comments made by the CFO of Trafalgar himself indicate that no amount should be recorded with respect to the offshore holdings because of the uncertainty of the income and capital to be returned;
- The minutes of June 13, 2005 indicate that the auditors refuse to release the financial statements officially until a written legal opinion was received by CAFA tax lawyer;
- The auditors have recorded \$87,696,198 (\$ 42,190,798 in 2005 and \$45,505,400 in 2006) in donation receipts to the nominal value of \$3 due to the uncertainty of their realizable value;
- The final report dated October 27, 2005 from [REDACTED], tax lawyer at Gowlings, Lafleur, Henderson LLP highlights a number of concerns with the 2005 program as follows. These were subsequently ignored or discounted by CAFA.
 - Opinion that the program had a technical flaw, in that subsection 248(35) of the Act would apply to deem the fair market value of the beneficial interest in the trust to be nil;
 - Concerns that the revised Program "could be considered by a court to be offensive;
 - Concerns that an anti-avoidance provision contained in the section of the Act that deals with leveraged gifts, namely subsection 248(38), would apply;
 - Cautioned that CRA may revoke the status of RCAAAs that participate in leveraged donation programs in light of the new provided provisions in the Act, namely Subsection 248(40) and Subsection 248(41)
 - Advises against participation in the program beyond December 31, 2005;
 - Issues of compliance with the *Trustee Act*;
 - And finally, potential penalties under subsection 188.1(9) for issuing false receipts.

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The CRA position that CAFA did not perform proper due diligence is further demonstrated in reviewing CAFA's financial statements. Therein we note that CAFA, with respect to its own mutual fund investments, takes a very cautious and prudent investment approach to reduce its portfolio risk as clearly noted in the financial statements when management states: "Management has adopted an approach whereby investments are strategically distributed, on a long-term basis, among several classes of mutual funds to reduce exposure to investment volatility."

Yet, even given all these facts, CAFA continues to participate in the tax shelter arrangement.

It is our view that the RCAAA failed to demonstrate due diligence in verifying the authenticity of the donation program, as well as how participation in the program furthers the objects of the organization. It appears that, as above, the RCAAA has willingly participated in an abusive tax shelter arrangement, in effect, by being paid a small percentage fee for transactions it knew our ought to have known were not gifts to the RCAAA. In this regard, it is our view that the Association ceases to qualify for its registration as such and has issued a receipt for a gift or donation otherwise than in accordance with this ITA section 110.1 and 118.1, which is cause for revocation by virtue of paragraphs 168(1)(b) and (d).

Gifts in Kind:

Legislation:

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

Audit Findings:

- No appraisal of the "trust units" was performed as required by regulation 3501(1)(e.1)(iii);
- The value of the receipt was determined by Trafalgar.

It is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with this ITA regulation 3501(1)(e.1)(iii), which is cause for revocation by virtue of paragraph 168(1)(d).

Other Compliance issues:

Statement of Remuneration Paid

Where salaries or wages are paid, the Act requires that annual "T4 Summaries" and "T4 Statements of Remuneration Paid" be prepared by the employer [Regulation 200(1)]. In addition to the salaries and wages actually paid, the T4 summaries and T4 statements of remuneration paid must also include the value of all taxable benefits conferred on employees in the year [paragraph 6(1)(a)]. T4 summaries of remuneration paid must always be based on the calendar year.

In addition to the foregoing annual reporting requirements, where an employer pays an amount in respect of an individual's salary, that employer is required to withhold certain amounts from such payments [subsection 153(1)]. These amounts are in respect of income tax, Canada Pension Plan, Unemployment Insurance, etc. and the withholdings must be remitted to the Receiver General of Canada.

The audit evidence indicated that CEO [REDACTED] received salary payments (commissions) totalling \$ 274,551 in 2005 and \$ 591,532 in 2006. Furthermore, [REDACTED] was contracted to perform duties as a Technical Director for the fee of \$44,000 per annum on July 1, 2005. No T4 or T4As were issued for either of these employees.

The issuance of proper information returns was addressed in the previous audit of March 31, 2000 (AFL letter dated October 3, 2002) yet the issue continues to occur. It is our view that the Association has failed to issue an information return in prescribed form in accordance with this ITA regulation 200, which is cause for revocation by virtue of paragraph 168(1)(c).

Late Filing of T2052 Information Return:

Legislation:

Regulation 216(1) of the Act requires every registered Canadian amateur athletic association to file a Registered Charity Information and Public Information Return (form T2052), without notice or demand within six months from the end of each fiscal period. This return must be in prescribed form and contain prescribed information.

Audit Findings:

The RCAAA was late in filing its T2052 returns over the following three consecutive fiscal years:

The RCAAA's Fiscal year end	Due Date	Date received
31-12-2005	30-06-2006	31-12-2006
31-12-2004	30-06-2005	28-02-2006
31-12-2003	30-06-2004	24-09-2004

The issue of late filing has been address in the previous audit of March 31, 2000 (AFL letter dated October 3, 2002) yet the issues of late filing continue to occur.

It is our view that the Association has failed to issue an information return in prescribed form in accordance with this ITA regulation 216(1), which is cause for revocation by virtue of paragraph 168(1)(c).

Conclusion:

If you do not agree with the concerns outlined above, we invite you to submit your written representations **within 30 days from the date of this letter**. After considering the representations submitted by CAFA, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Intention to Revoke the registration of CAFA in the manner described in subsection 168(1) of the ITA. Should you choose not to respond, the Director General of the Charities Directorate may proceed with the issuance of a Notice of Intention to Revoke the registration of CAFA in the manner described in subsection 168(1) of the ITA.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing us to discuss your file with that individual.

If you require further information, clarification, or assistance, I may be reached at (613) 957-2174 or by facsimile at (613) 946-7646.

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Yours sincerely,

A handwritten signature in cursive script, reading "Neil Nicholls". The signature is written in dark ink and is positioned above the printed name and title.

Neil Nicholls
Auditor
Compliance Section
Charities Directorate

Enclosure

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Tax Shelter/Scheme Descriptions:

Trafalgar Donations Program - 2004

The donor contributes \$279 per \$1,000 of donation. This contribution covers arrangement fees and pre-payment of loan interest.

The donor incurs a loan. The amount of the loan is \$1,120 per \$1,000 of donation.

The donor does not make payments on the loan. Consequently, for a cash payment for \$279, the donor receives a donation tax-receipt for \$1,000.

Equigenesis – 2004

The donor acquires one unit of a limited partnership for \$2,300 cash and \$15,000 borrowed from a trust. The donor also pays a loan arrangement fee for \$125, for a total cost of \$17,425.

In addition, the donor pays cash \$1,100 and obtains a loan for \$8,900. Including a donation loan arrangement fee of \$25, this amounts to a cost of \$10,025. The donor receives a donation receipt for \$10,000.

Therefore, for an aggregate gift of \$3,400, the donor receives a donation tax-receipt for \$10,000. The donor does not make payments on the loans.

Appendix "B"

2004 Donation Program Supporting Canadian Amateur Athletics Foundations and Charities ("Donation Program") (Tax Shelter #TS069260)

Registration as a Tax Shelter

1. A T5001 Application for Tax Shelter Number was submitted to Canada Revenue Agency in respect of the above Donation Program by the promoter on Jan. 9, 2004. A tax shelter number was assigned by CRA. The promoter was named on the application form as 1602628 Ontario Inc., of Burlington, Ontario. A corporation at the same address, ParkLane Financial Group Limited ("ParkLane Financial"), along with another company there, Trafalgar Associates Limited, carry out the promoter functions. The shareholder of the latter two companies as of the end of 2004 was Trafalgar Securities Limited of Bermuda. The controlling shareholder of the numbered company is the Canadian president of all three companies.
2. ParkLane Financial markets the Donation Program to financial advisors and other advisors in Canada.

Signing Documents and Procedure for Signing Up

3. A donor contributed his own funds to Aylesworth Thompson Phelan O'Brien LLP, In Trust ("Aylesworth") of \$279.00 per \$1,000 of donation. Per the promotional literature this \$279 per thousand was "with regard to an arrangement fee and pre-payment of loan interest".
4. A donor completed a Loan Application and Power of Attorney in favour of Plaza Capital Corporation ("Plaza Capital"), the lender, located in Canada. The amount of the loan was \$1,120 per \$1,000 donation.
5. A donor completed a "Promissory Note" in favour of Plaza Capital due in 10 years in the amount of \$1,120 per \$1,000 donation.
6. A donor completed a Pledge, indicating an intention to make a donation in favour of a particular registered charity or charities ("the charity") pledging \$1,000 per \$1,000 donation. (This charity could include a registered Canadian amateur athletic association.)
7. A donor completed a Direction to Aylesworth, directing \$1,000 per \$1,000 donation to the RCAA, and \$365.40 per \$1,000 to Specialty Insurance Limited ("Specialty Insurance"), and \$33.60 per \$1,000 to Plaza Capital.
8. A donor completed a Donor Declaration Letter. Point 5 says:
I understand that the Insurance Contract (the "Insurance") issued by an insurance company (the "Insurance Company") in respect of the Program is optional and that I could have declined coverage of Insurance by sending written notice to that effect to ParkLane Financial Group Limited. I hereby confirm and agree to an allocation of the fee payable to the Insurance Company towards the purchase of Insurance.
9. The \$279.00 "with regard to an arrangement fee and pre-payment of loan interest" consisted of \$33.60 for one year's prepaid interest, and \$245.40 as the donors' unfinanced portion of their arrangement fee. The total arrangement fee was \$365.40 per \$1,000 donation.

10. The donors' \$279 contribution above included \$33.60 of prepaid interest at 3% which was the 1 prescribed by CRA.
11. The total arrangement fee of \$365.40 consists of the amount to be paid to Specialty Insurance in Bermuda for:
- | | |
|------------------------|--------------------------------------|
| an insurance policy | \$115.00 per \$1,000 donation |
| an investment contract | 240.00 per \$1,000 donation |
| administrative fee | <u>10.40</u> per \$1,000 donation |
| | <u>\$365.40</u> per \$1,000 donation |
12. A donor completed a Direction to Plaza Capital, directing the loan proceeds of \$1,120 per \$1,000 donation to be paid to Aylesworth.

Contracts Received by Donor

13. A donor received a document entitled "Policy of Insurance" in which the donor is the "Policyholder/Insured". Specialty Insurance is the sole issuer of this Policy of Insurance and is guarantor of any and all provisions contained therein. The insurance provided is described as being for the purpose of providing the donor (the Insured) with a certain rate of growth from "The Trafalgar Global Index Futures Program" ("TGIFP") agreement attached to the Policy of Insurance. The donor is to receive, as insurance, a payment at the end of 10 years, representing the difference between the expected rate of growth of 6.04% and the actual rate of growth under this agreement. The amount shown as the premium paid for this policy is \$115.00 per \$1,000 donation.
14. The TGIFP agreement is between Trafalgar Trading and Specialty Insurance, for the donors' benefit. Specialty Insurance is to receive, on the donors' behalf, a profit distribution from Trafalgar Trading at the end of 10 years. The cost of this TGIFP investment, provided by the donor, was \$240 per \$1,000 donation, being part of their arrangement fee of \$365.40 per \$1,000 donation. A donor directed Aylesworth to pay this \$365.40 to Specialty Insurance.

Source and Uses of Funds

15. The sources of funds per \$1,000 donation were:
- | | |
|-----------------------------|-------------------|
| Amount borrowed from Plaza | \$1,120.00 |
| Amount contributed by donor | <u>279.00</u> |
| Total Sources of Funds | <u>\$1,399.00</u> |
16. The donors' uses of funds per \$1,000 donation were:
- | | |
|------------------------------------------------------------------------------------------------------|-------------------|
| Payment directed to RCAA | \$1,000.00 |
| One year of prepaid loan interest | 33.60 |
| Payment directed by donor to Specialty Insurance but re-directed to Trafalgar Trading pertaining to: | |
| Investment Contract with Trafalgar Trading | 240.00 |
| Loan or other amount from Specialty Insurance | 115.00 |
| Fee charged by Specialty Insurance | <u>.40</u> |
| Payment actually received by Specialty Insurance | <u>10.00</u> |
| Total Uses of Funds | <u>\$1,399.00</u> |

Source of Funds for the Donor Loan

17. An executive of a commercial lending corporation was approached to provide funding for this donation program. A separate financing corporation (located in Canada) was set up to assemble funds from various investors.
18. Plaza Capital Finance Corporation ("Plaza Capital Finance"), a sister company of Plaza Capital, and also located in Canada, borrowed these funds from the financing corporation, as documented by a Promissory Note issued by Plaza Capital Finance to that corporation. These funds were transferred directly by the financing corporation to Aylesworth.
19. A donor obtained his loan from Plaza Capital, as documented by a Promissory Note issued by the donor to Plaza Capital. This Promissory Note was assigned to Plaza Capital Finance.

Flow of Funds pertaining to Donations Claimed by the Donor

20. Per Direction from the donor, Aylesworth issued a cheque to the RCAA, which received the full amount of the funds, which the donor pledged. The RCAA deposited these cheques into its bank account.
21. A donation receipt was issued after year-end by the RCAA to the donors in an amount corresponding to the amount deposited by the RCAA.
22. Per Direction from the RCAA to its bank, the bank made an immediate payment of 99% of the total donated funds to the bank account of Trafalgar Trading in respect of the Royalty Agreement Purchase Price and Referral Fee. From this payment, Trafalgar Trading Limited directs an amount equal to approximately 6% of the amount received by the RCAA from its account to Parklane Financial for a donation referral fee used to pay referrers of the donors to the program. The RCAA retained 1% of the donation amounts received by it.
23. As seen above, the RCAA paid 93% (99% less 6%) directed to Trafalgar Trading purportedly as the purchase price of a "2004 Series A Royalty Agreement". However, as explained in more detail at Fact 24 below, Trafalgar Trading had to use these, or other funds, to repay the financing corporation \$1,125.60 per \$1,120 of loan amount. The RCAA's royalty agreement with Trafalgar is to earn for the RCAA revenue over 20 years through the use of Trafalgar Trading's use of Trading Software to trade S&P 500 and other international stock futures contracts. Trafalgar Trading issued monthly statements to the RCAA showing the investment's performance, after deduction of the monthly trading fee. Actual cheques were issued to the your RCAA for months when there was a net profit due to you. The amounts of these cheques issued to the RCAA in calendar 2005 totaled less than 2.5% of the amount paid to Trafalgar Trading by the RCAA for the investment in their "2004 Series A Royalty Agreement". In calendar 2006 such cheques issued to RCAA were less than 2.0% of this amount.

Flow of Funds pertaining to Arrangement Fees

24. Per the donors' Direction at Fact 7 above, the \$365.40 per \$1,000, which was paid to Aylesworth, was then to be sent to Specialty Insurance. However, Specialty Insurance issued a Direction to Aylesworth directing Aylesworth to pay Specialty Insurance only 1% of the donation amount, and to pay the balance to Trafalgar Trading. Hence Trafalgar Trading received \$355.40 per \$1,000 donation while Specialty Insurance received \$10.00 per this \$1,000.

Repayment to the Financing Corporation

25. Trafalgar Trading immediately made a payment to the financing corporation equal to the funds that the financing corporation loaned earlier in the day to Plaza Capital Finance (which were provided directly to Aylesworth). This represented a repayment of \$1,120 per \$1,000 of donation. In addition, a fee of 0.5% to the financing corporation was included, for a repayment of \$1,125.60 for each \$1,120 provided earlier in the day.

26. To pay for this \$1,125.60 (per 1,000 of donation) to the financing corporation, Trafalgar Trading had funds available to it from the Donation Program from two sources. These were:

Amount provided by the charities after Trafalgar Trading paid the
6% referral fee (\$990 - \$60)

\$930.00

Amount from Specialty Insurance being \$355.40
(being \$365.40 less \$10 retained by Specialty)

355.40

Sources of funds available to repay the financing company

1,285.40

Less: Repayment to the financing company

1,125.60

Balance of funds from the Donation Program available for both

Total investments of the donor and the RCAA

\$159.80

2. **Sources and Uses of Funds from the Donation Program**

The only funds that were injected into the Donation Program for longer than one day were the \$279 cash per \$1,000 of donation. This \$279 could be considered to have been used as follows:

Amount of taxpayer's own funds contributed per \$1,000 of donation

\$279.00

Deduct: Uses of funds per \$1,000 of donation:

(a) One year's prepaid interest on taxpayer loan of \$1,120 at 3% \$33.60

(b) Amount of donation that the RCAA was permitted to retain 10.00

(c) Donation referral fee paid to party who referred the taxpayer 60.00

(d) Amount that Specialty Insurance actually received for its services 10.00

(e) Fee paid to the finance corporation for providing loan for 1 day 5.60 \$119.20 Remaining
portion of their contribution available for investment \$159.80

Donor Assignment of their Promissory Note and Release from their Obligations

28. The donors were to request from Plaza Capital Finance that they assign their Promissory Note to Trafalgar Trading and that Trafalgar Trading accept assignment of their insurance policy and investment contract in return for their release from their obligation under their Promissory Note. An Assignment Agreement was signed at the time of the donors' request, and the donor would have been then issued a Release by Trafalgar Trading.

The donor Promissory Note was assigned and the donor Release form was issued some time between May 2005 and June 2006.