SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33–7860, 34–42905, IC–24491; File No. S7–10–99 International Series Release No.1226]

RIN 3235–AH32

Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule that would permit foreign securities to be offered to U.S. participants in certain Canadian tax-deferred retirement accounts and sold to those accounts without being registered under the Securities Act of 1933. The Commission also is adopting a new rule that would permit foreign investment companies to offer securities to those U.S. participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act of 1940. These rules will enable investors who hold securities in certain Canadian tax-deferred retirement accounts, and who reside or are temporarily present in the United States, to manage their investments within those accounts.

EFFECTIVE DATE: June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Senior Counsel, or C. Hunter Jones, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') today is adopting rule 237 [17 CFR 230.237] under the Securities Act of 1933 [15 U.S.C. 77a–aa] (the ''Securities Act''), rule 7d–2 [17 CFR 270.7d–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act''), and amendments to rule 12g3–2 under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm] (the ''Exchange Act'').

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Executive Summary

In Canada, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''), which operate in a manner similar to Individual Retirement Accounts (''IRAs'') in the United States. Individuals who have established Canadian retirement accounts and later moved to the United States (''Canadian/U.S. Participants'' or ''participants'') have been unable to make changes in their retirement accounts because the changes would involve the sale of unregistered securities and investment companies (''funds'') in violation of U.S. securities laws.

The Commission is adopting two rules that are designed to enable Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts. The new rules: (i) permit securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act or the Exchange Act, and (ii) permit foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act. The offer and sale of these securities, however, will remain fully subject to the antifraud provisions of the U.S. securities laws. The Commission also is issuing an order exempting Canadian broker-dealers that maintain these retirement accounts for Canadian/U.S. Participants, from the registration requirements and certain related provisions of the Exchange Act.

I. Discussion

The Commission has received complaints from many Canadian/U.S. Participants that the application of the U.S. securities laws to their retirement accounts has left them unable to manage their investments in those accounts. In response, we proposed rules last year to provide relief from the registration requirements of the federal securities laws for offers of securities to participants in Canadian retirement accounts, and sales to their accounts.[1] We received 35 comment letters on the proposed rules, all of which supported the proposal.[2] Today we are adopting the rules substantially as proposed, with modifications that reflect a number of technical changes suggested by commenters.[3]

A. Rule 237 Under the Securities Act[4]

Rule 237 exempts from the registration requirements of the Securities Act the offer of a foreign issuer's securities to a ''participant'' and the sale of those securities to his or her Canadian retirement account.[5] A ''participant'' includes an individual permanently or temporarily in the United States who contributes to or is (or will be) entitled to receive the assets from a Canadian retirement account.[6] A

[1] See Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Securities Act Release No. 7656 (Mar. 19, 1999) [64 FR 14648 (Mar. 26, 1999)] (''Proposing Release''). The registration requirements of the Securities Act generally would not preclude Canadian/U.S. Participants from purchasing some types of securities for their Canadian retirement accounts in secondary market transactions on stock exchanges or in other markets. However, there are generally no secondary markets for the securities of open-end management funds (or ''mutual funds''), which continuously publicly offer and redeem securities. The requirement that public offers and sales be registered under the Securities Act thus deters most foreign mutual funds from offering securities to Canadian/U.S. Participants.

[2] The commenters included sixteen financial institutions, eight professional and trade associations, seven investors, two government agencies, one elected official, and one consultant firm. The comment letters, and a summary of the comment letters received during the comment period, are available in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC (File No. S7–10–99).

[3] We are also issuing an order that provides exemptive relief from the broker-dealer registration requirements of the Exchange Act for certain Canadian broker-dealers that effect transactions for Canadian/U.S. Participants with respect to their Canadian retirement accounts. *See* In the Matter of the Investment Dealers Association of Canada; Order Granting Exemption, Release No. 34–42906 (June 7, 2000).

[4] The following discussion focuses on the scope and conditions of rule 237. The scope and conditions of rule 7d–2, as discussed below, are largely identical.

[5] The rule exempts sales to a Canadian/U.S. Participant's retirement account in connection with an exchange or re-allocation of existing Canadian retirement account investments, as well as sales in connection with new investments made with additional contributions to the account. Commenters confirmed our understanding that most Canadian/U.S. Participants will not make significant additional contributions to their Canadian retirement accounts because Canadian tax law penalizes contributions greater than a specified percentage of an individual's Canadian earned income (*i.e.,* income that is earned and taxable in Canada), which an individual employed in the United States ordinarily would not have. *See* Proposing Release, *supra* note 1, at n.4.

[6] *See* rule 237(a)(6). The proposed definition of ''participant'' would have included only individuals who are entitled to receive the income and assets from a Canadian retirement account (*i.e.,* beneficiaries). We revised the definition, at the suggestion of commenters, to include individuals

Canadian retirement account includes a Registered Retirement Savings Plan (''RRSP''), Registered Retirement Income Fund (''RRIF''), and similar retirement accounts established under Canadian law to provide tax-deferred retirement benefits. The accounts covered by the rule are limited to those that are managed by the participants, *i.e.,* are plans for which the participant selects or controls the securities in the account.[7]

The exemption provided by rule 237 would be available for offers and sales of securities of foreign issuers, if the securities are available for purchase by Canadian investors other than Canadian/U.S. Participants. The requirement that the issuer be a ''foreign issuer'' is designed to prevent a U.S. issuer from using the rule to sell unregistered securities to persons in the United States.[8]

An issuer or other person who relies on rule 237 must comply with two conditions. First, all written offering materials for eligible securities (including advertisements and newsletters) delivered to a participant must prominently disclose that the securities are not registered with the U.S. Securities and Exchange Commission.[9] Second, a person relying on the rule must not disclaim the applicability of Canadian law or jurisdiction [10] in any proceeding involving eligible securities.[11]

We have eliminated a number of restrictions included in proposed rule 237 that on further reflection we believe are unnecessary. First, the proposed rule would have specified the activities in which persons relying on the rule would be permitted to engage with respect to participants, such as paying dividends on investments and sending updated offering materials. One commenter pointed out the difficulty in identifying all permitted activities and expressed concern that the rule could prohibit activities that are consistent with the purpose of the rule. We share this concern and have revised the rule to exclude any description of permitted activities.

Second, proposed rule 237 would have permitted a person relying on the rule to solicit a Canadian/U.S. Participant only if the person was an authorized agent of the participant before the solicitation. That condition was designed to prevent the exemption from being used as an avenue for a distribution of securities in the United States beyond the rule's limited purposes. In the order we are issuing today, we are requiring that, as a condition for exemptive relief from the broker-dealer registration requirements of the Exchange Act, the broker-dealer must have had a bona fide, pre-existing relationship with the participant before he or she entered the United States.[12] We believe this condition of the exemptive order is sufficient and therefore have not included the condition in the rule.

Finally, proposed rule 237 would have prohibited persons relying on the rule from engaging in activities that would condition the U.S. market for the securities (such as advertising the securities in the United States) or that would facilitate secondary trading in the securities. We believe this provision also is unnecessary. As one commenter noted, such marketing activities would almost certainly result in a ''public offering'' to U.S. persons other than Canadian/U.S. Participants, and thus would not be exempted under the rule from the registration requirements of the Securities Act.

B. Rule 7d–2 Under the Investment Company Act

Rule 7d–2 under the Investment Company Act provides that a foreign fund's offer of securities to Canadian/U.S. Participants, and a sale to their accounts, are not ''public offerings'' that would require the fund to register as an investment company under that Act.[13] The scope of this rule, and the conditions that must be met by a foreign fund relying on the rule, are substantially the same as the scope and conditions of rule 237 under the Securities Act.[14]

C. Amendments to Rule 12g3–2 Under the Exchange Act

The Commission is adopting as proposed amendments to rule 12g3–2, which exempts securities of a foreign private issuer from the registration requirements of the Securities Exchange Act if the issuer has fewer than 300 shareholders resident in the United States. The amendments provide that Canadian/U.S. Participants who hold shares of a foreign private issuer only through their Canadian retirement accounts do not count towards the 300 shareholders in the United States.[15]

II. Effective Date

The effective date will be June 23, 2000. This effective date is less than 30 days after publication so that Canadian/U.S. Participants, issuers, and others may benefit sooner from the relief provided by the rule changes.[16]

III. Cost Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules.

who contribute to a Canadian retirement account but are not beneficiaries, and those who are beneficiaries but have yet to reach the age when they may receive income and assets from the plan.

[7] *See* rule 237(a)(2). The proposed rule used the term ''self-directed,'' which we have not included in the final rule. Commenters expressed concern that the term might not be understood in Canada to include certain plans in which the participant selects or controls the investments.

[8] A ''foreign issuer'' includes foreign governments and political subdivisions, foreign nationals, and foreign private issuers as defined under Securities Act rule 405 [17 CFR 230.405].

[9] A ''prominent'' statement under the rule would be one that is designed to attract the reader's attention. *See, e.g.,* Securities Act rule 421 [17 CFR 230.421] (guidelines on presenting information in a prospectus in a clear, concise, and understandable manner); U.S. Securities and Exchange Commission, Office of Investor Education and Assistance, A Plain English Handbook: How to Create Clear SEC Disclosure Documents 43–54 (1998) (providing suggestions for emphasizing information, such as extra white space, bold type, shading, boxes, and sidebars).

[10] The rule defines Canadian law as the federal, provincial, or territorial laws and regulations of Canada, as well as the rules and regulations of any Canadian self-regulatory authority. See rule 237(a)(1). Unlike the proposed rule, the rule as adopted does not prevent a person relying on the rule from asserting that the law or jurisdiction of a particular Canadian province or territory should apply in a legal action rather than the law or jurisdiction of another Canadian province or territory.

[11] *See* rule 237(b)(2). We are not adopting the proposed condition that a person relying on the rule not disclaim the applicability of U.S. law or the jurisdiction of U.S. courts, in any proceeding involving eligible securities. Rule 237 is premised on the availability of investor protections afforded by Canadian law for Canadian retirement account investments. Because the rule is premised on the availability of Canadian remedies, we believe, on further reflection, that conditioning the rule on not disclaiming U.S. remedies is unnecessary.

[12] *See* In the Matter of the Investment Dealers Association of Canada; Order Granting Exemption, Release No. 34–42906 (June 7, 2000). Under the order, a broker-dealer also may not solicit individuals in the United States for new Canadian retirement accounts.

[13] *See* rule 7d–2(b).

[14] *See supra* Part I.A (discussion of the scope and conditions of proposed rule 237). The one difference is that rule 7d–2 requires written offering materials for eligible securities to disclose prominently not only that the securities are not registered with the Commission, but also that the foreign fund that issued those securities is not registered with the Commission. Rule 7d–2(b)(1).

[15] *See* rule 12g3–2(a)(2).

[16] *See* 5 U.S.C. 553(d)(1) (permitting exemptive rules to become effective less than 30 days after publication).

The rules provide substantial benefits to Canadian/U.S. Participants. Because most securities that are held in Canadian retirement accounts, and the Canadian funds that issue many of those securities, are not registered under the U.S. securities laws, those securities generally cannot be sold by issuers to persons in the United States without violating the registration requirements of the Securities Act and, in the case of securities of an unregistered fund, the Investment Company Act.[17] As a consequence, Canadian/U.S. Participants have not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.[18] Rules 237 and 7d–2 permit offers of a foreign issuer's securities to a Canadian/U.S. Participant and sales to his or her account, under certain conditions consistent with the protection of investors. The rules thus will benefit these investors by making it possible for them to manage their Canadian retirement account investments.

Rules 237 and 7d–2 also will benefit foreign issuers (including foreign funds) and persons that sell securities of foreign issuers to Canadian retirement accounts in two ways. First, absent the rules, these persons likely could not offer foreign securities to Canadian/U.S. Participants or sell foreign securities to their accounts. Second, absent the rules, they could be exposed to substantial liability if they sold securities of foreign issuers to participants accidentally.

Foreign issuers and other persons may incur costs when relying on the rules to offer or sell securities. The rules require that any written offering materials delivered to a Canadian/U.S. Participant in reliance on the rules include a prominent statement that the securities are not registered with the Commission and, in the case of securities issued by a foreign fund, that the fund also is not registered with the Commission. To meet the requirements, the foreign issuer, underwriter, or broker-dealer may redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. The associated costs are likely to be minimal and are justified by the benefits of the relief provided by the new rules, which are, of course, not mandatory.

Rules 237 and 7d–2 also may result in some U.S. issuers, including some U.S. funds, incurring costs in the form of lost new business from Canadian/U.S. Participants who, absent the proposals, might cash out their Canadian retirement accounts and invest those assets in securities that are registered in the United States. Based on comments that the Commission has received from Canadian/U.S. Participants, however, it appears that many currently do not choose this investment strategy because of the adverse tax consequences that likely would result. It therefore appears that the rules will not significantly affect the number of participants that may cash out their Canadian retirement accounts in order to invest their retirement assets in U.S.-registered securities. The rules thus should not result in significant costs for U.S. issuers, including U.S. funds, in the form of lost new business. Because the rules primarily will affect foreign issuers and other foreign persons, it appears that the rules also will not cause any other costs or benefits for U.S. issuers.

The amendments to rule 12g3–2(a) provide that a foreign issuer need not count the Canadian/U.S. Participants who hold its securities only through their Canadian retirement accounts for purposes of determining whether the issuer has fewer than 300 shareholders resident in the United States and thus qualifies for the exemption from Exchange Act registration afforded by the rule. These amendments will benefit any foreign issuer whose securities might not qualify for the rule 12g3–2(a) exemption from Exchange Act registration if it were required to count participants who hold its securities in Canadian retirement accounts for purposes of determining whether it has fewer than 300 U.S. shareholders. The amendments also will benefit Canadian/U.S. Participants, because without the amendments foreign issuers and broker-dealers might be reluctant to sell foreign securities to participants' Canadian retirement accounts out of concern that those sales might make the foreign securities subject to registration under section 12(g). There appear to be no significant costs to foreign issuers, domestic issuers, or investors associated with these amendments.

IV. Effects On Efficiency, Competition and Capital Formation

Section 23(a)[19] of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. In addition, section 2(b) of the Securities Act, section 2(c) of the Investment Company Act, and section 3(f) of the Exchange Act provide that when the Commission is engaged in rulemaking and is required to consider whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[20]

The Commission does not believe rule 237, rule 7d–2, and the amendment to rule 12g3–2 will impose any burden on competition. Based on the reasons stated in the cost-benefit analysis above, the Commission believes that the rules will promote efficiency, competition, and capital formation. Two commenters stated that the rules would promote efficiency by removing the regulatory barrier that hinders the ability of participants to manage their Canadian retirement accounts. One of these commenters also stated that the rules would promote competition among the issuers of eligible securities because participants represent a significant market segment in terms of dollar value of assets held in their Canadian retirement accounts.

As discussed above, we anticipate that the rules will not result in any major increase in costs to funds or fund investors.

V. Paperwork Reduction Act

Certain provisions of the rules constitute a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. The Commission solicited, but did not receive, comments on the collection of information requirements in the Proposing Release.[21] The Commission submitted the proposed rules to the Office of Management and Budget (''OMB'') pursuant to 44 U.S. 3507(d) and received approval of the rules' collection of information requirements (OMB control number 3235–0527). An agency may not conduct or sponsor, and

[17] *See* Proposing Release, supra note 1, at text accompanying nn. 9–10.

[18] The U.S. securities laws do not directly prohibit participants from managing their accounts, but offers and sales to participants and their accounts necessitate registration in the United States.

[19] 15 U.S.C. 78w(a).

[20] 15 U.S.C. 77b(b), 80a–2(c), and 78c(f).

[21] As stated in the Proposing Release, the Commission estimates that the annual reporting and recordkeeping burden for the rule 237 disclosure requirement will be approximately 17.5 hours. *See* Proposing Release, *supra* note 1, at Part IV.B. The Commission estimates that the annual reporting and recordkeeping burden for the rule 7d–2 disclosure requirement will be approximately 32.5 hours. *See id.* at Part IV.A.

a person is not required to respond to, a collection of information unless it displays a currently valid control number.

VI. Summary Of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 regarding rules 237 and 7d–2, and the proposed amendments to rule 12g3–2. A summary of the Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. We received no comments on the IRFA.

A. Need for the Rules and Rule Amendments

As discussed more fully in the FRFA, the rules and rule amendments are intended to give participants the ability to manage the assets in their tax-deferred retirement savings accounts. To permit this, the Commission is adopting two new rules that provide relief from the U.S. registration requirements, under certain conditions, for offers of foreign securities to Canadian/U.S. Participants and sales to their accounts. Rule 237 under the Securities Act permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act. Rule 7d–2 under the Investment Company Act permits foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act.

The FRFA notes that to ensure that the securities registration requirements of the Exchange Act do not deter foreign issuers from relying on rules 237 and 7d–2 to sell their securities to Canadian retirement accounts of Canadian/U.S. Participants, the Commission also is amending rule 12g3–2 under the Exchange Act. Section 12(g)(1) of the Exchange Act [15 U.S.C. 78l(g)(1)] provides that an issuer whose securities are traded by any means of interstate commerce must register its equity securities with the Commission under the Exchange Act if it has more than 500 shareholders and total assets over $1 million.[22] The Commission is authorized to exempt securities of foreign issuers from this registration requirement, and has adopted rule 12g3–2 to exempt (i) securities of a foreign private issuer if it has fewer than 300 shareholders resident in the United States (rule 12g3–2(a)), and (ii) securities of a foreign private issuer with 300 or more shareholders resident in the United States if the issuer furnishes certain information to the Commission that it provides to shareholders in its home country, and meets certain other requirements (rule 12g3–2(b)).

B. Small Entities Subject to the Rules and Rule Amendments

As discussed more fully in the FRFA, the rules will affect foreign issuers and other persons that offer foreign securities to Canadian/U.S. Participants and sell those securities to Canadian retirement accounts. Foreign businesses, however, are not small entities for purposes of the Regulatory Flexibility Act.[23] Therefore, these rules are unlikely to have a significant economic impact on a substantial number of small entities.

The FRFA notes that it is possible that, as a result of the rules, some domestic issuers may incur costs in the form of lost new business from Canadian/U.S. Participants who, absent the rules, might choose to cash out their Canadian retirement accounts and invest those assets in securities registered under the U.S. securities laws. However, it appears that many Canadian/U.S. Participants currently do not choose this investment strategy. Moreover, even if absent the rules some participants would cash out their Canadian retirement accounts and invest those assets in domestic issuers, including domestic funds, we have no basis for predicting whether they would invest in domestic issuers that are small entities.[24] Therefore, it appears that these rules are unlikely to have a significant economic impact on a substantial number of domestic issuers that are small entities.

As discussed more fully in the FRFA, because foreign businesses are not small entities for purposes of the Regulatory Flexibility Act,[25] it appears that the amendments to rule 12g3–2 will not have a significant economic impact on a substantial number of small entities.

C. Reporting, Recordkeeping, and Other Compliance Requirements

The FRFA notes that rule 237 and rule 7d–2 would require written offering materials relating to securities that are offered and sold in reliance on the rules to disclose prominently that those securities are not registered with the Commission and that the securities are being offered or sold in the United States under an exemption from registration. Rule 7d–2 would require that written offering materials also disclose that the foreign fund that issued the securities is not registered with the Commission. Rule 237 and rule 7d–2 are available only for offers and sales of securities of foreign issuers. This compliance requirement thus would have no impact on small entities, because foreign businesses are not small entities for purposes of the Regulatory Flexibility Act.[26] Rules 237 and 7d–2, and the amendments to rule 12g3–2, do not involve any other reporting, recordkeeping, or compliance requirements.

D. Alternatives to Minimize Effect on Small Entities

As discussed more fully in the FRFA, the Commission considered various alternatives that might minimize any significant economic impact of the rules on small entities. These include (i) establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements for small entities; (iii) using performance rather than design standards; or (iv) exempting small entities from coverage of all or part of the rules. The FRFA concludes that alternative requirements or simplification or consolidation of the requirements is unnecessary because the amendments are designed to reduce the compliance burdens for all funds, including small entities. In addition, an exemption from any of the requirements for small entities would increase their regulatory burden rather than decrease it.

A copy of the FRFA may be obtained by contacting Curtis A. Young, Division of Investment Management, Securities and Exchange Commission, 450 Fifth

[22] Rule 12g–1 under the Exchange Act [17 CFR 240.12g–1] exempts an issuer from this section 12(g)(1) registration requirement if its total assets at fiscal year end do not exceed $10 million and, with respect to a foreign private issuer, the securities were not quoted in an automated inter-dealer quotation system.

[23] *See* 13 CFR 121.105 (defining ''business concern'' for purposes of the Small Business Administration's definition of ''small business'').

[24] For purposes of the rules, a domestic issuer (other than an investment company) that has total assets of $5 million or less and that is engaged or proposes to engage in small business financing is considered a small entity. 17 CFR 230.157. A domestic investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less is considered a small entity. 17 CFR 270.0–10.

[25] *See supra* note 23 and accompanying text.

[26] *See id.*

Street, NW, Washington, DC 20549–0506.

VII. Statutory Authority

The Commission is adopting rule 237 under the authority in sections 19(a) and 28 of the Securities Act [15 U.S.C. 77s(a); 77z–3], rule 7d–2 under the authority in section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and the amendments to rule 12g3–2 under the authority in section 19(a) of the Securities Act and section 12(g)(3) of the Exchange Act [15 U.S.C. 78l(g)(3)].

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.237 is added to read as follows:

§ 230.237 Exemption for offers and sales to certain Canadian tax-deferred retirement savings accounts.

(a) *Definitions.* As used in this section:

(1) *Canadian law* means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.

(2) *Canadian Retirement Account* means a trust or other arrangement, including, but not limited to, a ''Registered Retirement Savings Plan'' or ''Registered Retirement Income Fund'' administered under Canadian law, that is managed by the Participant and:

(i) Operated to provide retirement benefits to a Participant; and

(ii) Established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law.

(3) *Eligible Security* means a security issued by a Qualified Company that:

(i) Is offered to a Participant, or sold to his or her Canadian Retirement Account, in reliance on this section; and

(ii) May also be purchased by Canadians other than Participants.

(4) *Foreign Government* means the government of any foreign country or of any political subdivision of a foreign country.

(5) *Foreign Issuer* means any issuer that is a Foreign Government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an issuer meeting the following conditions:

(i) More than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(iii) For purposes of this definition, the term *resident,* as applied to security holders, means any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(6) *Participant* means a natural person who is a resident of the United States, or is temporarily present in the United States, and who contributes to, or is or will be entitled to receive the income and assets from, a Canadian Retirement Account.

(7) *Qualified Company* means a Foreign Issuer whose securities are qualified for investment on a tax-deferred basis by a Canadian Retirement Account under Canadian law.

(8) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Exemption.* The offer to a Participant, or the sale to his or her Canadian Retirement Account, of Eligible Securities by any person is exempt from Section 5 of the Act (15 U.S.C. 77e) if the person:

(1) Includes in any written offering materials delivered to a Participant, or to his or her Canadian Retirement Account, a prominent statement that the Eligible Security is not registered with the U.S. Securities and Exchange Commission and the Eligible Security is being offered or sold in the United States under an exemption from registration.

(2) Has not asserted that Canadian law, or the jurisdiction of the courts of Canada, does not apply in a proceeding involving an Eligible Security.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a—29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.12g3–2 is amended by revising paragraph (a) to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

(a) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) (15 U.S.C. 78*l*(g)) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph:

(1) Securities held of record by persons resident in the United States shall be determined as provided in § 240.12g5–1 except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(2) Persons in the United States who hold the security only through a Canadian Retirement Account (as that term is defined in rule 237(a)(2) under the Securities Act of 1933 (§ 230.237(a)(2) of this chapter)), shall not be counted as holders resident in the United States.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The general authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

6. Section 270.7d–2 is added to read as follows:

§ 270.7d–2 Definition of ''public offering'' as used in section 7(d) of the Act with respect to certain Canadian tax-deferred retirement savings accounts.

(a) *Definitions.* As used in this section:

(1) *Canadian law* means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.

(2) *Canadian Retirement Account* means a trust or other arrangement, including, but not limited to, a ''Registered Retirement Savings Plan'' or ''Registered Retirement Income Fund'' administered under Canadian law, that is managed by the Participant and:

(i) Operated to provide retirement benefits to a Participant; and

(ii) Established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law.

(3) *Eligible Security* means a security issued by a Qualified Company that:

(i) Is offered to a Participant, or sold to his or her Canadian Retirement Account, in reliance on this section; and

(ii) May also be purchased by Canadians other than Participants.

(4) *Foreign Government* means the government of any foreign country or of any political subdivision of a foreign country.

(5) *Foreign Issuer* means any issuer that is a Foreign Government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an issuer meeting the following conditions:

(i) More than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(iii) For purposes of this definition, the term *resident,* as applied to security holders, means any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(6) *Participant* means a natural person who is a resident of the United States, or is temporarily present in the United States, and who contributes to, or is or will be entitled to receive the income and assets from, a Canadian Retirement Account.

(7) *Qualified Company* means a Foreign Issuer whose securities are qualified for investment on a tax-deferred basis by a Canadian Retirement Account under Canadian law.

(8) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Public Offering.* For purposes of section 7(d) of the Act (15 U.S.C. 80a–7(d)), the term ''public offering'' does not include the offer to a Participant, or the sale to his or her Canadian Retirement Account, of Eligible Securities issued by a Qualified Company, if the Qualified Company:

(1) Includes in any written offering materials delivered to a Participant, or to his or her Canadian Retirement Account, a prominent statement that the Eligible Security, and the Qualified Company that issued the Eligible Security, are not registered with the U.S. Securities and Exchange Commission, and that the Eligible Security and the Qualified Company are relying on exemptions from registration.

(2) Has not asserted that Canadian law, or the jurisdiction of the courts of Canada, does not apply in a proceeding involving an Eligible Security.

Dated: June 7, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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