

shares to be so offered; (3) the aggregate market value of such shares as of the latest practicable date; and (4) a brief description of the transaction in connection with which the shares are to be offered.

(Secs. 3, 4, and 19, 48 Stat. 75, 77, 85, as amended; 15 U.S.C. 77c, 77d, 77s; secs. 3(b), 4(l), 19(a), 48 Stat. 75, 77, 85; secs. 209, 48 Stat. 908; 59 Stat. 167; sec. 12, 78 Stat. 580; 84 Stat. 1480; sec. 308(a)(2), 90 Stat. 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; sec. 301, 94 Stat. 2291, 2294; secs. 12(a), 12(h), 12(i), 16(a), 23(a), 48 Stat. 892, 896, 901; sec. 203a, 49 Stat. 704; sec. 8, 49 Stat. 1379, secs. 3, 8, 78 Stat. 565-568, 579; sec. 1, 82 Stat. 454; sec. 105(b), 88 Stat. 1503; sec. 18, 89 Stat. 155; 15 U.S.C. 77c(b), 77d(l), 77s(a), 78l(a), 78l(h), 78l(i), 78p(a), 78w(a))

[27 FR 3289, Apr. 6, 1962, as amended at 37 FR 22978, Oct. 27, 1972; 47 FR 29652, July 8, 1982; 61 FR 49959, Sept. 24, 1996]

§ 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 na-

tional 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

§ 230.238

17 CFR Ch. II (4-1-10 Edition)

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.

[65 FR 37676, June 15, 2000]

§ 230.238 Exemption for standardized options.

(a) *Exemption.* Except as expressly provided in paragraphs (b) and (c) of this section, the Act does not apply to any standardized option, as that term is defined by section 240.9b-1(a)(4) of this chapter, that is:

(1) Issued by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); and

(2) Traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 780-3(a)).

(b) *Limitation.* The exemption provided in paragraph (a) of this section does not apply to the provisions of section 17 of the Act (15 U.S.C. 77q).

(c) *Offers and sales.* Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities as defined in section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

[68 FR 192, Jan. 2, 2003]

§ 230.239T Temporary exemption for eligible credit default swaps.

(a) Except as expressly provided in paragraph (b) and (c) of this section, the Act does not apply to any eligible credit default swap that is:

(1) Issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) or exempt from registration under Section 17A of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission; and

(2) Offered and sold only to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act).

(b) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

(c) *Offers and sales.* Any offer or sale of an eligible credit default swap pursuant to this section by or on behalf of the issuer of an identified security that is to be delivered if there is a credit-related event or whose value is used to determine the amount of the settlement obligation, an affiliate of such issuer, or an underwriter, will constitute a “contract for sale of,” “sale of,” “offer for sale,” or “offer to sell” such identified security under Section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

(d) *Definition of eligible credit default swap.* For purposes of this section, an eligible credit default swap is a bilateral executory derivative contract not subject to individual negotiation:

(1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving identified obligation(s) or identified entity(ies) within a certain time; and

(2) The agreement for which includes the:

(i) Specification of the identified obligation or obligor; or, in the case of an identified group or index thereof, all of the identified obligations or obligors comprising any such group or index;

(ii) Term of the agreement;

(iii) Notional amount upon which payment obligations are calculated;

(iv) Credit-related events that trigger a settlement obligation; and

(v) Obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible credit default swap.

(e) This temporary rule will expire on November 30, 2010.

EFFECTIVE DATE NOTE: At 74 FR 3974, Jan. 22, 2009, § 230.239T was added, effective Jan.