

§ 270.7d-1

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defined in paragraph (c)(8) of this section;

(B) To the extent that the increases in, or additions of, insurance benefits are funded out of cash value, such cash value shall be proportionately allocated between the base test contract and incremental test contract according to the ratio of their respective guideline annual payments, as described in (d)(2)(ii)(A); and

(C) It is assumed that no redemptions are made under the actual and test contracts.

(D) An incremental test contract may deduct, in any manner permitted by this Rule, not more than 50 per centum of the sales load which would otherwise be permitted under the base test contract, and not be subject to the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v) (A) and (B) and (b)(13)(viii) of this Rule. *Provided, however,* That the increased or added benefit will be subject to the surrender, conversion, and withdrawal provisions referenced above if more than such 50 per centum of sales load is assessed.

(iii) For purposes of this paragraph (d)(2):

(A) *Actual contract* shall mean the flexible contract issued to the contractholder, and adjusted for the increase in or addition of insurance benefits, as of the date of the increase or addition;

(B) *Base test contract* shall mean the actual contract had the increase or addition not occurred;

(C) *Incremental test contract* shall mean a flexible contract that, (1) is issued on the date of the increase or addition, and (2) provides insurance benefits identical to the incremental change in insurance benefits under the actual contract upon such increase or addition; and

(D) Any change in insurance benefits which would occur automatically under a contract, with or without the opportunity for contractholder disapproval, or any change in death benefit operation shall not be considered an "increase in or addition of insurance benefits requested by a contract-

holder" for purposes of imposing additional sales load.

[52 FR 11208, Apr. 8, 1987, as amended at 59 FR 43467, Aug. 24, 1994; 67 FR 43536, June 28, 2002]

§ 270.7d-1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

(a) A management investment company organized under the laws of Canada or any province thereof may obtain an order pursuant to section 7(d) permitting its registration under the act and the public offering of its securities, if otherwise appropriate, upon the filing of an application complying with paragraph (b) of this section. All such applications will be considered by the Commission pursuant to the procedure set forth in § 270.0-5 and other applicable rules. Conditions and arrangements proposed by investment companies organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case.

(b) An application filed pursuant to this section shall contain, inter alia, the following undertakings and agreements of the applicant:

(1) Applicant will cause each present and future officer, director, investment adviser, principal underwriter and custodian of the applicant to enter into an agreement, to be filed by applicant with the Commission upon the filing of its registration statement or upon the assumption of such office by such person which will provide, among other things, that each such person agrees (i) to comply with the applicant's Letters Patent (Charter) and By Laws, the act and the rules thereunder, and the undertakings and agreements contained in said application insofar as applicable to such person; (ii) to do nothing inconsistent with the applicant's undertakings and agreements required by this section; (iii) that the undertakings enumerated as paragraphs (b)(1)(i) and (ii) of this section constitute representations and inducements to the Commission to issue its order in the premises and continue the same in effect, as the case may be; (iv) that each such

agreement constitutes a contract between such person and the applicant and its shareholders with the intent that applicant's shareholders shall be beneficiaries of and shall have the status of parties to such agreement so as to enable them to maintain actions at law or in equity within the United States and Canada for any violation thereof. In addition the agreement of each officer and director will contain provisions similar to those contained in paragraph (b)(6) of this section.

(2) That every agreement and undertaking of the applicant, its officers, directors, investment adviser, principal underwriter and custodian required by this section (i) constitute inducements to the Commission for the issuance and continuance in effect of, and conditions to, the Commission's order to be entered under this section; (ii) constitute a contract among applicant and applicant's shareholders with the same intent as set forth in paragraph (b)(1)(iv) of this section; and (iii) failure by the applicant or any of the above enumerated persons to comply with any such agreement and undertaking, unless permitted by the Commission, shall constitute a violation of the order entered under this section.

(3) That the Commission, in its discretion, may revoke its order permitting registration of the applicant and the public offering of its securities if it shall find after notice and opportunity for hearing that there shall have been a violation of such order or the act and may determine whether distribution of applicant's assets is necessary or appropriate in the interests of investors and may so direct.

(4) That applicant will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds thereof, if the Commission or a court of competent jurisdiction, shall have so directed by a final order.

(5) That any shareholder of the applicant or the Commission on its own motion or on request of shareholders shall have the right to initiate a proceeding (i) before the Commission for the revocation of the order permitting registration of the applicant or (ii) before a court of competent jurisdiction for the liquidation of applicant and a dis-

tribution of its assets to its shareholders and creditors. Such court may enter such order in the event that it shall find, after notice and opportunity for hearing that applicant, its officers, directors, investment adviser, principal underwriter or custodian shall have violated any provision of the act or the Commission's order of registration of the applicant.

A court of competent jurisdiction for the purpose of paragraphs (b)(4) and (5) of this paragraph means the District Court of the United States of the district in which the assets of the applicant are maintained.

(6) That any shareholder of the applicant shall have the right to bring suit at law or in equity, in any court of the United States or Canada having jurisdiction over applicant, its assets or any of its officers or directors to enforce compliance by applicant, its officers and directors with any provision of applicant's Charter or By Laws, the act and the rules thereunder, or undertakings and agreements required by this section, insofar as applicable to such persons. That such court may appoint a trustee or receiver of the applicant with all powers necessary to implement the purposes of such suit, including the administration of the estate, the collection of corporate property including choses-in-action, and distribution of applicant's assets to its creditors and shareholders. That applicant and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of the applicant to bring such suit, reserving, however, their right to maintain that they have complied with the aforesaid provisions, undertakings and agreements, and otherwise to dispute such suit on its merits. Applicant, its officers and directors also agree that any final judgment or decree of any United States court as aforesaid, may be granted full faith and credit by a court of competent jurisdiction of Canada and consent that such Canadian court may enter judgment or decree thereon at the instance of any shareholder, receiver or trustee of the applicant.

(7) Applicant will file, and will cause each of its present or future directors,

officers, or investment advisers who is not a resident of the United States to file with the Commission irrevocable designation of the applicant's custodian as an agent in the United States to accept service of process in any suit, action or proceeding before the Commission or any appropriate court to enforce the provisions of the acts administered by the Commission, or to enforce any right or liability based upon applicant's Charter, By Laws, contracts, or the respective undertakings and agreements of any such person required by this section, or which alleges a liability on the part of any such persons arising out of their service, acts of transactions relating to the applicant.

(8) Applicant's Charter and By Laws, taken together, will contain, so long as applicant is registered under the act in substance the following:

(i) The provisions of the Act as follows: Section 2(a): *Provided*, That the term "government securities" defined in section 2(a)(16) may include securities issued or guaranteed by Canada or any instrumentality of the government of Canada; the term "value" defined in section 2(a)(41) may be defined solely for the purposes of sections 5 and 12 in accordance with the provisions of §270.2a-1 (Rule 2a-1) if the same shall be necessary or desirable to comply with Canadian regulatory or revenue laws or rules or regulations thereunder; the term "bank" defined in section 2(a)(5) shall be defined solely for the purposes of section 9 and 10, as any banking institution; section 4; section 5; section 6(c); section 9; section 10 (a), (b), (c), (e), (f) and (g): *Provided*, That the provisions of section 10(d) may be substituted for the provisions of section 10(a) and 10(b)(2) if applicable; section 11; section 12 (a), (b), (c), and (d); section 13(a); section 15 (a), (b), and (c); section 16(a); sections 17, 18, 19, 20 and 21; section 22(d); section 22(e): *Provided*, That the Toronto Stock Exchange or the Montreal Stock Exchange or both may be included in addition to the New York Stock Exchange; section 22(f); section 22(g); section 23; section 25 (a) and (b); section 30 (a), (b), (d), (e), and (f); section 31; section 32(a): *Provided*, That provision may be made for the selection and termination of employment of the accountant in compliance with

The Companies Act of Canada; section 32(b). Where a provision of the act prohibits or directs action by an investment company, or its directors, officers or employees, the Charter or By Laws shall state that the applicant of its directors, officers or employees shall or shall not act, as the case may be, in conformity with the intent of the statute; where the provision applies to others, such as principal underwriters, investment advisers, controlled companies and affiliated persons, the Charter or By Laws shall also state that the applicant will not permit the prohibited conduct or will obtain the required action. Any of the provisions of sections 11, 12, 15, 18, 22, 23, 30, and 31 may be omitted if not applicable to a company of applicant's classification or subclassification as defined in section 4 or 5 of the act or if not applicable because the subject matter of such provisions is prohibited by the Charter or By Laws. Other provisions of the act not specified above may be incorporated in the applicant's Charter or By Laws at its option.

(ii) Any question of interpretation of any term or provision of the Charter or By Laws having a counterpart in or otherwise derived from a term or provision of the act shall be resolved by reference to interpretations, if any, of the corresponding term or provision of the act by the courts of the United States of America or, in the absence of any controlling decision of any such court, by rules, regulations, orders or interpretations of the Commission.

(iii) Applicant will maintain the original or duplicate copies of its books and records at the office of its custodian or other office located within the United States.

(iv) At least a majority of the directors and of the officers of the applicant will be United States citizens of whom a majority will be resident in the United States.

(v) Except as provided in §270.17f-5 and §270.17f-7, applicant will appoint, by contract, a bank, as defined in section 2(a)(5) of the Act (15 U.S.C. 80a-2(a)(5)) and having the qualification described in section 26(a)(1) of the Act (15 U.S.C. 80a-26(a)(1)), to act as trustee of, and maintain in its sole custody in the

United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. The contract will provide, *inter alia*, that the custodian will:

(A) Consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities exchange, through the delivery of securities and receipt of cash, or *vice versa* as the case may be, within the United States, and (B) redeem in the United States such of applicant's shares as shall be surrendered therefor, and (C) distribute applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in paragraphs (b) (3) and (5) of this section.

(vi) Applicant's principal underwriter for the sale of its shares will be a citizen and resident of the United States or a corporation organized under the laws of a state of the United States, and having its principal place of business therein, and if redeemable shares are offered, also a member in good standing of a securities association registered under section 15A of the Securities Exchange Act of 1934.

(vii) Applicant will appoint an accountant, qualified to act as an independent public accountant for the applicant under the act and the rules thereunder, who maintains a permanent office and place of business in the United States.

(viii) Any contract entered into between the applicant and its investment adviser and principal underwriter will contain provisions in compliance with the requirements of sections 15, 17(i) and 31 and the rules thereunder, and require that the investment adviser maintain in the United States its books and records or duplicate copies thereof relating to applicant.

(ix) Applicant's Charter and By Laws will not be changed in any manner inconsistent with this paragraph or the Act and the rules thereunder unless authorized by the Commission.

(9) Contracts of the applicant, other than those executed on an established securities exchange which do not in-

volve affiliated persons, will provide that:

(i) Such contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, if the subject matter of such contracts is within the purview of such acts; and

(ii) In effecting the purchase or sale of assets the parties thereto will utilize the United States mails or means of interstate commerce.

(10) Applicant will furnish to the Commission with its registration statement filed under the Act a list of persons affiliated with it and with its investment adviser and principal underwriter and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the Act.

(Sec. 7, 54 Stat. 802; 15 U.S.C. 80a-7; secs. 6(c); 15 U.S.C. 80a-6(c); and 38(a); 15 U.S.C. 80a-37(a) of the Act)

[19 FR 2585, May 5, 1954, as amended at 38 FR 8593, Apr. 4, 1973; 49 FR 36084, Sept. 14, 1984; 65 FR 25637, May 3, 2000]

§ 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: