

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42906; International Series Release No. 1227]

In the Matter of the Investment Dealers Association of Canada; Order Granting Exemption

June 7, 2000.

On January 7, 1999, the Investment Dealers Association of Canada, on behalf of itself and the Toronto Stock Exchange, the Vancouver Stock Exchange, the Alberta Stock Exchange, and the Montreal Exchange (collectively, the "Canadian SROs"), requested that the U.S. Securities and Exchange Commission ("Commission") issue an exemptive order under sections 15(a)(2) and 36 of the Securities Exchange Act of 1934 ("Exchange Act") with respect to the broker-dealer registration requirements and certain related provisions of the Exchange Act. This request, which is outlined below, has been considered in connection with two new rules being adopted today by the Commission that will permit foreign securities to be offered and sold to certain Canadian tax-deferred retirement accounts without being registered under the Securities Act of 1933 ("Securities Act"), and that will permit foreign investment companies to offer and sell their securities to those accounts without registering under the Investment Company Act of 1940 ("Investment Company Act").¹ The relief we provide today responds to this request but applies to a broader group of account holders and retirement accounts in order to be consistent with these new rules.²

Specifically, the Canadian SROs request that, subject to the conditions set forth below, the Commission grant exemptive relief pursuant to section 15(a)(2) of the Exchange Act for Canadian broker-dealers that are members of the Canadian SROs. The requested relief would permit such broker-dealers to offer their services with respect to RRSP or RRIF accounts to persons formerly resident in Canada

who established RRSP or RRIF accounts and who now reside in the United States, but continue to maintain their RRSP and RRIF accounts in Canada.³

In addition, the Canadian SROs request that the Commission grant such member Canadian broker-dealers exemptive relief pursuant to section 36 of the Exchange Act, with respect only to the services relating to RRSP or RRIF accounts described above, from the reporting and other requirements specifically imposed by the Exchange Act and the rules and regulations thereunder on a broker or a dealer that is not registered with the Commission. Such exemptive relief would be conditioned on compliance by the member Canadian broker-dealer with all of the terms and conditions to the exemptive relief under section 15(a)(2) of the Exchange Act.

The Canadian SROs advance several grounds for the relief sought. First, because Canadian law requires that RRSP and RRIF accounts maintain 80% of their assets in Canadian securities and comply with various tax regulations, account holders will be disadvantaged if they cannot continue to deal with Canadian broker-dealers familiar with both Canadian securities and the requirements of Canadian tax law. Second, because Canadian law requires that these accounts be sited in Canada with a Canadian trustee and maintained by a qualified Canadian financial institution, the transfer of RRSP and RRIF accounts to a U.S. broker-dealer is highly impracticable, if not impossible, if the account holder wishes to avoid immediate taxation of such funds. Third, the requested relief will apply only to Canadian broker-dealers that are members of the Canadian SROs. Finally, the requested relief would promote the public policies of both the U.S. and Canadian governments of encouraging individuals to save for retirement.⁴

To further the protection of investors, the Canadian SROs propose five conditions to the relief sought. These conditions, among other things, help assure that the permitted activities are limited to those necessary to maintain

pre-existing relationships with respect to RRSP and RRIF accounts (with certain narrow exceptions), that U.S. account holders know that these accounts and Canadian broker-dealers are not fully regulated under U.S. securities laws, and that Canadian broker-dealers relying upon the exemption provide the Commission with information relating to their U.S. transactions upon request. Specifically, the Canadian SROs represent, on behalf of their member Canadian broker-dealers, that (1) the member broker-dealers and their respective associated persons will not advertise RRSPs or RRIFs in the United States; (2) the member broker-dealers will disclose to U.S. account holders, at least annually (and at any time a new account is opened as described below), that RRSP and RRIF accounts are not regulated under the securities laws of the United States and the member broker-dealers are not subject to the broker-dealer regulations of the United States; (3) except as provided below, the member broker-dealers and their respective associated persons will not solicit individuals residing in the United States for new RRSP or RRIF accounts; (4) except as provided below, the member broker-dealer or the associated person will have had a bona fide pre-existing relationship with the account holder before he or she entered the U.S.; and (5) the member broker-dealers will provide the Commission with the information, documents, testimony, and assistance contemplated by Rule 15a-6(a)(3)(i)(B) under the Exchange Act with respect to RRSP and RRIF account transactions subject to the exemption. Notwithstanding the foregoing clauses (3) and (4), associated persons of member broker-dealers may solicit existing clients who reside in the United States and continue to hold RRSP or RRIF accounts at each time that the associated person soliciting such account changes brokerage firms, so that the account holder may elect whether the relationship maintained by the account holder is with the brokerage firm or the associated person. In addition, a bona fide pre-existing relationship will not be required to the extent the account holder, having determined to switch broker-dealers, establishes the relationship with the member broker-dealer or the associated person in an unsolicited transaction that meets the requirements of the exemption set forth in Rule 15a-6(a)(1) under the Exchange Act.

The matter has been considered and the Commission finds, on the basis of the information provided by the

¹ See Rule 237 under the Securities Act ("Rule 237") and Rule 7d-2 under the Investment Company Act ("Rule 7d-2"); Release Nos. 33-7860, 34-42905, IC-24491, International Series Release No. 1226 (June 7, 2000).

² The Canadian SROs' request is limited to specified activities of member broker-dealers with respect to certain Canadian retirement accounts, known as Registered Retirement Savings Plans ("RRSPs") and Registered Retirement Income Funds ("RRIFs"), maintained by U.S. persons. As discussed in more detail below, the relief we provide today will apply not only to RRSP and RRIF accounts, but also to certain Canadian retirement accounts that meet the criteria set forth in Rule 237 and Rule 7d-2.

³ The Canadian SROs note that the exemption in Rule 15a-6(a)(4)(iii) under the Exchange Act is available to Canadian broker-dealers only to the extent they effect transactions with persons who are temporarily present in the U.S.

⁴ The Canadian SROs also note that the North American Securities Administrators Association ("NASAA") adopted an amendment to the Uniform Securities Act that would enable Canadian broker-dealers to trade on behalf of individual owners of RRSPs and RRIFs, including those present in the U.S., without registering as broker-dealers under state law. (NASAA Cross Border Trading Committee Bulletin, Nov. 9, 1995).

Canadian SROs, that granting the requested exemptions is appropriate and consistent with the public interest and the protection of investors. We believe it is clearly in the public interest to encourage individuals to save for retirement. In conjunction with this exemptive order, the Commission is adopting Rule 237 which 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, and Rule 7d-2 which would permit foreign investment companies to offer and sell their securities to those accounts without registering under the Investment Company Act.⁵ For purposes of clarity and consistency, this exemptive order applies to "Participants" (rather than "account holders") and "Canadian Retirement Accounts" (including, but not limited to RRSPs and RRIFs) as these terms are defined in Rules 237 and 7d-2.⁶

The Commission notes that the exemptions are narrow in scope, and are intended only to permit member Canadian broker-dealers that are not registered in the U.S. to conduct activities necessary to allow individuals, who have established Canadian Retirement Accounts and later moved to the U.S., to effectively manage the assets in those accounts.

Accordingly, *It Is Ordered*, pursuant to section 15(a)(2) of the Exchange Act, that any Canadian broker-dealer that is a member of a Canadian SRO shall be exempt from the requirements of section 15(a)(1) of the Exchange Act, to the extent it effects transactions in securities with or for, or induces or attempts to induce the purchase and sale of any security by, Participants for their Canadian Retirement Accounts. This exemption is subject to compliance by any member Canadian broker-dealer intending to rely upon it with all of the following conditions:

(1) Except as provided below, the member broker-dealer and its associated persons will not advertise Canadian

Retirement Accounts in the United States;

(2) The member broker-dealer will disclose to its Participants, at least annually (and at any time a new account is opened as described below), that Canadian Retirement Accounts are not regulated under the securities laws of the United States and the member broker-dealer is not subject to the broker-dealer regulations of the United States;

(3) Except as provided below, the member broker-dealer and its associated persons will not solicit individuals residing in the United States for new Canadian Retirement Accounts;

(4) Except as provided below, the member broker-dealer or the associated person will have had a bona fide pre-existing relationship with the Participant before he or she entered the U.S.; and

(5) The member broker-dealer will provide the Commission with the information, documents, testimony, and assistance contemplated by Rule 15a-6(a)(3)(i)(B) under the Exchange Act with respect to Canadian Retirement Account transactions subject to this exemption (as if such Rule applied to this exemption).

Notwithstanding the foregoing clauses (1) and (3), a Canadian broker-dealer may provide its Participants with the ability to effect transactions in their Canadian Retirement Accounts (and access information relating to those accounts), as well as provide all Participants with general information regarding Canadian Retirement Accounts, through the broker-dealer's Web site.⁷

Notwithstanding the foregoing clauses (3) and (4), an associated person of a

⁷ The Commission recognizes how, under the unique and limited circumstances addressed by this order, the ability of Participants to access, and effect transactions in, their Canadian Retirement Accounts over the Internet might serve as an effective tool in the overall management of these accounts. The Commission also recognizes that general Canadian Retirement Account information contained on the Web sites of Canadian broker-dealers may help all Participants to continuously assess and evaluate the effectiveness of their retirement accounts. However, a Canadian broker-dealer must continue to take reasonable measures to ensure that it does not otherwise effect, induce, or attempt to induce, securities transactions with any other U.S. resident (this includes soliciting Participants for new Canadian Retirement Accounts who are not existing clients of the broker-dealer), or in any other type of account of a U.S. resident that is a Participant, as a result of these Internet activities. These measures should be consistent with the Commission's position on foreign broker-dealer advertising and solicitation over the Internet. See Interpretation Re: Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions, or Advertise Investment Services Offshore; Securities Exchange Act Release No. 39779 (March 23, 1998) ("Internet Release").

member broker-dealer may solicit existing clients who reside in the United States and continue to hold Canadian Retirement Accounts at each time that the associated person soliciting such clients changes brokerage firms. This exception is intended to allow the Participant to elect whether the relationship maintained by the Participant is with the brokerage firm or the associated person.

Notwithstanding the foregoing clause (4), a member broker-dealer may open a Canadian Retirement Account for a Participant who has determined to switch broker-dealers in an unsolicited transaction that meets the requirements of the exemption set forth in Rule 15a-6(a)(1) under the Exchange Act. Although a transaction over a foreign broker-dealer's Web site ordinarily would be solicited for purposes of Rule 15a-6(a)(1),⁸ for purposes of this order only, a Canadian broker-dealer will be permitted to rely on the Rule 15a-6(a)(1) exemption if Participants access, and subsequently transfer their Canadian Retirement Accounts to the broker-dealer through that broker-dealer's Web site.⁹

It Is Further Ordered, pursuant to section 36 of the Exchange Act, that any such member Canadian broker-dealer shall be exempt, with respect only to the services relating to Canadian Retirement Accounts described above, from all reporting and other requirements specifically imposed by the Exchange Act and the rules and regulations thereunder, on a broker or a dealer that is not registered with the Commission.¹⁰

This exemption is subject to compliance by any member Canadian broker-dealer intending to rely upon it with all of the conditions to the exemption under section 15(a)(2) under the Exchange Act described above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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⁸ See Internet Release, fn. 56 and accompanying text.

⁹ However, any Canadian broker-dealer that has a Web site and intends to rely on Rule 15a-6(a)(1) for transactions with any other U.S. resident, or in any other type of account of a U.S. resident that is a Participant, should continue to ensure that the "unsolicited" customer's transactions are not in fact solicited, either directly or indirectly, through customers accessing its Web site. *Id.*

¹⁰ Such member Canadian broker-dealers remain subject to all other applicable provisions of the federal securities laws, including without limitation Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

⁵ See fn. 1, supra.

⁶ Rules 237(a)(2) and 7d-2(a)(2) define a "Canadian Retirement Account" as 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. Rules 237(a)(6) and 7d-2(a)(6) define a "Participant" as 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."