SUPPORTING STATEMENT
Rule 237

A. JUSTIFICATION

1. Necessity for the Information Collection

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States ("Canadian-U.S. Participants" or "participants") often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or "cashing out") those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most securities that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Securities

Act of 1933 ("Securities Act").[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 237 under the Securities Act[3] 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 237 contains a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[4] Rule 237 requires written offering materials for securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not

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1 15 U.S.C. 77. In addition, the offering and selling of securities of investment companies ("funds") that are not registered pursuant to the Investment Company Act of 1940 ("Investment Company Act") is generally prohibited by U.S. securities laws. 15 U.S.C. 80a.

2 See Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33-7860, 34-42905, IC-24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 7d-2 under the Investment Company Act, permitting foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act. 17 CFR 270.7d-2.

3 17 CFR 230.237.

4 44 U.S.C. 3501 - 3502.

registered with the Commission and are exempt from registration under the U.S. securities laws. Rule 237 does not require any documents to be filed with the Commission.

2. Purpose of the Information Collection

Rule 237 has provided relief from the U.S. registration requirements for the offer of a foreign issuer's securities to a Canadian-U.S. Participant and the sale of those securities to his or her Canadian retirement account. The collection of information requirement – that written offering materials concerning securities offered or sold in reliance on the rule disclose prominently that those securities are not registered with the Commission and are exempt from registration – is designed to ensure that Canadian-U.S. Participants are aware that those securities are not subject to the protections afforded by registration under the U.S. securities laws.

3. Role of Improved Information Technology

There are no requirements in rule 237 that any documents be filed with the Commission. There is no "collection of information" that involves the use of automated, electronic, mechanical, or other forms of information technology.

4. Efforts to Identify Duplication

No other rule duplicates the requirement that written offering materials concerning securities offered or sold in reliance on rule 237

disclose that those securities are not registered with the Commission.[5] This information likely would not be readily available to Canadian-U.S. Participants without this disclosure requirement.

5. Effect on Small Entities

Rule 237 enables Canadian-U.S. participants to manage assets in their Canadian retirement accounts by providing relief from U.S. registration requirements. The burden under the rule consists of adding certain disclosure information to written offering materials. This is a minimal and non-recurring burden that applies equally to both small and large entities. The Commission believes that it would not be feasible to adjust the rule to lessen this minor burden on small entities because the disclosure requirements ensure that participants are aware that securities covered by the rule are not subject to protections afforded under the U.S. securities laws.

6. Consequences of Less Frequent Collection

The rule requires each written offering document for securities offered or sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission. Less frequent disclosure of this

[5] Rule 7d-2 under the Investment Company Act requires that the fund provide similar, but not identical, disclosures. The differences reflect that investment companies are registered under the Investment Company Act, while securities issued by the funds to the public are registered under the Securities Act. Canadian funds can rely on both rule 7d-2 and rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts. Rule 237, however, does not require any disclosure in addition to that required by rule 7d-2. Thus, the disclosure requirements of rule 237 do not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d-2. To avoid double- counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with rule 237.

information would not fulfill the objective of ensuring that Canadian-U.S. Participants are aware that the investments that they make for their Canadian retirement accounts are not subject to the protections afforded by registration under the U.S. securities laws.

7. Inconsistencies With Guidelines in 5 CFR 1230.5(d)(2)

Not applicable.

8. Consultations Outside of the Agency

The Commission requested public comment on the collection of information requirements in rule 237 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings, and informal exchanges. These forums provide the Commission and the staff means of ascertaining and acting upon paperwork burdens confronting the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimates of Hour Burden

Rule 237 requires written offering documents for securities offered and sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and are exempt from registration under the U.S. securities laws. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can 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. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The Commission understands that there are approximately 3811 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian-U.S. Participants.[6] The staff estimates that in any given year approximately 38 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 38 issuers, on average,

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[6] This estimate is based on the following calculation: 3700 equity issuers + 111 bond issuers = 3811 total issuers. See World Federation of Exchanges, Number of Listed Issuers, available at http://www.world-exchanges.org/statistics/annual/2009 (providing numbers of equity and fixed-income issuers on Canada's Toronto Stock Exchange in 2009).

distributes 3 different written offering documents concerning those securities, for a total of 114 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 38 respondents[7] would be required to make 114 responses by adding the new disclosure statements to approximately 114 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 19 hours (114 offering documents x 10 minutes per document). The total annual cost of burden hours is estimated to be $6004 (19 hours x $316 per hour of attorney time).[8]

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian-U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. However, the staff believes that the number of issuers from other countries that rely on rule 237, and that therefore are required to comply with the offering document disclosure requirements, is negligible.

13. Estimate of Total Annual Cost Burden

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[7] This estimate of respondents only includes foreign issuers. The number of respondents would be greater if foreign underwriters or broker-dealers draft stickers or supplements to add the required disclosure to existing offering documents.

[8] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The $316 per hour figure for an attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The disclosure requirements do not entail any annual cost burden in addition to the cost of the hourly burden discussed above.

14. Estimate of Cost to the Federal Government

The disclosure requirements would not entail any cost to the federal government. Rule 237 does not require issuers to file any documents with the Commission.

15. Explanation of Changes in Burden

The burden hours for rule 237 increased from 17.5 hours to 19 hours based on an increase in the estimated number of issuers that may rely on the rule.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.