

SUPPORTING STATEMENT
Rule 7d-2

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 investment companies (“funds”) that are “qualified companies” for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of

1940 (“Investment Company 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 their Canadian retirement accounts.² Rule 7d-2 under the Investment Company Act³ permits 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.

Rule 7d-2 contains a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995.⁴ Rule 7d-2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those

¹ 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (“Securities Act”) is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

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 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

³ 17 CFR 270.7d-2.

⁴ 44 U.S.C. 3501 - 3502.

securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration. Rule 7d-2 does not require any documents to be filed with the Commission.

2. Purpose of the Information Collection

Rule 7d-2 provides relief from 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, and the foreign fund that issued them, 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 7d-2 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 the rule

disclose that those securities, and the foreign fund that issued the securities, are not registered with the Commission and are exempt from registration.⁵ This information likely would not be readily available to Canadian-U.S. Participants without this disclosure requirement.

5. Effects on Small Entities

Rules 7d-2 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 funds and 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 rules to disclose prominently that those securities,

⁵ Rule 237 under the Securities Act requires that the written offering materials concerning securities offered or sold in reliance on the rule 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.

and the foreign fund that issued the securities, are not registered with the Commission. Less frequent disclosure of this 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 the Agency

The Commission requested public comment on the collection of information requirements in rule 7d-2 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 7d-2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. 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 staff estimates that there are 2075 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.⁶ Most of these

⁶ Investment Company Institute, 2010 Investment Company Fact Book (2010) at 183, tbl. 60.

funds have already relied upon the rule and have made the one-time change to their offering documents required to rely on the rule. The staff estimates that 104 (5 percent) additional Canadian funds may newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 312 offering documents. The staff therefore estimates that 104 respondents would make 312 responses by adding the new disclosure statement to approximately 312 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d-2 disclosure requirement would be 52 hours (312 offering documents x 10 minutes per document). The total annual cost of these burden hours is estimated to be \$16,432 (52 hours x \$316 per hour of attorney time).⁷

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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.

13. Estimate of Total Annual Cost Burden

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 7d-2 does not require funds to file any documents with the Commission.

15. Explanation of Changes in Burden

The burden hours for rule 7d-2 increased from 50 hours to 52 hours based on an increase in the estimated number of funds 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. Exception to Certification Statement

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.