

**MEMO# 10841**

March 31, 1999

## **SEC PROPOSES RULES TO PERMIT CANADIANS RESIDING IN THE US TO PURCHASE CANADIAN SECURITIES FOR RETIREMENT ACCOUNTS**

1 The Commission expects to deal separately with a request it received to provide additional relief under Exchange Act rule 15a-6 to permit Canadian broker-dealers to engage in activities to maintain Canadian participants' Canadian retirement accounts without registration under the Exchange Act. [10841] March 31, 1999 TO: INTERNATIONAL COMMITTEE No. 12-99 SEC RULES COMMITTEE No. 22-99 RE: SEC PROPOSES RULES TO PERMIT CANADIANS RESIDING IN THE US TO PURCHASE CANADIAN SECURITIES FOR RETIREMENT ACCOUNTS

On March 19, 1999 the Securities and Exchange Commission proposed exemptive rules under the federal securities laws to permit Canadians who reside in the US or are temporarily present in the US to purchase Canadian securities, including Canadian mutual funds, for their Canadian retirement accounts. A copy of the proposing release is attached. The proposals respond to issues raised in a rulemaking petition filed with the Commission by the Investment Funds Institute of Canada. There are three parts to the Commission's proposal: ! Proposed rule 237 under the Securities Act of 1933 would permit foreign securities to be offered to Canadians in the US and sold to their Canadian tax-deferred retirement accounts without being registered under the 1933 Act. ! Proposed rule 7d-2 would allow Canadian investment companies to be offered and sold to Canadians in the US for purchase through their tax-deferred retirement accounts without being registered under the Investment Company Act of 1940. ! A proposed amendment to Exchange Act rule 12g3-2 would provide that participants who hold shares of a foreign private issuer only through their Canadian retirement accounts do not have to be counted in determining whether the issuer has fewer than 300 shareholders who reside in the US.<sup>1</sup> The Canadian retirement accounts covered by the Commission's proposals are self-directed tax- deferred retirement accounts that are similar to US individual retirement accounts. The proposals are intended to allow Canadians who established these accounts while in Canada, and who now reside or are temporarily present in the US, to make changes in the investments in the accounts to meet their individual retirement goals. The proposed relief would not include exemptions from the antifraud 2 Canadian tax law penalizes contributions greater than a specified percentage of an individual's income that is earned and taxed in Canada. Under applicable tax treaties, Canadian military and diplomatic personnel stationed in the US are deemed to be residents of Canada and to earn income taxable in Canada. The Commission does not believe that other Canadians residing in the US ordinarily would have income earned and taxable in

Canada. provisions of the federal securities laws or from any applicable state laws. The provisions of proposed rule 237 and proposed rule 7d-2 are substantially the same. Both would cover self-directed individual retirement accounts that are established and qualified for tax- advantaged treatment under Canadian law. The proposals would apply to offers and sales of securities that are eligible for investment by Canadian retirement accounts and available to Canadian investors generally. The relief would cover the exchange or reallocation of existing retirement account investments and sales in connection with new contributions to the account. The Commission expects, however, that Canadian tax law will not permit most Canadians in the US to make new contributions to their accounts.<sup>2</sup> The Commission requested comment on whether this view of Canadian law is correct and, if not, whether the proposed exemptions should exclude new purchases. The proposed rules would include a number of conditions designed to limit marketing activities and preserve the jurisdiction of Canadian and US law, including the following: ! A person relying on the rule would be permitted to solicit Canadian participants in the US only if the person is an authorized agent of the participant. ! Transactions under the rule would be limited to processing requests from participants, paying dividends and distributions on securities, delivering materials requested by participants, and delivering updated materials and account statements typically provided to holders of those Canadian securities. ! Persons relying on the rule could not engage in activities which would condition the US market for the securities or facilitate secondary trading in the securities in the US. ! Offering materials for the securities would have to prominently disclose that the securities are not registered with the Commission and cannot be offered or sold in the US unless registered or exempt from registration. ! Persons relying on the rule could not disclaim the applicability of Canadian or US law or jurisdiction in any proceeding involving these securities. The Commission requested comment on whether also to require that persons relying on the rule provide the Commission with information and assistance relating to offers and sales of securities under the rules or require them to designate an agent for service of process in the US. Finally the Commission requested comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments on the proposals are due to the Commission by May 28, 1999. The Institute expects to submit a comment letter and is considering, among other things, whether or not the granting by the Commission of the relief contained in proposed rule 7d-2 would be consistent with the investor protection policies embodied in section 7(d) of the 1940 Act. If there are comments that you would like the Institute to make, please contact me by phone (202-326-5826), fax (202-326-5841) or e- mail (podesta@ici.org) by April 16, 1999. Mary S. Podesta Senior Counsel Attachment