

**MEMO# 2332**

November 19, 1990

## **SEC ISSUES REVISED PROPOSAL TO FACILITATE CROSS-BORDER SECURITIES OFFERINGS CERTAIN CANADIAN ISSUERS**

November 19, 1990 TO: INTERNATIONAL FUNDS TASK FORCE NO. 27-90 RE: SEC ISSUES REVISED PROPOSAL TO FACILITATE CROSS-BORDER SECURITIES OFFERINGS CERTAIN CANADIAN ISSUERS \_\_\_\_\_ The SEC recently published for comment revised proposed rules, forms and schedules intended to form the basis for a multijurisdictional disclosure system that would facilitate cross-border securities offerings by Canadian issuers meeting certain requirements. Based on the concepts of mutual recognition and harmonization of disclosure standards, the objective of the proposed multijurisdictional disclosure system is to permit single-jurisdiction regulation of certain securities offerings and continuous reporting obligations, thus enhancing the efficiency and reducing the cost of cross-border offerings. A copy of the reproposing release (except the section containing the text of rule, form and schedule proposals and rule and form changes) is attached. The original multijurisdictional disclosure system proposal was published in July 1989. See Securities Act Release No. 6841, 54 Fed. Reg. 32226 (July 24, 1989). The original proposal excluded investment companies as defined in Section 3 of the Investment Company Act of 1940. Under the reproposal, the multijurisdictional disclosure system would be available to a Canadian issuer that meets the definition of an investment company, but is not registered or required to be registered as an investment company under the 1940 Act, based on an exemptive order or exemptive rule. This change is designed to accommodate Canadian issuers that would be exempt from registration under the 1940 Act in accordance with Rule 6c-9 as proposed to be amended. (Rule 6c-9 currently exempts foreign banks and their finance subsidiaries that offer or sell their debt securities or non-voting preferred stock in the United States from registration as investment companies under the 1940 Act. If amended as proposed, the Rule would be expanded to exempt offers and sales by foreign banks and their finance subsidiaries of their equity securities, offers and sales by foreign insurance companies and their finance subsidiaries of their equity and debt securities and offers and sales by certain foreign bank and insurance holding companies of their equity and debt securities from 1940 Act registration.) Like the original proposal, the reproposal would permit a Canadian issuer to rely on Canadian rules and regulations with respect to a cash tender or exchange offer with respect to a class of securities less than 20 percent of which is held by U.S. residents. The revised proposal further specifies that U.S. affiliates of the issuer would not be considered U.S. residents for this purpose. The release seeks additional comment as to the appropriateness of the 20 percent threshold and whether it should be raised. The release mentions that this aspect of the proposal is only one of several Commission initiatives designed to ensure that U.S. securityholders are not excluded from foreign-based tender and exchange offers. For

example, the Commission recently issued a release proposing a conceptual approach intended to encourage foreign bidders and offerors to extend multinational tender and exchange offers to U.S. securityholders on the basis of foreign disclosure, procedural and accounting requirements, where U.S. securityholders own a small percentage of the securities involved. (See Memorandum to International Funds Task Force No. 14-90, dated June 18, 1990.) The Institute filed a comment letter generally supporting the Commission's proposed conceptual approach. (See Memorandum to International Funds Task Force No. 22-90, dated September 24, 1990.) Comments on the revised multijurisdictional disclosure system proposal must be filed by December 15, 1990. Frances M. Stadler Assistant General Counsel Attachment

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