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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From:  
Securities and Exchange Commission  
Office of Investor Education and Advocacy  
Washington, DC 20549-0213

Extension: Rule 237

OMB Control No. 3235-0528, SEC File No. 270-465

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

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”).<sup>1</sup> 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.<sup>2</sup> Rule 237 under the Securities Act<sup>3</sup> 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 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

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<sup>1</sup> 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.

<sup>2</sup> *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.

<sup>3</sup> 17 CFR 230.237.

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 4101 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.<sup>4</sup> The staff estimates that in any given year approximately 41 (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 41 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 123 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 41 respondents<sup>5</sup> would be required to make 123 responses by adding the new disclosure statements to approximately 123 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 20.5 hours (123 offering documents x 10 minutes per document). The total annual cost of burden

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<sup>4</sup> This estimate is based on the following calculation: 3970 equity issuers + 131 bond issuers = 4101 total issuers. See World Federation of Exchanges, Number of Listed Issuers, *available at* <http://www.world-exchanges.org/statistics/annual-query-tool> (providing number of equity issuers listed on Canada's Toronto Stock Exchange in 2012). After 2009, the World Federation of Exchanges ceased reporting the number of fixed-income issuers on Canada's Toronto Stock Exchange. The number of fixed-income issuers in 2012 is based on the ratio of the number of fixed-income issuers listed on Canada's Toronto Stock Exchange in 2009 (111) relative to the number of bonds listed on that exchange in that year (178) multiplied against the number of bonds listed on that exchange in 2012 (210):  $(111/178) \times 210 = 131$ .

<sup>5</sup> 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

hours is estimated to be \$7769.50 (20.5 hours x \$379 per hour of attorney time).<sup>6</sup>

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.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

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existing offering documents.

<sup>6</sup> 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 \$379 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012*, 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.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

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