



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-464, OMB Control No. 3235-0527]

Submission for OMB Review; Comment Request; Extension: Rule 7d-2

Upon Written Request, Copies Available From

Securities and Exchange Commission

Office of FOIA Services

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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”) has submitted to the Office of Management and Budget a request for extension and approval of the collection of information discussed below.

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

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

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.

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 4,312 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.⁵ The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 216 (5 percent) additional Canadian funds would 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 648 offering documents. The staff therefore estimates that 216 respondents would make 648 responses by adding the new disclosure statement to 648 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d-2 disclosure requirement would be 108 hours (648 offering documents x 10 minutes per document). The total annual cost of these burden hours is estimated to be \$49,140 (108 hours x \$455 per hour of attorney time).⁶

⁵ Investment Company Institute, 2021 Investment Company Fact Book (2021) at 276, tbl. 66, *available at* https://www.ici.org/system/files/2021-05/2021_factbook.pdf. Since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the number of estimated Canadian funds has increased from the last renewal.

⁶ The Commission's estimate concerning the wage rate for attorney time is based on salary information for

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.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. Responses will not be kept confidential. 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.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: September 26, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

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the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$455 per hour figure for an Attorney is based on SIFMA's Management & Professional Earnings in the Securities Industry 2013, updated for 2022, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. As discussed in footnote 5, since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the hourly burden has increased from the last renewal.