INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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Amendments To SEC Regulation S

The Investment Dealers Association was successful in convincing the US Securities and Exchange Commission (SEC) that new amendments to Regulation S, the safe harbour from US registration for the offshore offerings of US and foreign issuers, should not apply to Canadian investment dealers. *Large and small Canadian companies* whose principal market for traded securities is the United States *therefore are unaffected by the new SEC proposals* and will continue to benefit from the original safe harbour under Regulation S.

Regulation S in US securities law provides a 'safe harbour' from SEC registration requirements for the offers and sales of securities by domestic and foreign issuers which are made outside the United States. The Regulation S safe harbour was adopted on the premise that the registration provisions under US law should not apply to placements of securities that are truly offshore.

The SEC action in respect of Regulation S was prompted by evidence of abuse of the Regulation as it has been used by issuers as a guise for distributing securities into US markets without the protections of registration under the Securities Act. On 20 February 1997, the SEC proposed amendments to Regulation S designed to curb abuses of the rule. The key amendments included: (i) extending the restricted period, during which no offers or sales can be made to US investors, from forty days to two years; (ii) requiring purchasers to certify they are not US investors and will only resell the securities in accordance with the Securities Act of 1933 or with Regulation S; (iii) requiring underwriters to agree not to engage in hedging transactions in these securities for two years and (iv) requiring issuers to place a legend on share certificates advising that the securities cannot be transferred other than in accordance with the Securities Act of 1933.

The proposed SEC amendments would have seriously affected the public offerings in the Canadian market of Canadian issuers whose principal market is the United States (more than 50% of shares trading on US exchanges). First, Canadian issuers would have been unable to initiate market stabilization activities in connection with domestic offerings because of restrictions on hedging transactions in these securities. Second, compliance with the certification and legending requirements would have added to administrative costs and, finally, since legended stock would trade as a separate class of securities on Canadian exchanges, share liquidity would have been damaged as the offered securities would not be fungible with those shares inter-listed and traded on US exchanges.

The IDA argued successfully that Canadian issuers were applying Regulation S appropriately - to promote relief from US securities regulations for offerings placed outside the US market and

therefore should remain free to utilize Regulation S as it existed before the SEC action.

Member firms interested in further background on this matter should contact Ian CW Russell, Senior Vice-President, Capital Markets at 416-865-3036.

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