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SEC Exemptions Permit Canadian Broker-Dealers that are Members of a Canadian SRO to deal in the Self-Directed Tax Advantaged Retirement Accounts of Canadians Resident in the United States

On June 7, 2000, the Securities and Exchange Commission (“SEC”) announced that Canadian broker-dealers are now exempt from registration requirements and certain related provisions of the Exchange Act in respect of transactions in self-directed tax advantaged retirement savings plans of Canadians resident in the United States. The SEC Release is summarized below, but can be accessed in detail on the SEC website at www.sec.gov/rules/other/34-42906.

This exemptive relief was granted in tandem with new SEC rules that permit Canadian securities, including mutual funds, to be offered and sold in the Canadian self-directed tax advantaged retirement plans of Canadians resident in the United States, without these securities being registered under the Securities Act of 1933 or the Investment Company Act of 1940. New Rule 237 under the Securities Act of 1933, new Rule 7d-2 under the Investment Company Act and amendments to Rule 12g3-2 under the Securities Exchange Act of 1934 permit the securities of foreign investment firms and other foreign issuers to be offered and sold in these retirement accounts without these securities or the investment companies registered under U.S. securities law.

The new SEC rules are effective June 23, 2000. The details of the rules are available on the SEC website at www.sec.gov/rules/final33-7860.

Overview of SEC Exemptive Relief

Canadian broker-dealers that are members of a Canadian self-regulatory organization are provided exemptive relief pursuant to Section 15(a)(2) of the Exchange Act. This relief will permit these broker-dealers to deal with the RRSP or RRIF accounts of Canadians that are resident in the United States, but maintain these retirement accounts in Canada.

Exemptive relief from reporting and other requirements in respect of the self-directed tax

advantaged retirement accounts of Canadians resident in the United States is provided pursuant to Section 36 of the Exchange Act. This relief is conditioned on compliance by the Canadian broker-dealer with specific terms and conditions for exemptive relief under Section 15(a)(2).

The exemptive order sets out five conditions to obtain relief:

- 1) Member firms and their salespersons will not advertise RRSPs or RRIFs in the U.S.
- 2) Member firms will disclose to the account holders residing in the U.S., at least annually (and at any time a new account is opened as described below) that RRSP and RRIF accounts are not regulated under the securities laws of the U.S. and that Member firms are not subject to the broker-dealer regulations of the U.S.
- 3) Except as provided below, Member firms and their salespersons will not solicit individuals residing in the U.S. for new RRSP or RRIF accounts.
- 4) Except as provided below, Member firms or their salespersons will have had a bona fide pre-existing relationship with the account holder before he or she entered the U.S.
- 5) Member firms will provide the SEC with the information, documents, testimony and assistance contemplated by Rule 15a-6(3)(i)(b) under the Exchange Act with respect to RRSP and RRIF account transactions.

Notwithstanding clauses (3) and (4) above, registered salespersons of Member firms may solicit existing clients resident in the United States who continue to hold RRSP or RRIF accounts when the salesperson soliciting the account changes brokerage firms to permit the client to elect to deal with the Member firm or the original salesperson.

Notwithstanding clause (4), a Member firm may open an account for a client without the existence of a bona fide pre-existing relationship where the client has decided to switch broker-dealers and the relationship is established in an unsolicited transaction.

The SEC also clarifies that, despite clauses (1) through (3), a Member firm's website, which enables clients to conduct transactions and provides general information regarding Canadian retirement accounts, does not violate the provisions for exemptive relief.

The relief set out above applies not only to RRSPs and RRIFs, but also to certain Canadian retirement accounts that meet the criteria set out in the new Rule 237 and Rule 7d-2 noted above.

Additional Relief under U.S. Securities Law

NASAA Amendment to the Uniform Securities Act

In 1995 the North American Securities Administrators Association (“NASAA”) approved a proposal to amend Section 201 of the Uniform Securities Act that would permit Canadian broker-dealers to deal in the self-directed tax advantaged retirement accounts of Canadians resident in the United States. The amendment consisted of a simplified registration procedure for two types of cross-border trading:

- i) Trading by Canadian broker-dealers on behalf of a person from Canada temporarily resident within a state and with whom the dealer has a bona fide pre-existing relationship prior to the client entering the United States.

The “temporary resident” definition includes Canadians on temporary work assignments in the United States and so-called “snowbirds” who vacation in the United States. Residency in this context is generally interpreted as less than 183 days in a calendar year.

- ii) Trading by a person from Canada resident within a state whose transactions are

in a self-directed tax advantaged retirement plan in Canada of which the individual is the holder or contributor. These Canadians are permitted to trade with a Canadian broker-dealer in these RRSP or RRIF accounts.

A “person from Canada” refers to a Canadian now resident in the United States, regardless of nationality. The definition includes a U.S. citizen who may have established an RRSP account while resident in Canada and then returned to the United States.

For a Canadian dealer to be permitted to trade in a particular state with clients in the above two categories, the Member firm and its salespersons executing trades in that state would be required to register under a simplified form of registration. Member firms and their salespersons would be exempt from most state regulations, except the anti-fraud provision and requirements related to the simplified registration regime. Member firms would therefore be exempt from state requirements relating to the registration of securities traded.

State Implementation and Relationship with Federal Requirements

As set out in IDA Bulletin #2680 dated January 7, 2000, 21 states have adopted the NASAA proposal permitting special limited registrations or exemptions from registration for Member firms and their salespersons when dealing with clients in the U.S. who are either temporarily resident or holders of Canadian self-directed tax advantaged retirement plans. However, the NASAA proposal relates only to state regulations. Consequently, without corresponding SEC registration exemptions for foreign securities and mutual funds traded in retirement plans and exemptions from broker-dealer requirements for Canadian brokers, the NASAA initiative permitting Canadians resident in the U.S. to deal with their RRSP accounts was ineffective.

The recently announced SEC exemptions which permit Canadians resident in the United States to deal with Canadian broker-dealers in transactions in self-directed tax advantaged retirement accounts will now enable Canadian broker-dealers to take advantage of the special limited registration procedures and exemptions available in the aforementioned 21 states.

IDA Bulletin #2680 identifies those states that offer a special registration procedure or special exemption procedure, and provides a detailed, step-by-step analysis of the requirement to obtain special limited registration or special exemption.

Remaining States – Adoption of Amendment to Section 201

With respect to the remaining states that have not implemented the amendment to Section 201 of the Uniform Securities Act, the IDA is working with the Canadian Securities Administrators to persuade Securities Regulators in those states to implement the required changes. Many states have indicated that they are likely to follow the decision taken by the SEC to provide exemptive relief for Canadians resident in the United States to deal with their self-directed tax advantaged retirement accounts.

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