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English Français

### **Under what circumstances can a Canadian salesperson deal with a retail client present in the United States?**

Dealings with clients in the United States are governed by both federal and state laws. The discussion below covers only retail clients. There are other exemptions regarding dealings with institutional clients.

Note: This FAQ is intended to provide general assistance to IDA members ("Members") in understanding U.S. federal and state securities laws. Members should consult with their legal counsel regarding the application of and compliance with U.S. securities laws.

#### **U.S. Federal Law.**

With the exception of Canadian self-directed tax advantaged retirement plans and temporary residents as described below, Canadian salespersons are prohibited under the *Securities Exchange Act of 1934* from dealing with clients in the U.S. unless they are registered with a dealer registered in the U.S. Without registration or an exemption, a salesperson dealing with a client present in the U.S. may be subject to charges under the *Securities Exchange Act of 1934*, as would the Member employing him or her. In addition, the customer may have a defense in a civil action in a U.S. court for an unpaid account and may have a claim for any losses in the account.

**Broker-Dealer Exemptions for temporary U.S. residents and holders of Canadian self-directed tax advantaged retirement plans.** Rule 15a-6(a)(4)(iii) under the *Securities Exchange Act of 1934* exempts a foreign dealer from broker-dealer registration when dealing with a temporary resident of the U.S. with whom the dealer had a bona fide pre-existing relationship prior to the person entering the U.S. Temporary residence is generally taken to mean residence for less than 183 days in a year.

On June 7, 2000, the U.S. Securities and Exchange Commission granted an exemption from broker-dealer registration for Members and salespersons dealing with U.S. residents

who have Canadian self-directed tax advantaged retirement plans such as Registered Retirement Savings Plans and Registered Retirement Income Funds. The exemption is subject to the following conditions:

- The account must be managed by the client, i.e. the client must select or control the securities in the account.
- Members and salespersons may not advertise such accounts in the U.S. Members may, however, grant access to clients holding such accounts for trading and to obtain information about their accounts through a Web site. They may also provide general information about such accounts on their Web sites.
- Members must disclose to clients holding such accounts, when a new account is opened and at least annually thereafter, that such accounts are not regulated under the securities laws of the U.S. and that the Member is not subject to the broker-dealer regulations of the U.S.
- The Member or salesperson must have a bona fide pre-existing relationship with the client before he or she entered the U.S. Members and salespersons are not permitted to solicit such accounts from U.S. residents; however, a Canadian salesperson can, when changing firms, solicit the transfer of the account of a client with whom he or she has an existing relationship. Furthermore, U.S. residents having Canadian self-directed tax advantaged retirement plans are permitted to transfer their accounts between Members if they choose to do so on an unsolicited basis.
- The Member and salesperson must comply with the anti- fraud provisions of U.S. securities laws.

***Trading in securities not registered in the U.S. for Canadian self-directed tax advantaged retirement plans of U.S. residents.*** Effective June 23, 2000, the U.S. Securities and Exchange Commission adopted Rule 237 under the *Securities Act of 1933* and Rule 7d-2 under the *Investment Company Act of 1940*, which permit U.S. residents who have Canadian self-directed tax advantaged retirement plans to trade the securities of foreign issuers, including Canadian issuers and mutual funds, in those accounts even though those securities are not registered to trade in the United States.

The exemptions are subject to the following conditions:

- All written offering materials for such securities, including advertisements and newsletters, delivered to a U.S. resident having a Canadian self-directed tax advantaged retirement plan must prominently disclose that the securities are not registered with the U.S. Securities and Exchange Commission and are being offered or sold in the U.S. under an exemption from registration. Foreign mutual fund issuers must include a similar disclosure statement in their written offering materials.
- Members or salespersons relying on the rule must not disclaim the applicability of Canadian law or jurisdiction in any proceeding involving eligible securities.

The exemptions are limited to foreign issuers. The securities of U.S. issuers may not be sold to such accounts in reliance on the exemptions; however, securities of U.S. issuers may be sold to such accounts if the securities are registered or exempt from registration under the Securities Act of 1933 and the transactions are otherwise in compliance with the *Securities Act of 1933*. U.S. mutual funds must also be registered under the *Investment Company Act of 1940*.

***Trading in securities by temporary U.S. residents.*** Members relying on the Rule 15a-6(a)(4)(iii) exemption from broker-dealer registration when dealing with temporary U.S. residents may only effect transactions for such customers if the securities are registered or exempt from registration under the *Securities Act of 1933* and the transactions are otherwise in compliance with the *Securities Act of 1933*. Available exemptions from such

registration would include transactions for Canadian self-directed tax advantaged retirement plans discussed above, ordinary secondary market transactions and exempt private placements.. Unless registered in the U.S., Canadian mutual funds and other securities in a public offering cannot be offered or sold to Canadians temporarily resident in the United States outside of Canadian self-directed tax advantaged retirement plans since such offers are part of a continuing public offering. Ordinary secondary market transactions generally may begin 40 days after the public offering of such securities in Canada.

### **U.S. Taxes**

Members should consider the suitability of particular non-U.S. investments for United States-based holders of Canadian self-directed tax advantaged retirement plans and temporary residents. For example, an investment in Canadian mutual funds or other collective investment vehicles by U.S. tax residents may involve an investment in entities characterized as passive foreign investment companies under U.S. federal income tax law. For individual U.S. taxpayers such an investment may have adverse tax consequences, including taxation of gains and certain distributions at the highest ordinary income tax rate with the addition of an interest charge over the taxpayers holding period. Thus, the U.S. tax status of the client is critical to assessing whether such an investment is appropriate for the customer. It may be prudent, depending on the Member's relationship to its customer, to advise the client to consult with his or her tax advisor concerning this issue before an investment decision is made. For holders of Canadian self-directed tax advantaged retirement plans, consideration should similarly be given to advising the client to consult with his or her tax advisors regarding the need to make annual filings with their federal tax returns to protect against such adverse treatment. Other suitability considerations may apply to other securities or instruments marketed by Members to these accounts.

### **U.S. State Laws**

All U.S. states have their own securities laws requiring registration of broker-dealers and individuals dealing with state residents. Without state registration or an exemption from state registration, dealings with individuals present in a state are not permitted despite the federal exemptions for temporary residents and Canadian self-directed tax advantaged retirement plans. Without registration or an exemption under applicable state securities laws, a salesperson dealing with a client present in the U.S. may be subject to charges under the applicable state securities law, as would the Member employing him or her. In addition, the customer may have a defense in a civil action in a state court for an unpaid account and may have a claim for any losses in the account.

Several years ago the North American Securities Administrators Association, which includes all of the state regulators, recommended to the states changes in their legislation that would grant Members and their salespersons regulatory relief when dealing with temporary U.S. residents and holders of Canadian self-directed tax advantaged plans. State regulators have taken different approaches to implementing the recommendation and many have not yet implemented it. Some have granted blanket exemptions; some require limited registration; some require that the Member and its Canadian salespersons make filings to obtain conditional exemptions.

The following chart lists the states that have adopted regulatory relief for Canadian broker-dealers when dealing with holders of Canadian self-directed tax advantaged retirement plans and in most cases with Canadian clients who are temporarily present in the respective states. The states have been grouped generally under three models and a summary of the requirements for one state under each model has been provided. In addition, the states which have not yet adopted regulatory relief are listed on the far right column. The IDA intends to update this chart periodically.

**Caveat** - Some states listed under a particular model have adopted variations from the model and some variations are significant. Canadian broker-dealers should consult with their legal counsel regarding compliance with specific state requirements.

**Model No. 1 - Self-Executing Exemption.** Wyoming provides self-executing exemptions for the Canadian broker-dealer, its salesmen and the securities they sell to Canadians temporarily present in the state and Canadian self-directed tax advantaged retirement plans, provided that the Canadian broker-dealer meets all of the following requirements.

The Canadian broker-dealer must:

- Be a Canadian resident.
- Have no office or other physical presence in this state.
- Only effect or attempt to effect transactions in securities:
  - With or for a person from Canada who is temporarily present in this state, with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered this state; or
  - With or for a person from Canada who is present in this state, whose transactions are in a self-directed tax-advantaged retirement plan in Canada of which the person is the holder or contributor.
- Be a member in good standing of a self-regulatory organization or stock exchange in Canada.
- Maintain its provincial or territorial registrations and its membership in a self-regulatory organization or stock exchange in good standing.
- Not be in violation of the anti-fraud laws of this state in connection with its securities transactions therein.

**Model No. 2 - Exemption by Notice Filing Procedure.** Hawaii provides exemptions for the Canadian broker-dealer, its salesmen and the securities they sell to Canadians temporarily present in the state and Canadian self-directed tax advantaged retirement plans, provided that:

- The Canadian broker-dealer meets all of the requirements for the self-executing exemption (Model No. 1).
- The Canadian broker-dealer discloses to its customers in Hawaii that it is not subject to the full regulatory requirements of the Hawaii Blue Sky laws.
- The Canadian broker-dealer makes a notice filing to claim the exemption.
- No filing fees are required to be paid.

**Model No. 3 - Special Registration Procedure.** Florida provides a special registration procedure for the Canadian broker-dealer, its salesmen and the securities they sell to Canadians temporarily present in the state and Canadian self-directed tax advantaged retirement plans, provided that:

- The Canadian broker-dealer meets all of the requirements for the self-executing exemption (Model No. 1).
- The Canadian broker-dealer:
  - Files a registration application.
  - Renews the registration annually.
  - Corrects inaccurate information in the application on an ongoing basis.
  - Provides Florida with its books and records upon request.
  - Provides Florida with notice of criminal, civil and administrative actions against it.
  - Discloses to its customers in Florida that it is not subject to the full regulatory requirements of the Florida Blue Sky laws.
- Each salesman intending to transact business with Canadians temporarily present in the state and/or Canadian self-directed tax advantaged retirement plans in Florida:
  - Files a registration application.

- Renews the registration annually.
- Provides Florida with notice of criminal, civil and administrative actions against the salesman.
- Expensive fee structure.
  - \$200 per year for the Canadian broker-dealer.
  - \$40 per year for each salesman.

**State Chart**  
(last updated January 13, 2006)

Model No. 1	Model No. 2	Model No. 3	No Action Yet
California	Alabama	Alaska	U.S. Virgin Islands
Connecticut	Arizona	District of Columbia	
Georgia	Arkansas	Florida	
Idaho	Colorado	Iowa	
Illinois	Delaware	New Hampshire	
Kansas	Hawaii	North Carolina	
Maryland	Indiana	Oregon	
Michigan	Kentucky		
Minnesota	Maine		
Missouri	Massachusetts		
Nevada	Mississippi		
New Mexico	Montana		
Ohio	New Jersey		
Oklahoma	North Dakota		
Pennsylvania	Rhode Island		
South Dakota	South Carolina		
Texas	Tennessee		
Vermont	Utah		
West Virginia	Washington		
Wisconsin			
Wyoming			

**Special States**

**Louisiana** - On January 30, 2002, the Louisiana Commissioner of Securities adopted a Statement of Policy intended to provide regulatory relief for Canadian broker-dealers, their salesmen and the securities sold when sold to Snowbirds and RRSPs. Compliance with the Statement of Policy appears to provide protection for Canadian broker-dealers from enforcement actions by the Louisiana Securities Commission; however, it is unclear what effect the Statement of Policy may have regarding a customer's statutory right to bring a civil action against an unregistered broker-dealer for any losses in his account.

**Nebraska** - On July 17, 2002, the Nebraska Department of Banking and Finance issued a no-action letter intended to provide regulatory relief for Canadian broker-dealers, their salesmen and the securities sold when sold to RRSP's. Compliance with the no-action letter provides protection for Canadian broker-dealers from enforcement actions by the Nebraska Department of Banking and Finance if they effect transactions with RRSP holders in Nebraska. However, the no-action letter expressly states that it "does not affect the right of any individual to pursue a private action in connection with the activity of any broker-dealer covered by this no-action position." Thus, customers will have the right to bring a civil action against an unregistered broker-dealer relying on the no-action letter for any losses in their account. Furthermore, the no-action letter only provides regulatory relief for transactions with RRSPs; it does not provide any relief for transactions with Snowbirds, which are still not permitted.

**New York** - In 2001, New York granted a Canadian broker-dealer's request for a no-action letter confirming the state would take no action for failure to register in New York as a broker-dealer or as salesmen. The no-action letter was granted provided that (1) the broker-dealer and its salesmen only service Canadian Retirement Accounts held by former Canadian residents currently residing in New York and current Canadian residents temporarily residing in or visiting New York, and other transactions permitted by New York law; (2) the Canadian broker-dealer remains a member in good standing of the IDA; (3) the Canadian broker-dealer advises the New York residents in writing that it is not registered to transact securities business in the U.S; and (4) the Canadian broker-dealer notifies its salesmen that they may be subject to enforcement actions regarding fraud or other securities violations. Staff at the New York Bureau of Securities have taken the position that Canadian broker-dealers are expected to individually request their own no-action relief and provided the 2001 request discussed above as an example of a request for such relief. We have been able to successfully obtain such no-action relief from the New York Bureau of Securities on behalf of several Canadian broker-dealers.

**U.S. Virgin Islands** - As of February 12, 2005, the U.S. Virgin Islands have a comprehensive Blue Sky law in place. This new Blue Sky law authorizes the adoption of rules to provide for (1) an exemption from registration for Canadian broker-dealers and their salesmen when dealing with Canadian snowbirds and RRSPs and (2) an exemption from registration for the securities sold in such transactions. However, the necessary implementing rules have not yet been proposed or adopted.

**Virginia** - Virginia Rules 21VAC 5-20-85 and 21VAC 5-20-155 provide a special registration procedure for Canadian broker-dealers and their salesmen when dealing with Canadian snowbirds and RRSPs. In addition, Rule 21VAC 5-40-160 provides a parallel securities registration exemption for the securities sold. However, Canadian dealers and their salesmen who register in Virginia will be subject to the requirements of 21VAC 5-20-280, which imposes certain U.S. compliance and conduct requirements that Canadian dealers may not be willing or able to meet. Accordingly, the Virginia registration procedure may be of limited usefulness.