



DIVISION OF
INVESTMENT MANAGEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549



ACT ICA
SECTION 7(d)
RULE _____
PUBLIC AVAILABILITY 8/15/97

August 15, 1997

Mr. Bradley A. Veld
14315 SE 29th Circle
Vancouver, WA 98638

Re: U.S. Regulation of Canadian Mutual Funds

Dear Mr. Veld:

This is in response to your letter to Chairman Arthur Levitt, dated May 13, 1997, in which you describe the difficulties that you are having in connection with the transfer of your retirement assets between Canadian mutual funds that are managed by Mackenzie Financial Services Inc. Your letter was forwarded to the Division of Investment Management, which has primary responsibility for the regulation of investment companies such as mutual funds, and to the Division of Corporation Finance, which oversees the offer and sale of securities generally.

In your letter, you refer to recent rule changes that have limited your ability to transfer your assets between funds. Certain U.S. securities laws, which we discuss below, can restrict the ability of non-U.S. registered mutual funds to permit transfers between funds by shareholders who reside in the United States. You should be aware, however, that none of these laws has been modified recently, nor has the Securities and Exchange Commission (the "Commission") recently changed its enforcement policies with respect to these laws or any of its rules promulgated under these laws.

As a general proposition, any issuer that publicly offers or sells its securities in the United States is subject to regulation under U.S. securities laws. Most requirements apply equally to domestic and foreign issuers, irrespective of whether the offerees or purchasers of the issuer's securities are U.S. residents or citizens. The principal U.S. securities laws that impose requirements with respect to the offer and sale of mutual fund shares are the Securities Act of 1933 (the "Securities Act") and the Investment Company Act of 1940 (the "Investment Company Act").

Securities Act

Under the Securities Act, any company that publicly offers or sells its securities to persons in the United States must register those securities with the Commission. This registration requirement applies to both U.S. and foreign companies, including investment companies. The registration requirement applies to all types of public sales of securities, whether the sale is for cash or whether the sale involves an exchange of securities.

An exchange offer that allows an investor to transfer assets from one mutual fund to another is deemed to involve a public offer of securities in the United States if the offer is made to a U.S. resident. As noted above, public offers to U.S. residents must be registered with the Commission. This registration requirement may not be waived simply because the transfer takes place between related funds within the same family of funds. Because you are now a resident of the United States, and because the Canadian fund in which you seek to invest has not registered its securities with the Commission, the fund would be conducting an illegal public offering in the United States if it allowed you to transfer among funds.

Investment Company Act

In addition to the requirements of the Securities Act, the Investment Company Act and the Commission's rules thereunder require the registration of mutual funds and set comprehensive requirements concerning many aspects of a mutual fund's operations. In the case of a mutual fund organized under the laws of another country, Section 7(d) of the Investment Company Act prohibits such a fund from publicly offering or selling its securities in the United States unless the Commission has issued an order permitting the fund to register under the Investment Company Act. Rule 7d-1 under the Investment Company Act, adopted by the Commission in 1954, establishes conditions whereby a Canadian mutual fund can be eligible to receive an order permitting Investment Company Act registration. Only a very small number of Canadian mutual funds, however, have elected to comply with the conditions set forth in Rule 7d-1 and to apply for a Section 7(d) order. Mackenzie Financial Services Inc. has not registered its funds with the Commission.

As applied to securities offerings and sales by foreign mutual funds, the provisions of the Securities Act and the Investment Company Act do not prohibit such offerings and sales completely, but rather ensure that they will be subject to the same type and degree of regulation that applies to offerings and sales of securities by U.S. mutual funds. Accordingly, foreign mutual funds that elect not to comply with U.S. securities laws are not permitted to offer and sell their securities publicly in the United States. We note, however, that a foreign mutual fund could structure an

Mr. Bradley A. Veld
August 15, 1997

3

offering and sale of its securities to qualify for an exemption from the registration requirements of the Securities Act and the Investment Company Act.¹ A foreign mutual fund must make an independent determination as to whether an exemption from U.S. registration requirements is available with respect to the offering and sale of its shares.

I hope that the information in this letter is useful to you. Should you have any additional questions, please do not hesitate to contact me or Matthew McGuire of this Office at (202) 942-0660.

Very truly yours,

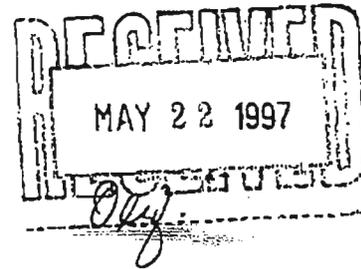


Douglas J. Scheidt
Associate Director and
Chief Counsel

cc: Ms. Glenna Gideon, Office of Congresswoman Linda Smith

¹ For example, an issuer can offer and sell securities without registration if it complies with provisions intended to support the characterization of its offering and sale as a private placement rather than a public offering. Similarly, certain offerings and sales are not subject to U.S. registration requirements if they are structured as offshore transactions, even if the purchasers of the offered securities are U.S. residents. This provision, however, does not permit the foreign issuer to target offers to U.S. residents, and thus foreign mutual funds would be prohibited from sending prospectuses and exchange information to a U.S. resident regarding funds that the U.S. resident does not already own.

May 20, 1997



Congresswoman Linda Smith
P.O. Box 1219
Olympia, WA 98507

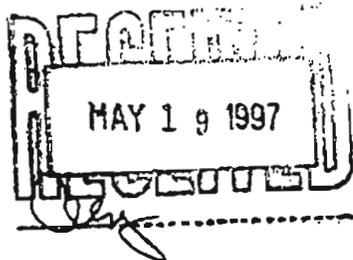
Dear Congresswoman Smith,

I recently sent you a copy of a letter which I sent to Mr. Arthur Leavitt, President of the US Securities and Exchange Commission, in which I expressed my concern over the recent rule enforcement regarding foreign investments. As I explained in my letter, my wife and I are owners of mutual funds in Canada. These funds were purchased with our pension settlements from our Canadian employers, as required by Canadian Law. The rule enforcement by the SEC, as I understand it, makes these funds practically inaccessible. It seems that the only options that we have is to leave the funds as they are now, and hope that the mutual funds perform well over the next 20 years, or to redeem them and incur a large tax penalty for early withdrawal. As this is a large part of our retirement portfolio, not having any control over it is rather worrisome.

I am asking for your assistance in either relaxing the rule enforcement to at least allow access to these accounts for the purpose of exchanging from one fund to another or to do away with the rule altogether. If you or your staff have any questions regarding this request, please feel free to contact me.

Sincerely,

Brad Veld
14315 SE 29th Circle
Vancouver, WA 98683
ph: 360-896-7495
fax: 360-896-3428



072/86

May 13, 1997

Mr. Arthur Leavitt
President
U.S. Securities and Exchange Commission
450 5th St. NW
Washington, DC 20549

Dear Sir:

I was recently informed by Mackenzie Financial Services that there were some recent changes in rule enforcement which will have an effect on the Canadian Mutual Funds which my wife and I own (Copy of letter attached).

I was a resident of Canada during the period 1981-1989. During this time I was employed by a company which funded a pension in my name. When I left Canada, I was required by Canadian law to put this pension money into a "Locked-in" Registered Retirement Savings Plan (RRSP) which, I am sure you know, is similar to an IRA account.

My wife, a Canadian Citizen, also had a pension fund which was placed in RRSP's when we moved to the United States.

This rule enforcement makes it virtually impossible for us to manage these accounts, as we are not allowed transfer between funds. As both my wife and I are at least 15 years from retirement age, redemption of these funds is not a viable option due to the tax implications of early withdrawal. This ruling has made our pension funds untouchable and quite possibly worthless if the particular funds in which they are invested take a turn for the worse. This will leave us with little money for retirement. The other thing which is upsetting is that there was no prior notification that the rule was going to be enforced allowing us the opportunity to place our pension money in potentially more stable funds.

My only hope is that the rule enforcement, as described in the letter from my Financial Advisor, is either incorrect or that there are some special provisions which would allow us access to these accounts. I also find it hard to believe that this rule could be enforced on Canadian citizens who happen to reside in the U.S.

Mr. Arthur Leavitt
US Securities and Exchange Commission
Page 2 of 2

Please fill me in on the intent of this rule and if my interpretation is correct. It seems illogical that the US Government would be interested in making my pension funds untouchable and possibly worthless.

Sincerely,

Bradley A. Veld

Bradley A. Veld
14315 SE 29th Circle
Vancouver, WA 98683

360-896-7495

enc.

cc: Senator Patty Murray
Senator Slade Gorton
~~Senator~~ Linda Smith