

# SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 34-53667/April 18, 2006

## ORDER EXEMPTING COMPUTERSHARE TRUST COMPANY OF CANADA AND COMPUTERSHARE INVESTOR SERVICES INC. FROM BROKER REGISTRATION

### I. Introduction

Pursuant to Section 15(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”), the Securities and Exchange Commission (“Commission”) is granting Computershare Trust Company of Canada (“CTCC”) and its affiliate Computershare Investor Services Inc. (“CISI,” and together with CTCC, “Computershare”) a conditional exemption from the broker registration requirement of Section 15(a)(1) of the Exchange Act to the extent Computershare acts, subsequent to the entry of this order, as a “broker” as defined in Section 3(a)(4) of the Exchange Act in connection with its administration of dividend reinvestment and stock purchase plans (collectively, “DRSPPs”), employee stock purchase plans and employee stock option plans (collectively, “Employee Plans”), and odd-lot programs with U.S. resident investors (DRSPPs, Employee Plans, and odd-lot programs collectively referred to as “Stock Plans”).

Pursuant to Section 36 of the Exchange Act, the Commission also is granting Computershare a conditional exemption from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker that is not registered with the Commission (e.g., Exchange Act Section 15(c)(3) and the financial responsibility rules adopted under that section) to the extent Computershare acts, subsequent to the entry of this order, as a broker in connection with its administration of Stock Plans with U.S. resident investors. For purposes of this order, a U.S. resident investor is any participant in a Stock Plan who permanently resides in the United States. Computershare shall treat all Stock Plan participants with U.S. mailing addresses as U.S. resident investors unless Computershare has been informed that a participant with a U.S. address is not a permanent U.S. resident.

### II. Background

Computershare has agreed to consent to the entry of an order, without admitting or denying the findings, in which the Commission finds that it violated Sections 15(a)(1) and 17A(c)(1) of the Exchange Act (“Commission Order”). With respect to Section 15(a)(1), the Commission finds that, since June 2000 to the present, Computershare has acted as a broker in connection with its administration of Stock Plans by engaging in the business of effecting securities transactions in these Stock Plans with U.S. resident investors. With respect to Section 17A(c)(1), the Commission finds that, from June 2000 through April 14, 2004, Computershare acted as a transfer agent, as defined by Section 3(a)(25) of the Exchange Act, for approximately 260 companies that have securities

registered under Section 12 of the Exchange Act. At the time of this activity, Computershare was not registered as a broker or as a transfer agent as required by Sections 15(a)(1) and 17A(c)(1) of the Exchange Act, respectively. Effective April 14, 2004, Computershare registered with the Commission as a transfer agent. Computershare has not registered with the Commission as a broker. Pursuant to the Commission Order, Computershare will be censured and ordered, among other things, to cease-and-desist from future violations of Sections 15(a) and 17A of the Exchange Act.

### **III. Discussion**

Section 15(a)(1) of the Exchange Act generally requires any broker that makes use of the mails or any instrumentality of interstate commerce to effect transactions in, or to induce the purchase or sale of, any security to register with the Commission. Section 3(a)(4) of the Exchange Act generally defines a broker as any person engaged in the business of effecting transactions in securities for the account of others. The Commission finds that, over the time period at issue, Computershare violated Section 15(a)(1) by, in connection with its administration of Stock Plans, engaging in the business of effecting securities transactions for U.S. resident investors without being a registered broker.<sup>1</sup> Absent an exception or exemption, Computershare would be required to register as a broker with the Commission to continue this activity, and would be in violation of the Commission Order pertaining to Section 15(a) of the Exchange Act by engaging in these activities without being registered as a broker pursuant to Section 15(b) of the Exchange Act.

Section 15(a)(2) of the Exchange Act authorizes the Commission to exempt, either conditionally or unconditionally, from the broker registration requirements of Section 15(a)(1) of the Exchange Act any broker or class of broker, by rule or order, as it considers consistent with the public interest and the protection of investors. Similarly, but more broadly, Section 36 of the Exchange Act authorizes the Commission to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Banks registered as transfer agents are conditionally excepted from broker registration under Section 3(a)(4)(B)(iv) of the Exchange Act for their activities in administering Stock Plans. Computershare, however, is not a bank as defined in Section 3(a)(6) of the Exchange Act. Absent an exemption, Computershare would be required to register with the Commission as a broker to continue to administer Stock Plans with U.S. resident investors.

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<sup>1</sup> As the Commission recognized in addressing the Direct Registration System, some activities in connection with dividend reinvestment and stock purchase plans may require broker-dealer registration under Section 15(a) of the Exchange Act. See Exchange Act Release No. 35038 (Dec. 1, 1994), 59 FR 63652 (Dec. 8, 1994).

The Commission has determined to grant Computershare a limited conditional exemption from broker registration. The Commission finds that a limited exemption from broker registration, subject to the conditions set forth below, is consistent with the public interest and the protection of investors. Computershare's Stock Plan administration activities require Computershare to engage in limited broker activities, as well as transfer agent activities. Computershare represents that in each case it is retained directly by the issuer or its affiliate to provide Stock Plan services to that issuer's employees or shareholders. Computershare will administer DRSPPs and odd-lot programs with U.S. resident investors only for issuers for which it acts as transfer agent. Neither this order nor the conditions set forth herein apply to Stock Plans with no U.S. resident investors.

The Commission believes that granting a limited conditional exemption is warranted because (1) Computershare is engaged in the business of providing transfer agent services for issuers registered under Section 12(g) of the Exchange Act; (2) Computershare is registered with the Commission as a transfer agent; (3) Computershare's broker services will be provided only directly on behalf of the issuer or its affiliate in the securities of the issuer, as part of that issuer's Stock Plan;<sup>2</sup>(4) Computershare's broker activities performed in connection with administering Stock Plans with U.S. resident investors will be limited (e.g., Computershare will be prohibited from engaging in certain activities that it engaged in prior to the issuance of this order, such as netting customer orders to buy and sell issuer plan securities), and its contact with U.S. investors will be limited, which will limit the risk that U.S. investors will be subject to abusive sales practices; and (5) the conditions of the exemption impose appropriate protections designed to safeguard investors' funds and securities. Moreover, the exemption will allow investors that have established relationships with issuers through Stock Plans administered by Computershare to continue those relationships without interruption. Under these circumstances, the Commission believes that it is not necessary to require Computershare to register both as a transfer agent and a broker.

The Commission therefore finds that it is consistent with the public interest and the protection of investors to exempt, subject to the conditions set forth below, Computershare from the broker registration requirement of Section 15(a)(1) of the Exchange Act to the extent that Computershare acts as a broker in connection with administering Stock Plans with U.S. resident investors for issuers.<sup>3</sup> Moreover, in light of the conditional broker exemption and the conditions on that exemption discussed below, including Computershare's continued registration as a transfer agent, the Commission also finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to exempt Computershare, under Section 36 of the Exchange Act, from the reporting and other requirements specifically imposed by the Exchange

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<sup>2</sup> Computershare represents that in each case it will be in direct privity of contract with the issuer or its affiliate.

<sup>3</sup> The Commission notes, however, that this order only addresses broker registration issues with regard to Computershare as a Stock Plan administrator, and that nothing in this order affects prior positions with respect to plans or programs. See, e.g., Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520, 532 at n. 98 (Jan. 3, 1997) (adopting Regulation M governing the activities of underwriters, issuers, selling security holders and others in connection with offerings of securities).

Act, and the rules and regulations thereunder, on a broker that is not registered with the Commission to the extent Computershare acts, subsequent to the entry of this order, as a broker under Section 3(a)(4) of the Exchange Act in connection with its administration of Stock Plans with U.S. resident investors.

IT IS THEREFORE ORDERED, pursuant to Section 15(a)(2) of the Exchange Act, that a conditional exemption for Computershare from the registration requirements of Section 15(a)(1) of the Exchange Act to the extent Computershare is acting as a broker under Section 3(a)(4) of the Exchange Act be, and hereby is, granted. This exemption is limited to administering Stock Plans with U.S. resident investors and subject to the conditions listed below.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that Computershare shall be exempt, in connection with engaging in Stock Plan administration activities consistent with the conditions set forth below, from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker that is not registered with the Commission to the extent Computershare is acting as a broker under Section 3(a)(4) of the Exchange Act. Computershare remains subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IT IS FURTHER ORDERED, that the exemptions granted herein to Computershare pursuant to Section 15(a)(2) and Section 36 of the Exchange Act shall become effective upon the date the Commission enters the Commission Order, pursuant to which Computershare will, among other things, be ordered to cease-and-desist from future violations of Sections 15(a) and 17A of the Exchange Act.

This order is granted subject to the following conditions:

1. Computershare will maintain its registration as a transfer agent under Section 17A of the Exchange Act as long as it continues to administer Stock Plans with U.S. resident investors.
2. In connection with administering Stock Plans with U.S. resident investors, Computershare will not solicit transactions or provide investment advice to U.S. resident investors with respect to the purchase or sale of securities in connection with the Stock Plan, other than by delivering written or electronic Stock Plan materials to U.S. resident employees of the issuer, U.S. resident shareholders of the issuer, or U.S. resident members of affinity groups of the issuer so long as such materials are comparable in scope or nature to those permitted by the Commission as of the date of enactment of the Gramm-Leach-Bliley Act.<sup>4</sup>

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<sup>4</sup> See Section 3(a)(4)(B)(iv) of the Exchange Act.

In addition, each U.S. resident investor in Stock Plans administered by Computershare will be advised in writing, or electronically, that Computershare is not a registered U.S. broker and that securities held in program accounts are not subject to protection under the Securities Investor Protection Act of 1970. In connection with DRSPPs, each U.S. resident investor also will receive a DRSP plan brochure, prepared by the issuer or its affiliate. Computershare will review the DRSP plan brochures to confirm that they include a description of the DRSP's features, contractual terms, and fee and processing arrangements, but do not contain advice or recommendations concerning the purchase or sale of the issuer's securities. The brochures may discuss the benefits of investing through the DRSP plan itself. Computershare will not provide U.S. resident investors with any written materials encouraging individuals to engage in any particular transactions, whether purchases or sales, and Computershare will not offer advice or recommendations regarding the advisability of any investment in an issuer's securities in any materials accompanying the issuer's DRSP plan brochure (or otherwise during the administration of Stock Plans). Computershare will not prepare or assist in the preparation of Employee Plan materials, and Computershare will not distribute Employee Plan materials to employees. Computershare will not prepare materials relating to odd-lot programs, but it may distribute such materials to employees. With respect to odd-lot program plan materials that Computershare distributes, Computershare will review the company's materials to confirm that they include a description of the program, but do not contain advice or recommendations concerning the purchase or sale of the issuer's securities, other than the benefits of participating in the odd lot program itself. Computershare will not make any recommendations with respect to participation in the odd lot program.

With respect to the Stock Plans for which it acts as administrator, Computershare may provide electronic (e.g., through its website) or telephonic access for its customers to obtain or change account information, sell shares, and obtain enrollment information. Computershare will not recommend any Stock Plans, and any information concerning the individual Stock Plans will be presented in a plain and factual format, in both tone and approach. Computershare will not discuss the advisability of investing in any particular security, or participating in a Stock Plan rather than using the services of a registered broker-dealer. Computershare will not identify to a U.S. resident investor a particular security except as requested by the investor, which request can be made, for example, on Computershare's website through a menu of all plans listed in alphabetical or another neutral order, and then only as necessary to be responsive to the specific inquiry. Any Computershare website (or other means of electronic or telephonic access) will not provide quotations, but may, for example, provide a link to another person's website that provides such information, and may provide market-related information in connection with a specific issuer as requested by the

investor, which request can be made, for example, through a menu of all plans listed in alphabetical or another neutral order.

3. In connection with administering Stock Plans with U.S. resident investors, Computershare will not net customers' buy and sell orders. To the extent that Computershare's administration of Stock Plans with U.S. resident investors results in a trade in the United States, then Computershare will direct such trade to a U.S.-registered broker or dealer for execution.
4. In connection with administering Stock Plans with U.S. resident investors, Computershare will maintain with a bank (or banks) at all times a bank account (or accounts) for the purpose of safeguarding the assets of U.S. resident investors against creditors of Computershare in the event of any bankruptcy. The accounts shall be separate from any other Computershare bank account, and funds in the accounts will not be commingled with those of Computershare. Solely for purposes of this condition, a bank shall have the same meaning as in Exchange Act Rule 15c3-3(a)(7).<sup>5</sup> All customers' funds in Computershare's custody and possession that are related to Stock Plans with U.S. resident investors will be maintained in such account (or accounts) until paid to the customer or the issuer, or used to settle a transaction with or through a broker or dealer.
5. In connection with administering Stock Plans with U.S. resident investors that make periodic purchases, if the specified time intervals for such periodic purchases are quarterly or more frequent, Computershare will send each U.S. resident investor, at least quarterly, a written or electronic account statement containing at a minimum the information in items (a) through (h), below.<sup>6</sup> In connection with administering all other Stock Plans with U.S. resident investors, Computershare will send each U.S. resident investor, not later than four trading days after the date of the last transaction effected in the aggregated batch, a written or electronic transaction notification containing, at a minimum, the following information:
  - (a) The name of Computershare;
  - (b) The name of the customer;
  - (c) The capacity in which Computershare is acting;

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<sup>5</sup> 17 CFR 240.15c3-3(a)(7). Under this rule, with respect to a broker or dealer that maintains its principal place of business in the Dominion of Canada, the term "bank" also means a Canadian bank subject to supervision by an authority of the Dominion of Canada.

<sup>6</sup> Account statements or transaction notifications provided electronically should be done in a manner consistent with the Commission's policies for delivery of account statements through electronic media. See, e.g., Exchange Act Release Nos. 42728 (April 28, 2000) (SEC Interpretation: Use of Electronic Media) and 37182 (May 9, 1996) (Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information).

- (d) The date of each transaction for the account of the customer;
  - (e) The identity, price, and number of shares or units purchased or sold for the customer in each such transaction; and, in a periodic statement, the total number of shares or units of such securities held by the customer at the end of the account period;
  - (f) The aggregate amount of fees that the customer has paid or will pay in connection with the transaction;
  - (g) The source and amount of remuneration Computershare has or will receive from a party other than the customer, unless the written statement or notification discloses whether Computershare has received or will receive remuneration from a party other than the customer, and that Computershare will furnish within a reasonable time the source and amount of this remuneration upon written request of the U.S. resident customer. This election is not available, however, if, with respect to a purchase, Computershare was participating in a distribution of that security or, with respect to a sale, Computershare was participating in a tender offer for that security (Computershare would not be required to disclose any payments it receives from issuers for acting in a transfer agent capacity); and
  - (h) The name of the registered broker-dealer utilized; or where there is no registered broker-dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that Computershare will furnish this information within a reasonable time upon written request of the U.S. resident customer.
6. In connection with administering Stock Plans with U.S. resident investors, personnel at any call center operated by or on behalf of Computershare will be limited to responding to inquiries received from a U.S. resident customer about a Stock Plan, but may not: (a) identify to a U.S. resident investor a particular security except as requested by the investor and then only as necessary to be responsive to the specific inquiry; (b) respond to inquiries from U.S. resident investors concerning the advisability of investing in the particular security or participating in the Stock Plan rather than using the services of a registered broker-dealer; or (c) take verbal orders to buy or sell securities for U.S. resident investors. Call center personnel may provide U.S. resident customers general information about Stock Plan services as described in the Stock Plan brochure and the status of the customer's account, as well as accommodate telephone requests for brochures, account statements, certificated shares and replacement dividend checks. Computershare will be responsible for ensuring that call center personnel are strictly instructed not to provide recommendations or advice to U.S. resident investors and that they will be monitored and supervised closely in this respect.

7. In connection with administering Stock Plans with U.S. resident investors Computershare will effect purchases and sales at least once a day unless orders received produce such a low share volume as to dictate less frequent transaction intervals. For purposes of this condition, consistent with the terms of the Stock Plans, Computershare may regard purchase orders as not having been received until good funds are provided by the customer to pay for the shares to be purchased. Good funds would include certified checks, money orders and bank drafts, as well as personal checks of the customer, that have been cleared through the banking system. In connection with the exercise of stock options through Employee Plans, Computershare will notify the company daily of the receipt of any option exercises to be filled through the issuance of treasury stock. In all cases, purchases and sales will occur at least once a week (assuming an order is received during the week). In the case of odd-lot plans, purchases and sales may occur when sufficient shares have been tendered to constitute a standard unit of trading on the marketplace. In the event that the terms of any Employee Plans with U.S. resident investors do not currently permit Computershare to comply with the terms of this provision, Computershare may continue to offer such Employee Plan services, but in connection with the negotiation of any new agreements, or in the renegotiation of any existing agreements for renewal, to provide Employee Plan services, it will undertake to assure that the investment conditions of the Employee Plans will permit it to comply with the terms of this provision.
8. In connection with administering Stock Plans with U.S. resident investors, Computershare will not receive payment for order flow, as defined in Exchange Act Rule 10b-10.
9. In connection with administering Stock Plans with U.S. resident investors, Computershare will make and keep current all material books and records relating to customers' funds, securities, and orders to purchase or sell securities, including the following:
  - (a) Records reflecting customer ownership in the Stock Plan;
  - (b) Any statement, checkbook, or cancelled check regarding any bank account established pursuant to condition 4 above; and records reflecting funds submitted by Stock Plan customers, funds held on behalf of customers pursuant to condition 4 above, and reconciliation of the funds submitted and the funds held;
  - (c) An original of any communication received by Computershare from a Stock Plan customer or a copy of any materials sent to Stock Plan customers by Computershare;
  - (d) A record of any order by a Stock Plan customer to purchase or sell securities;



- (e) A copy of any transaction notification or statement sent pursuant to condition 5 above;
  - (f) A copy of any supervisory procedures relating to condition 6 above;
  - (g) A copy of any transaction notification received pursuant to condition 5 above; and
  - (h) A copy of any agreement relating to Stock Plans entered into with an affiliated or unaffiliated third party, including agreements with banks, broker-dealers, and entities providing services related to processing and call centers.
10. Any record maintained pursuant to condition 9 will be retained for a period of not less than six years, the first year in a readily accessible place for purposes of examination and inspection by the Commission. Records maintained pursuant to condition 9 may be stored electronically consistent with the requirements of Exchange Act Rule 17Ad-7(f).

Upon the effective date of this order, Computershare shall comply immediately with all conditions of this order, except for condition 5, condition 7, and the terms of condition 3 that do not relate to netting customers' buy and sell orders. Computershare shall comply with condition 5, condition 7, and the terms of condition 3 that do not relate to netting customers' buy and sell orders within 90 days of the effective date of this order.

In finding that this exemption is appropriate in the public interest, we stress that (i) Computershare will provide Stock Plan services to issuers' employees or shareholders only when it is retained directly by the issuer or its affiliate and (ii) Computershare's activities as a registered transfer agent are subject to Commission regulation and inspection. In contrast, the Stock Plan activities that are the subject of the Commission's enforcement order were conducted more broadly and outside any Commission oversight. We also stress that Computershare will administer DRSPPs and odd-lot programs with U.S. resident investors only for issuers for which it acts as transfer agent.

This exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

By the Commission.

Jill M. Peterson  
Assistant Secretary