

GENERAL RULING/ORDER 31-901
IMMIGRANT INVESTMENT SYNDICATE ADVISERS

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATTER OF
ADVISERS TO IMMIGRANT INVESTMENT SYNDICATES

ORDER
(Section 160)

WHEREAS the Government of Canada introduced the Immigrant Investor Program ("the Program") in January 1986 as a means of admitting qualified business persons as immigrants to Canada on the basis of their willingness to invest their capital in Canadian business ventures;

AND WHEREAS investment syndicates ("Investment Syndicates") have been accepted under the Program whereby immigrant investors invest in the Investment Syndicate which in turn invests in a number of qualified Saskatchewan business ventures;

AND WHEREAS many Investment Syndicates have formed a separate company ("Fund Manager") to provide advice and make decisions as to the investment of Investment Syndicate money in Saskatchewan businesses;

AND WHEREAS in providing advice to and making decisions on behalf of an Investment Syndicate, a Fund Manager is acting as an adviser, and pursuant to section 27 of *The Securities Act, 1988* ("the Act"), must be registered as an adviser in the category of investment counsel/portfolio manager;

AND WHEREAS many Fund Managers presently giving advice to Investment Syndicates would not qualify for registration as investment counsel/portfolio manager, because the individuals giving advice and making investment decisions do not meet the proficiency requirements specified in subsections 37(6) and 38(2) of *The Securities Regulations* ("the Regulations") for partners and officers of investment counsel;

AND WHEREAS a Fund Manager does not perform the functions usually performed by an investment counsel/portfolio manager of managing a portfolio of securities, but instead analyzes Saskatchewan businesses and gives advice and makes decisions as to investment in Saskatchewan businesses;

AND WHEREAS Fund Managers do not give advice to the public generally, but give advice to only one Investment Syndicate;

AND WHEREAS many Fund Managers presently giving advice to Investment Syndicates do not maintain a business office in Saskatchewan as required by subsection 18(1) of the Regulations;

AND WHEREAS the Commission has determined that it would not be prejudicial to the public interest to vary the proficiency requirements for the registration of partners and officers of Fund Managers, to waive the capital and bonding requirements, the requirement that Fund Managers' financial statements be accompanied by an auditor's report, and the requirement that Fund Managers maintain a business office in Saskatchewan;

IT IS HEREBY ORDERED, pursuant to section 160 of the Act that:

- (a) subsections 37(6) and 38(2) of the Regulations which set out the proficiency requirements for registration of partners and officers of investment counsel;
- (b) subsection 18(1) of the Regulations which requires every registered adviser to maintain a business office in Saskatchewan;
- (c) subsection 19(2) of the Regulations which requires advisers to maintain minimum free capital in certain amounts;
- (d) subsection 20(6) of the Regulations which requires advisers to maintain certain bonding and insurance;
- (e) subsection 20(7) of the Regulations which requires advisers to file a directors' resolution regarding the adequacy of bonding and insurance coverage; and
- (f) section 54 of the Regulations which requires that the financial statements filed by an adviser pursuant to section 49 of the Regulations be reported on by an auditor

shall not apply to a Fund Manager seeking registration under the Act as an investment counsel/portfolio manager or to a partner or officer of a Fund Manager seeking registration provided that:

1. Each partner or officer of the Fund Manager who gives investment advice, has:
 - (a) the experience necessary to provide competent investment advice by reason of:
 - (i) operating or managing a successful business or businesses in Canada for at least five years immediately prior to the date of the application, related to some or all of the types of business or businesses in which the Investment Syndicate is authorized to make investments, including experience in risk analysis, investment decisions and business management; or
 - (ii) successfully carrying on business as investment counsel/portfolio manager in Canada in accordance with the laws of the jurisdiction in which such business was carried on for at least five years immediately prior to the date of the application for registration; or
 - (iii) such other experience as the Director may accept; and
 - (b) the knowledge necessary to provide competent investment advice by reason of:
 - (i) completion of a Bachelor of Commerce degree, a Bachelor of Administration degree or a Masters of Business Administration degree; or
 - (ii) designation as a Chartered Accountant or a Certified Business Valuator; or
 - (iii) successful completion of the Canadian Securities Course, provided that individuals will be registered if they provide a written undertaking to complete such course within one year of initial registration; or
 - (iv) such other knowledge as the Director may accept.
2. All monies of an Investment Syndicate held by the Fund Manager shall be segregated in a separate trust account in the name of that Investment Syndicate;
3. All securities or other property of an Investment Syndicate held by the Fund Manager shall be segregated and identified as being held in trust for that Investment Syndicate;
4. The Fund Manager does not purchase or sell any security on behalf of the Investment Syndicate or recommend the purchase or sale of any security of a person or company;

- (a) in which the Fund Manager or a partner, officer, director, promoter, control person or employee ("associated person") of the Fund Manager has a direct or indirect interest; or
- (b) which may result, directly or indirectly, in a benefit to the Fund Manager or an associated person of the Fund Manager;

unless the Investment Syndicate's offering document given to each investor prior to their investment contains, on the face page and in bold type of the same size or larger as that used in the body of the text, the following statement:

"The Investment Syndicate may make investments which could result in a conflict of interest on the part of persons associated with the Fund Manager because:

the Fund Manager or such associated persons may have a beneficial interest in the company in which the investment is made; and

the Fund Manager or such associated persons may receive a benefit from such company by way, for example, of payment for services rendered or property sold to the company."

and provided that a notice is received by all investors in the Investment Syndicate and filed with the Commission at least 15 days prior to the completion of a transaction executed or recommended by a Fund Manager that comes within the provisions of subparagraphs (a) or (b) which notice contains:

- (c) particulars of the person or company whose securities are being purchased;
- (d) the direct or indirect beneficial interest that a Fund Manager or an associated person has or may acquire in that person or company; and
- (e) any direct or indirect benefit that may flow from that person or company to a Fund Manager or an associated person;

This paragraph does not apply to Fund Managers of those Investment Syndicates who have reached their minimum subscription prior to the date of this General Ruling/Order, and filed Form 19 as required by subsection 81(4) of the Act either prior to the date of this General Ruling/Order or within 60 days thereafter, provided that a notice as specified above is given of all transactions occurring after the date of this General Ruling/Order that come within the provisions of subparagraphs (a) or (b) of this paragraph.

5. The Fund Manager, in a written agreement with each Investment Syndicate to which it provides advice, agrees to:
 - (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Investment Syndicate; and
 - (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
6. Each Fund Manager whose head office is outside the Province of Saskatchewan applying for registration provides:
 - (a) a written undertaking to attorn to the jurisdiction of the Saskatchewan Securities Commission and the courts of the Province of Saskatchewan;
 - (b) an agent for service in Saskatchewan who maintains an office during normal business hours;
 - (c) a written undertaking to promptly provide books and records at the request of the Director of the Saskatchewan Securities Commission;
 - (d) a certificate of status from the Saskatchewan Business Corporation Branch showing that the applicant is registered to carry on business in Saskatchewan;
7. In addition to the business records required under section 25 of the Regulations, the Fund Manager shall maintain, for a period of five years, a written record of:
 - (a) all recommendations made to each Investment Syndicate to which it provides advice, and the analysis upon which the recommendation was based; and
 - (b) all investment decisions made on behalf of each Investment Syndicate to which it provides advice, and the analysis upon which the decision was based;
8. a Fund Manager registered as an investment counsel/portfolio manager shall provide services to only those Investment Syndicates specified in the certificate of registration issued by the Commission;
9. The Fund Manager and each partner and officer of a Fund Manager who gives investment advice otherwise complies with the normal registration requirements for investment counsel/portfolio managers and partners and officers set out in the Act and Regulations;

Dated at Regina, Saskatchewan this 24th day of April, 1990.

"Marcel de la Gorgendière"
Marcel de la Gorgendière, Q.C.
Chairman