

SASKATCHEWAN STAFF NOTICE 81-701

LIMITED POWERS OF ATTORNEY AND LETTERS OF AUTHORIZATION USED IN THE SALE OF MUTUAL FUNDS

Introduction

The purpose of this Notice is to communicate the views of the staff of the Saskatchewan Securities Commission (the “staff”) on the use of powers of attorney, letters of authorization or trading authority (collectively “powers of attorney”) by dealers and their sales representatives in the purchase and redemption of mutual fund securities. It is substantially similar to Ontario Securities Staff Notice #81-0794 of the same title. It replaces Saskatchewan Staff Notice 33-703 Salespersons Acting under Powers of Attorney dated September 7, 1995.

Background

A large number of mutual fund securities are registered in the security registers of mutual funds in client name. Mutual fund companies must look to the registered unitholder (i.e. the investor) for instructions to execute a trade. Hence, where a dealer submits an order on behalf of its client, mutual fund companies should require that dealers provide instructions bearing the client's signature for each trade before processing a trade in client name. At the same time, staff understand the impracticalities for dealers in obtaining a client's signature for every trade. Mutual fund companies have informed staff that they will accept a power of attorney signed by a client which authorizes the client's dealer to request trades on behalf of the client.

National Instrument 81-102 Mutual Funds prohibits a mutual fund from paying redemption proceeds prior to the receipt by the mutual fund of a written request for redemption from the securityholder. A written request is not required, however, if alternative “arrangements” are made between the mutual fund and the securityholder. The mutual fund industry typically accepts powers of attorney signed by clients of dealers. These powers of attorney purport to give dealers authority to purchase and redeem the clients' securities, and as such, many industry participants view them as an acceptable alternative “arrangement”.

Issues of Concern

Staff have serious concerns about the scope and form of powers of attorney which dealers and their sales representatives commonly obtain from their clients. Staff compliance examinations of the operations of both dealers and fund managers have revealed that many powers of attorney confer unlimited powers on dealers and their representatives that are not permitted by their category of registration. These unlimited powers of attorney may permit a dealer's representatives to place trades without having received specific prior instructions from the client. Staff concerns about the ability to conduct discretionary trading are heightened where there is little or no supervision by a dealer of its representatives. When dealers fail to supervise the use of powers of attorney carefully, there is a much greater risk that inappropriate uses of such powers of attorney will not be prevented or detected.

Staff are concerned about how these powers of attorney are presented to clients and question whether clients understand the contents of the documents and the inherent risks involved in executing unlimited powers of attorney.

Recommendations

Staff recommend that dealers and their representatives discontinue the use of powers of attorney that confer unlimited authority and discretion over their clients' accounts.

In order to ensure appropriate use of powers of attorney, staff recommend that dealers develop a standard document or form of power of attorney that:

- clearly states the name of the dealer, as well as the name of the specified representative;
- provides for the signature of a designated partner, director, officer or branch manager of the dealer whereby that designated individual indicates approval and acceptance of the power of attorney;
- provides for the dealer representative's signature;
- states that the power of attorney will terminate if and when the specified representative leaves the employment of the dealer;
- clearly states that the power of attorney is limited to trading in mutual funds and that the dealer's representative must obtain prior specific consent from the client for each trade;
- clearly states that the dealer's representative is limited to providing investment recommendations and executing the client's trading orders, and that he or she may not make any decision to buy or sell mutual fund securities on behalf of the client; and
- is labelled in such a way that it clearly conveys the limited scope and power given by the client to the dealer and representative. Acceptable titles include "Limited Power of Attorney" or "Letter of Authorization".

Staff recommend that a dealer have legal counsel review the document to ensure that it does not grant to the dealer and the dealer's representatives discretionary authority over a client's account.

Staff also recommend that a dealer set up control procedures to monitor the use of powers of attorney. Recommended procedures include:

- attaching a copy of the limited power of attorney to each trade order form and indicating the original copy of the power of attorney is on the dealer's file (this will help to ensure that the branch manager, head office and the mutual fund company are aware of the authorization);
- keeping a copy of the power of attorney document on the dealer representative's file and at head office of the dealer;
- appropriate client signature verification procedures;
- procedures to record and retain, whether electronically or manually, specific oral or written trade instructions received from clients and for the dealer to regularly assess the adequacy of documented instructions;
- procedures to identify client accounts where limited powers of attorney have been granted;
- ensuring that branch managers and head office carry out supervision on these accounts on a regular basis prior to executing a trade, or within a reasonable time after executing a trade, to ensure that all transactions are performed according to clients' prior and specific instructions, and in accordance with clients' investment objectives;
- procedures to ensure clients receive a confirmation of every trade directly from the mutual fund company or from the dealer's head office; and
- documenting in writing the control procedures in a policies and procedures manual made available to representatives.

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