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

IN THE MATTER OF
THE EXEMPTIONS CONTAINED IN CLAUSES 39(2)(a)(iii), (b) AND (j) AND 82(1)(a)

AND IN THE MATTER OF
BANKS TO WHICH THE BANK ACT (CANADA) APPLIES,

AND IN THE MATTER OF
CREDIT UNIONS TO WHICH THE CREDIT UNION ACT, 1985, APPLIES,

AND IN THE MATTER OF
INSURANCE COMPANIES
LICENSED PURSUANT TO THE SASKATCHEWAN INSURANCE ACT,

AND IN THE MATTER OF
TRUST CORPORATIONS AND LOAN CORPORATIONS
LICENSED PURSUANT TO THE TRUST AND LOAN CORPORATIONS ACT,

AND IN THE MATTER OF
PERSONS AND COMPANIES CARRYING ON BUSINESS AS DEPOSIT AGENTS
IN THE PROVINCE OF SASKATCHEWAN

A M E N D E D D E C I S I O N

Hearing Held December 16, 17, 18, 1991, and July 9, 1992.

Before: Marcel de la Gorgendière, Q.C., Chairman
Herbert Dow, Vice Chairman
Morley Meiklejohn, Commission Member
Rand Flynn, Commission Member

Decision Dated March 18, 1993.
Amended June 23, 1993.
Amended October 21, 1993.

This decision is the result of proceedings set in motion in an application by the staff of the Saskatchewan Securities Commission for an order to determine that it was in the public interest that exemptions contained in The Securities Act, 1988 (the "Act") not apply to transactions involving investing in an evidence of indebtedness commonly known as guaranteed investment certificates ("GICs") through intermediaries referred to as Deposit Agents ("DAs"). Such an order would have to be the result of a hearing to comply with the Act. The exemptions exist in sections 39(2)(a)(iii) and (b) and (j) for certain trades and 82(1)(a) for certain prospectus requirements pertaining to securities of banks to which The Bank Act (Canada), credit unions to which The Credit Union Act, 1985, insurance companies licensed pursuant to The Saskatchewan Insurance Act and trust corporations and loan corporations licensed pursuant to The Trust and Loan Corporations Act apply. These institutions (called "FIs" hereafter when referring to their acceptance of investments as specified in the exemption sections mentioned) often receive orders for GICs through persons not employed by them who are paid on a commission basis.

The hearing took place on December 16, 17 and 18, 1991. There was sufficient evidence produced to show very significant amounts of funds were being invested by DAs on behalf of investors. We determined that significant losses had occurred as a result of abuse of trust by two DAs. While the funds taken from investors and wrongly applied could be considered small in regard to total amounts handled, the Commission determined that there is the potential for even further and more significant abuses unless there is a compulsory standardization of good practices in the handling of funds on behalf of investors.

At that hearing, representatives of FIs and DAs, as well as the general public and individual investors, commented on the original proposals of the staff made in the Notice of Hearing. At the conclusion of three days of hearings, staff suggested certain changes in the proposed rules might be in order. The Commission agreed and ordered that the staff, after preparation of suggested changes, send them to the hearing participants. The Commission requested that the participants also submit comments on the staff's revised proposals after they received notice of them from the staff.

Subsequent to the receipt of the staff's revised proposals and the comments on them by the participants, the Commission met for their consideration. The Commission set July 9, 1992 as a date to continue the hearing and provided for filing of comments prior to it as well as direct appearances. All affected by a potential order had an opportunity to make comments directly to the Commission on the staff proposals and the proposals of other participants and the conclusions that the Commission itself had drawn as a result of its deliberation on them in a proposed decision issued May 28, 1992.

Having then made such a broad attempt to consult and having exposed its opinion in a proposed decision, what follows by way of a decision will not surprise any of the participants.

While the Commission concludes that the public interest requires as stated above "a compulsory standardization of good practices" in order to protect investors, determining the rational for any practices and then determining what they should be, remains the Commission's task. The requirements should be effective yet not a hindrance to the convenience of or an additional expense to investors. The Commission is aware that it is to rule in an area that involves significant volumes of individual transactions and is one subject to frequent change and potential technological

improvements.

These changing circumstances make legislated solutions difficult to administer with the flexibility desired. It also makes it unwise to challenge credibility by attempting to proclaim long term solutions. Leaving this matter in the hands of an administrative tribunal appears to the Commission to be the solution to the problem of requirements for flexibility and changing circumstances. For this reason the Commission will not comment on the Part 5 long-term proposals of the Commission's staff. It intends to present in this decision rules to be implemented in the current situation and leave subsequent changes to the usual policy process brought about by applications from those concerned.

As stated above, the Commission found that regulation in this previously exempt field is in the public interest. On what principle is the onus of regulation to be based? Placing the onus for a solution on financial institutions themselves might be one approach. The problem is that the DA is not, except in certain cases which will be dealt with differently, a person or company that is subject solely to the control of the institution that is "selling". We feel that the main impetus for DAs has come from individuals who want to deal through someone who will look after the mechanics of investing in fixed term debt securities of financial institutions but who want to receive comparative information on the rates available and obtain the best for their purpose. As a result we feel that we should recognize this and act on the principle that when funds are placed with a DA for the purpose of investment in an FI that that DA is acting on behalf of the investor.

To deem the DA as acting solely on behalf of the FI would distort reality. One of the first effects would be that the DA would have to act in the best interests of the FI rather than the investor which is what the investor is trying to avoid. The investor is looking for independent advice on choices to make. Where the DA, at the expectation of his customer, is not tied to using any particular FI, which FI could the Commission expect to make responsible for the DA's conduct? If there is any risk in dealing with a DA directly rather than directly with an FI that risk should fall on those who wish to deal with a DA.

This illustrates why the Commission in the following provisions makes allowances for some procedures for convenience of investors which may not be considered free of risk because it appears on the evidence that it is a procedure desired by investors. The Commission will accept it on the basis that the investor is prepared to take that risk i.e. oral instructions. The Commission, however, has set certain limitations restricting such procedures to the most common area of use where abuse would be more difficult.

The field then is not being left unregulated and what follows will specify the rules which the Commission directs its staff to organize within the format of a local policy. The Commission believes these business practice rules set out a standard of good practice that in fact is followed by most DAs and FIs at this time. Setting out the rules as a local policy will allow the Commission to make its provisions available to the public without the necessity of the public having to review these reasons for the decision. Release of this decision will give advance notice of the provisions to be implemented in the local policy. This is necessary as a result of the changes the Commission is now making to the rules after consideration of representations at the July 9,1992 hearing concerning the provisions of its proposed decision.

General Provisions

1. The Commission has determined that investment in GICs that are not made directly with an FI should be made in accordance with the following rules. They constitute practices that are considered for general application in the ordinary circumstances known in Saskatchewan. The Commission requires that the rules must be followed in order to maintain the exemptions based on sections 39(2)(a)(iii), (b) and (j) and 82(1)(a) for trades in GICs (as defined herein). However, the policy is to provide for applications for exemption from the rules where an individual can show why any course of conduct was or will be reasonable in the circumstances as a result of such factors such as strikes in transportation, communication or at FIs, illness or acts of God or, an inordinate number of applications to process within set time limits. Unusual, unavoidable events will be considered before any cease trade order is made or exemptions are removed. The local policy will make reference to and summarize relevant provisions of the Commission's local policy on Applications and Hearings to facilitate such applications including those applications foreseen in the rules themselves.

2. The effective date of these rules is **August 1, 1993**.

3. Definitions for the purpose of these rules:

   a. A "GIC" is:

      i. An evidence of indebtedness of or guaranteed by an FI;

      ii. A certificate or receipt issued by a trust corporation licensed pursuant to The Trust and Loan Corporation Act for funds received for guaranteed investment; and

      iii. An evidence of indebtedness other than a deposit by a member issued by a credit union in accordance with The Credit Union Act, 1985;

   b. "DA" or "Deposit Agent" is a person who, or company which, accepts, receives or solicits funds from a person or company for transmission to an FI for investment in GICs where the FI pays a commission or other benefit to the person or company who arranged the investment. A Deposit Agent includes a person or company who does not transmit funds directly to an FI but who transmits funds to another Deposit Agent for transmission to the FI for investment in GICs. Such a Deposit Agent who does not deal directly with an FI is a sub-agent ("Sub-Agent") of the Deposit Agent who deals directly with the FI;

   c. "funds" includes cash in the form of Canadian legal tender, cheques and negotiable instruments;

d. An "FI" is:

i. A bank to which The Bank Act (Canada) applies;

ii. A credit union to which The Credit Union Act, 1985 applies;

iii. An insurance company licensed pursuant to The Saskatchewan Insurance Act; and

iv. A trust corporation or a loan corporation licensed pursuant to The Trust and Loan Corporations Act;

e. A "financial institution" is an FI but is specifically referred to in the context of its capacity to arrange for clearing of cheques, receipt of cash and transfer of funds and may not be necessarily the same entity with whom the DA is investing funds.

Business Practice Rules

These Business Practice Rules (the "Rules" or "Rule") apply to trades in GICs through intermediaries referred to hereafter as Deposit Agents ("DAs" or a "DA"). The Rules apply equally to trades in GICs through Sub-Agents which are included in the definition DA unless the Rules specify otherwise.

1. No DA shall accept, receive or solicit funds as a principal for an investor or on the basis of pooled funds for more than one investor;

2. No DA shall accept, receive or solicit funds from a person or company for the purchase of a GIC from an FI unless the DA has a written contractual agreement (the "Contract") with that FI or in the case of a Sub-Agent, unless the Sub-Agent has a contract with his DA. (See Rule 12 for the contract terms between Sub-Agents and their DAs). The terms of the Contract between a DA and an FI, among any other provisions establishing the requirements for consideration between the parties, must provide:

a. An acknowledgement that the DA may accept, receive or solicit funds on behalf of a person or company for investment with the FI;

b. That the DA must remit to the FI all funds received each day, for investment with the FI, except any post-dated cheques which must be deposited when payable, by means of an account which allows the immediate transfer of funds to that FI ("a Direct Deposit Account") where established by the FI or DA, or by courier or mail, subject to a reasonable cut-off time in relation to financial institution and communication facilities available to the DA in which case the funds must be remitted the next business day;

c. That the DA must accept, receive or solicit funds from investors only in accordance with these Rules;

d. That the DA must use an application form approved by the FI and prepared in accordance with these Rules;

e. That the DA must send the completed application form to the FI, in the most expeditious and reasonable way considering the amount invested, no later than the next business day after the funds have been received and are deposited;

f. That the DA may only use Sub-Agents when authorized to do so in accordance with these Rules;

g. An acknowledgement that all funds accepted, received or solicited by the DA will be held in trust for the investor;

h. An acknowledgement that the DA must operate trust accounts, if any, in accordance with these Rules; and

i. An acknowledgement that the DA will accept funds only for the purchase of those securities which are exempt from the registration and prospectus requirements of The Securities Act, 1988 (the "Act") under clauses 39(2)(a)(iii), (b) and (j);

3. A DA shall only accept, receive or solicit funds for investment in GICs on an application form approved by the FI with which the funds are to be invested (the "Application"). The completed Application must state:

a. The name of the investor and a third party, if any, designated by the investor as the beneficial owner, but in no circumstances shall such third party designation be that of or for the direct or indirect benefit of a DA;

b. The name of the FI with whom the investor wishes to invest;

c. The amount of the funds invested;

d. The interest rate of the investment and how interest is to be calculated and paid;

e. The term of the investment;

f. Whether or not the investment can be redeemed or transferred prior to maturity and any costs or charges applicable;

g. The date of the Application;

h. The address or account where the investor wishes to receive interest and maturity cheques, except where such payments are not applicable as for RRIF and RRSP accounts held for the investor by the FI;

i. The address where the investor wishes to receive confirmations and/or investment certificates. Confirmation of an investment must be sent to an address other than that of a DA but an additional copy may be sent to the DA; and

j. A statement in bold print to the effect that the FI shall send a confirmation of the investment directly to the investor within 15 days of the FI receiving the investor's funds and if the investor does not receive such confirmation, the investor should make further inquiries.

A copy of the Application must be given to each investor at the time of completion. It must contain a clear explanation of the investment process in at least 12 point type. The explanation, if not on the Application, must be given to the investor by the DA at the same time in writing and state that the writing forms part of the investor's Application. The Application must contain a declaration by the DA that all funds or certificates are held by the DA in trust for the investor. If contained separate from the Application the declaration must incorporate by reference the specific Application. Both the DA and the investor must sign the Application and explanation, if separate, subject to the provisions of Rule 5. The DA must promptly send a copy of the Application to the FI.

4. FIs shall promptly, but in any event no later than 15 days of receiving or reinvesting an investor's funds, send a written notice to the investor (the "Confirmation Notice");

a. The Confirmation Notice must confirm:

i. That the FI received the funds;

ii. The amount of funds received;

iii. The interest rate at which the funds will have been invested, and how interest will be calculated and paid;

iv. The term of the investment including the start or maturity date;

v. Whether or not the investment can be redeemed prior to maturity and any costs or charges applicable; and

vi. The name of the investor or person designated as owner of the GIC by the person investing;

b. The FI must send the Confirmation Notice to the address specified by the investor on the Application. A copy of the Confirmation Notice may be sent to the DA;

c. The Confirmation Notice may be in the form of an investment certificate;

d. The Confirmation Notice may take the form of a duplicate copy of the Application marked by the FI so as to acknowledge receipt of funds and acceptance of the Application terms.

5. A DA may sign an Application on behalf of an investor only to enable the reinvestment of maturing GICs with an FI and where there is no change of beneficial ownership and only in the following circumstances:

a. Where either:

(i) The investor is away from his principle residence for an extended period of time; or

(ii) Where it is a matter of substantial inconvenience for the investor to attend at the DA's office;

and the investor gives oral or written instructions to the DA stating:

i. The source of the funds for reinvestment;

ii. The terms on which the funds are to be reinvested;

iii. Where interest and maturity cheques should be sent or deposited;

iv. Where the Confirmation Notice from the FI for the reinvestment should be sent;

v. The time period in which the DA is so authorized to act; and

b. The DA sends, within 24 hours, a copy of the Application he signed on behalf of the investor to the investor's then current address, if requested by the investor, and to the address of his principle residence so as to confirm the investor's instructions.

6. DAs shall only accept, receive or solicit funds from investors for investment in GICs by:

a. Cheques payable to the FI with whom the investor wishes to invest;

b. Cheques or other negotiable instruments endorsed to the credit of the payee for deposit to the FI with whom the investor wishes to invest. No other endorsement shall be used unless the choice of FI has been delegated to the DA in accordance with circumstances outlined in Rule 5. If a written direction has been given by an investor to an FI as provided in Rule 10, the cheque or other negotiable instrument shall be endorsed to the credit of the payee for deposit to that FI;

c. Cash, if a receipt is given by the DA to the investor upon tender and the cash is deposited in an account as specified in Rule 8 no later than the close of business on the day of receipt. The DA must keep investors' funds separate and cannot commingle them with his own funds, and further, the DA must send the total amount of the funds received from investors to an FI and must not make any deductions for commission or for any other reason; or

d. Cheques processed in accordance with Rule 8.

7. Each DA must send funds to the FI on the day they are received or dated, or the next business day if the DA receives the funds after closure of financial institutions, courier or mail service. The DA may send the funds to the FI:

a. by depositing them into a Direct Deposit Account in the name of the FI; or

b. by courier; or

c. by mail;

provided that the DA sends the funds to the FI in the most expeditious and reasonable way.

Transmission of funds from a Sub-Agent to his DA must be carried out according to the terms in the sub-agency arrangement approved by the Commission pursuant to Rule 12.

8. When an investor wishes to give the DA cash or to split a third party cheque among a number of FIs, a DA other than a Sub-Agent shall deposit such funds received into a trust clearing account ("Trust Account"). Sub-Agents shall not operate a Trust Account. Such Trust Account shall be operated in accordance with the following provisions:

a. The Trust Account is separate from any account for the DA's own funds;

b. That a written trust agreement is established between the DA and the financial institution where the Trust Account is held that meets the requirements of these Rules for the use of the Trust Account and the trust agreement acknowledges that:

i. The DA holds the funds in trust and the funds must be paid out to an FI or the investor, and not to the DA; and

ii. The Trust Account must not be overdrawn;

c. Any interest, or other consideration or set off from the DA's financial institution as a result of the operation of the Trust Account is credited to the investor;

d. The DA clears the Trust Account to a zero balance at the end of each day by forwarding funds to the FIs; and

e. The DA gives the Commission the right to examine and take possession of all records pertaining to the operation of the Trust Account and gives written direction to his financial institution to make such records directly available to the Commission upon its request.

9. A DA must file a report with the Commission annually within three months after its financial year end.

The report must:

a. Confirm that the DA continues to carry on the business of a DA;

b. List the address and telephone numbers of the DA's business locations;

c. List each FI to which the DA sends funds for the purchase of GICs and confirm that the DA has entered into a Contract with each FI;

d. Confirm whether the DA has a Trust Account and if so where it is located;

e. Confirm that the DA has complied with all of the Rules including the Rules regarding the Trust Account;

f. Provide the names, addresses and phone numbers of any Sub-Agents and confirm that agreements exist between the DA and its Sub-Agents in accordance with these Rules and any order of the Commission relating to the operation of the Sub-Agent and that the Sub-Agents are complying with the agreement and naming any Sub-Agents who have ceased to act and whether there are any outstanding claims in regard to their sub-agency of which

the DA is aware; and

g. Where the DA uses a Trust Account, contain a report of an accountant acceptable to the Commission, indicating that the accountant has inspected the books and records of the DA concerning that Trust Account and is satisfied that it has been operated by the DA in accordance with these Rules, namely that:

i. Cheques have been issued to provide for the Trust Account to be balanced daily at zero;

ii. Deposit slips match financial institution records;

iii. Copies of receipts have been examined to verify funds received are being maintained in Trust Accounts that are separate from the DA's operating accounts or personal accounts;

iv. That there is a trust agreement concerning the Trust Account in accordance with these Rules;

v. That the Trust Account has not been overdrawn, or if it has been overdrawn, a description of the circumstances of the overdraw; and

vi. That no payments have been made from the Trust Account to the DA or anyone other than an FI or an investor.

10. FIs must:

a. Make redemption, maturity and interest payments payable in the name of the investor or a third party as described in Rule 3(a); and

b. Send redemption, maturity and interest payments to the address or account designated by the investor on the Application or in any other written direction signed by the investor that has been subsequently received by the FI.

11. a. An FI must not accept, receive or solicit funds for the purchase of GICs from a DA unless that DA has a Contract with the FI;

b. An FI must not accept, receive or solicit funds for the purchase of GICs from a Sub-Agent;

c. FIs must:

i. Provide the Commission with the names and addresses of all DAs with whom they have Contracts;

ii. Advise the Commission within two business days of the termination of a Contract with a DA and the reasons therefor;

iii. Advise the Commission within two business days of ceasing to accept, receive or solicit funds for the purchase of GICs from all DAs;

iv. Advise the Commission of any breach of these Rules within two business days of obtaining knowledge of its occurrence;

v. Detail the FI's address, telephone and fax number and the name of the FI's main contact for Saskatchewan and address, telephone and fax number;

vi. The name, address and fax number, if any, of the principal contact for the DA; and

vii. The names required to be filed by this Rule may be provided individually or compiled in a single filing commencing initially by the date of implementation of these Rules. Thereafter, they shall be filed when a Contract with a DA is made or terminated as provided and a consolidated list must be filed annually from the date of the initial filing.

12. a. A DA must not accept, receive or solicit funds for investment from a Sub-Agent unless the Commission has approved a sub-agency arrangement. An application for approval of a sub-agency arrangement shall be made to the Commission providing in detail the method of operation to be followed by the DA and the Sub-Agent in obtaining investments. The application should include the following particulars of the DA including:

i. Experience, education and other relevant qualifications of its operating staff and of its Sub-Agents;

ii. Financial operating statements for the latest three years;

iii. Estimates of the value of GICs to be purchased annually;

iv. Proposals regarding bonding and errors and omissions insurance;

v. An outline of a monitoring plan for Sub-Agent operation;

vi. The Contract proposed to be executed determining the obligations and duties of

the DA and its Sub-Agents which Contract must contain the relevant provisions outlined in Rule 2 modified to reflect that the Contract is between the DA and each individual Sub-Agent; and

vii. Financial stability of each Sub-Agent except where the Commission accepts a proposed insurance arrangement.

The Commission may, as a condition of approval, require such further information as it may consider necessary.

As a condition of approval of a sub-agency arrangement the Commission will require that a DA's Sub-agents must not act as a Sub-agent for any other DA nor act as a DA for an FI. The Commission will further require that no person carrying on business in the same office as a Sub-agent may act as a Sub-agent for any other DA or act as a DA for an FI.

b. Where approval is given as a result of an application, reports will be required from the DA of the details of its Sub-Agents in the same manner and frequency as an FI is required to file concerning its DAs under Rule 11.

c. An FI which uses DAs or Sub-Agents may apply for an exemption from these Rules where:

i. All the DAs act exclusively on behalf of a credit union in accepting, receiving or soliciting funds for investment in GICs from a member of the same credit union. The credit union on application acceptable to the Commission must confirm that it:

(1) Assumes full responsibility for all funds deposited by the member with the DA from the time of the deposit;

(2) Is a credit union which is a member of The Credit Union Deposit Guarantee Corporation which guarantees repayment of 100% of its GICs if the credit union should be financially unable to meet its liabilities; and

(3) Each DA is a participant in the 10 million dollar fidelity coverage arranged by the credit union for it as part of its membership in the Credit Union Central of Saskatchewan.

ii. It has been confirmed on application acceptable to the Commission that:

(1) The Sub-Agent acts exclusively on behalf of Investors Group Financial

Services Inc. in regard to accepting, receiving or soliciting funds for investment in GICs from Investors Group Trustco Ltd.;

(2) The Sub-Agent is covered under fidelity bonds that remain in effect and have been approved by the Commission; and

(3) Investors Group Financial Services Inc. and Investors Group Trustco Ltd. assume full responsibility for all funds deposited with the Sub-Agent from the time of deposit.

iii. It has been confirmed on application acceptable to the Commission that:

(1) The Sub-Agent acts exclusively on behalf of Laurentian Financial Services Inc.("LFS") in regard to accepting, receiving or soliciting funds for investment in GICs from Laurentian Bank of Canada and;

(2) The Sub-Agent is an employee of LFS and is covered under fidelity bonds that remain in effect and have been approved by the Commission; and

(3) LFS and Laurentian Bank of Canada assume full responsibility for all funds deposited with the Sub-Agent from the time of deposit.

iv. It has been confirmed on application acceptable to the Commission that each DA acts exclusively on behalf of a Canadian chartered bank and the bank confirms that it assumes responsibility for all funds deposited with the DAs from the time of deposit and that there is fidelity coverage acceptable to the Commission; or

v. It has been confirmed on application acceptable to the Commission that:

(1) Each DA acts exclusively on behalf of the Co-operative Trust Company of Canada ("Co-op Trust") in regard to accepting, receiving or soliciting funds for investment in GICs from Co-op Trust;

(2) Each DA is covered under fidelity bonds that remain in effect and have been approved by the Commission;

(3) Co-op Trust assumes full responsibility for all funds deposited with each DA from the time of deposit; and

the names and addresses of the DAs and Sub-Agents are filed with the Commission.

13. These Rules do not apply to the sale of GICs by FIs:

    a. Through their branch employees;

    b. Through other FIs where a principal and agent relationship exists between the FIs and the sale is made by an employee of the agent FI;

    c. Through dealers who participate in the Canadian Investor Protection Fund;

    d. Through a person who or company which is recognized at law as a fiduciary on behalf of others for whom they act including executors of estates or lawyers acting on a solicitor-client basis where the fiduciary does not receive a commission; or

    e. Through employees in branches of a securities affiliate of the FI, other than a mutual fund dealer.

14. These Rules do not apply to the sale of:

    a. Income or annuity contracts;

    b. Contracts of insurance; or

    c. Variable insurance contracts as defined in subsection 39(3) of the Act;

    issued by insurance companies licensed pursuant to The Saskatchewan Insurance Act.

DATED at the City of Regina, in the Province of Saskatchewan, this 18th day of March, 1993.

AMENDED at Regina, Saskatchewan this 23rd day of June, 1993.

AMENDED at Regina, Saskatchewan this 21st day of October, 1993.

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