Saskatchewan Local Policy Statement 3.5

Principles of Regulation - Activities of Registrants Related to Financial Institutions

The Saskatchewan Securities Commission participated on the capital markets subcommittee of the Canadian Securities Administrators which developed the Principles of Regulation - Activities of Registrants Related to Financial Institutions ("the General Issues Principles") (attached as Schedule "A"). The Commission adopts the General Issues Principles as a local policy pending the development and finalization of a national policy.

Adopted by the Commission effective
the 1st day of July 1990.

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

NOTICE

Principles of Regulation - Activities of Registrants Related to Financial Institutions

May 11, 1990

The Canadian Securities Administrators are releasing a third set of Principles of Regulation entitled "Principles of Regulation Re: Activities of Registrants Related to Financial Institutions" (the "Related Issues Principles"). The Related Issues Principles are attached hereto as Schedule "A".

The effective date of the Related Issues Principles is July 1, 1990.

The Related Issues Principles deal with several issues which arise because of ownership by financial institutions of securities registrants, namely selling arrangements between a registrant and its related financial institution, transfer of confidential client information by a registrant to a related financial institution, and settling of securities transactions through a client's account at a related financial institution.

The Related Issues Principles also establish a national clearing system for review of networking notice: required under securities legislation and notices required by the Related Issues Principles and by two previous Principles of Regulation, one Re: Distribution of Mutual Funds by Financial Institutions and t second Re: Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Relate Financial Institutions.

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SCHEDULE A

Principles of Regulation
Re: Activities of Registrants Related to Financial Institutions

Preamble

As a result of legislation enacted by several provinces and the federal government, a number of financi institutions ("FIs") have, in the past three years, invested in existing securities dealers or incorporated subsidiary securities dealers or advisers ("FI related registrants").

To deal with certain issues arising from ownership by FIs of FI related registrants, the Canadian Securities Administrators (the "CSA") previously published Principles of Regulation Re:Distribution o Mutual Funds by Financial Institutions dated November 4, 1988 (the "Mutual Fund Principles") and Principles of Regulation Re: Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Related Financial Institutions dated November 17, 1988 (the "Full Service Principles"). The CSA has regulatory concerns about some situations which may arise because of the relationship between FI related registrants and their related FIs, which concerns were not addressed in the previous Principles of Regulation. These Principles of Regulation entitled "Activities of Registrants Related to Financial Institutions" ("these Related Issues Principles") are intended to address the outstanding concerns.

The CSA Capital Markets Subcommittee (consisting of representatives from British Columbia, Alberta Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia) has considered the outstanding concerns and worked toward developing appropriate responses which are as uniform as possible. Members of the subcommittee also discussed the issues with representatives of several FIs and FI related registrants, self-regulatory organizations ("SROs"), The Canadian Bankers' Association, The Trust Companies Association of Canada, the Canadian Life and Health Insurance Association Inc. the Canadian Co-operative Credit Society, provincial FI regulators and the federal office of the Superintendent of Financial Institutions. The CSA has approved these Related Issues Principles developed by the subcommittee.

These Related Issues Principles outline those areas where a consensus has been reached on the subject issues by the securities administrators of all the provinces and territories (the "Commissions"), unless otherwise indicated. The principles outlined will be implemented by the Commission of each province and territory by such means as might be appropriate.

These Related Issues Principles address the following areas of concern:

Section 1 selling arrangements between FI related registrants and their related FIs;

Section 2 transfer of confidential client information by FI related registrants to their related

FIs;

Section 3 settling of transactions through clients' accounts at related FIs; and

Section 4 national clearing system for the review of:

(a) networking notices under the Regulations of Nova Scotia, Quebec, Ontario and British Columbia, and Policy 7.1 in Alberta, and

(b) notices required by the Mutual Fund Principles, the Full Service Principles and these Related Issues Principles to be filed with each Commission.

For the purposes of these Related Issues Principles, a FI means a bank, trust company, loan company, insurance company, treasury branch, credit union or caisse populaire. In the case of Manitoba, these Related Issues Principles will only apply to registrants related to banks and trust companies, pending development of a policy in Manitoba regarding registrants related to other FIs.

For the purposes of these Related Issues Principles, a registrant is related to a FI if it is an affiliate of th FI or if the FI is otherwise a "related party" of the registrant. The FI will be a "related party" of the registrant if:

(a) the FI influences the registrant;

(b) the FI is influenced by the registrant;

(c) both the FI and the registrant influence the same third person or company; or

(d) both the FI and the registrant are influenced by the same third person or company.

For the purposes of the definition of "related party", influence means, in respect of a person or company, having the power, directly or indirectly, to exercise a controlling influence over the management and policies of the person or company, other than an individual, or the activities of an individual, whether alone or in combination with one or more other persons or companies and whether through the beneficial ownership of voting securities, through one or more other persons or companies or otherwise. For the purposes of the definition of influence in respect of a company or person, other than an individual, any other person or company that, directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially owns or exercises control or direction over more than 20 per cent of any class or series of voting securities of the company or person, other than an individual, in the absence of evidence to the contrary, shall be deemed to influence the company or person.

FI related registrants will be subject to certain duties and obligations in dealings with their clients. Als FI related registrants will be registered under the Securities Acts in the provinces or territories in which they operate and will be subject to relevant securities legislation and National, Uniform and Local Policies. In some cases FI related registrants will be members of an SRO and subject to SRO rules. The securities legislation and SRO rules address certain kinds of self-dealing and conflicts of interest which might arise as a result of the relationship between a FI related registrant and its related FI. Thes Related Issues Principles are not intended to lessen a FI related registrant's obligations under securities legislation or otherwise.

In the course of the subcommittee's deliberations it became apparent that no clear answers exist to some of the regulatory concerns arising from arrangements between FI related registrants and their related FIs which are dealt with in these Related Issues Principles. Accordingly, in areas of uncertainty the CSA has adopted a generally cautious approach, with a view to revisiting these issues in the future after the public, FIs, FI related registrants and regulators have had more experience regarding these issues. While any particular issue could be reviewed in a shorter time frame, the CSA is of the view that these Related Issues Principles should be reviewed at the end of one year to assess whether they adequately serve legitimate regulatory and business concerns.

The CSA has addressed the regulatory concerns which arise out of the relationship between FI related registrants and their related FIs solely from the perspective of securities regulators. These Related Issues Principles only apply to activities within the jurisdiction of securities regulators. Federal and provincial regulators of FIs may impose requirements on FIs which are related to securities registrants.

These Related Issues Principles will be effective on July 1, 1990.

Principles of Regulation

1. Selling Arrangements

For the purpose of these Related Issues Principles, a selling arrangement is an arrangement between a FI related registrant and its related FI under which the registrant induces clients or requires clients as a condition of dealing with or purchasing products or services from the registrant to deal with or purchas products or services from the related FI.

The CSA has a concern that in some cases a selling arrangement between a FI related registrant and its related FI may be contrary to the interests of investors. A selling arrangement between a FI related registrant and its related FI will constitute a networking arrangement pursuant to the Regulations under the Securities Acts (the "Regulations") of Nova Scotia, Quebec, Ontario and British Columbia and Policy 7.1 in Alberta, with respect to which the registrant must give prior written notice to the Commission in each of those provinces in which the registrant intends to operate under the

arrangement. While Newfoundland, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, the Yukon and the Northwest Territories do not have the same statutory or policy requirements described above, the Commissions of these provinces and territories will also require that a FI related registrant that intends to operate under a selling arrangement with its related FI must give 30 days prior written notice to the Commission in each of those provinces or territories in which the registrant intends to operate under the arrangement. Each Commission requiring notice will review the selling arrangement to determine whether to object to it. This section of these Related Issues Principle is intended to provide some guidance on the approach that the Commissions will take toward selling arrangements.

The Commissions expect that in responding to the required notices of networking arrangements they will distinguish between selling arrangements which involve inducements and those which impose conditions on clients. The Commissions recognize that a selling arrangement may include both the offering of inducements and the imposition of conditions. Accordingly, the Commissions, in reviewing the arrangement, will look at the substance of the arrangement and how it will operate in practice.

Generally, the Commissions do not expect that they will object to a selling arrangement in which client or a FI related registrant are offered inducements to deal with or purchase products or services from the related FI. An example would be where a FI related registrant and its related FI agree that if a client purchases securities through the registrant he will be offered reduced rate financing from the related FI.

The CSA is concerned about the type of selling arrangement in which a FI related registrant makes it a condition that a client who wishes to trade a security or purchase a product or service from the registrant must acquire another product or service form its related FI. This is of particular concern in circumstances where competitive products and services are not readily available to the public from other sources or where an investor's freedom of choice is unduly inhibited. An example might be wher a client wishes to purchase a particular security in a distribution from a FI related registrant who is the sole underwriter of the security, but as a condition of dealing with the registrant the client must have ar account with its related FI. The Commissions will not necessarily object to all selling arrangements in which FI related registrants impose requirements on clients to deal with their related FIs as some such arrangements may not be contrary to the public interest. However, in Quebec, the Commission will object to all selling arrangements in which FI related registrants impose obligations on clients to buy products from their related FIs.

In addressing selling arrangements between FI related registrants and their related FIs, the Commissions will consider similar issues to these they would consider in respect of other networking arrangements. Generally, where the Commissions do not object to a selling arrangement, they will require that the FI related registrant disclose the particulars of the arrangement to clients who are purchasing a product or service under the arrangement, including the relationship between the parties t the arrangement and the benefits which will accrue to each party.

Registrants are reminded that selling arrangements may also be subject to review under the Competitio Act (Canada).

2. Transfer of Confidential Client Information

For the purposes of these Related Issues Principles, confidential client information includes all facts relating to a client, and any analysis or opinions based thereon, that the FI related registrant is aware of because of its relationship with the client. This includes, but is not limited to, the client's name, addres phone number, income, assets, debts, investment objectives and financing plans.

The CSA has a concern that FI related registrants and their related FIs may enter into arrangements under which confidential client information is passed from registrants to their related FIs in circumstances and for purposes that may be contrary to the interests of investors. In some cases the arrangement will constitute a networking arrangement pursuant to the Regulations of Nova Scotia, Quebec, Ontario and British Columbia and Policy 7.1 in Alberta, with respect to which the FI related registrant must give prior written notice to the Commission in each of those provinces in which the registrant intends to operate under the arrangement. Irrespective of whether the arrangement constitutes a networking arrangement, this section of these Related Issues Principles sets out the procedure all Commissions will require a FI related registrant to follow prior to transferring confidenti client information to its related FI. In cases where the arrangement constitutes a networking arrangement, the Commissions in those provinces which require prior notice of the arrangement may impose additional requirements depending on the terms of the arrangement.

Subject to the following paragraph, all Commissions will require that, if a FI related registrant intends disclose confidential client information to its related FI, the registrant must first obtain the client's informed written consent to do so. The consent form must either be a separate document or, in appropriate cases, the consent form may be part of the disclosure document required by section 3 of the Full Service Principles. In obtaining the consent, the FI related registrant must advise the client of:

(a) the fact that the registrant will pass confidential client information to its related FI;

(b) the relationship between the registrant and its related FI;

(c) the nature of the information that will be passed to the related FI;

(d) the use which will be made of the information by the related FI, including whether the related FI will pass the information on to others; and

(e) the effect, if any, that a revocation of consent in the future may have on the client's ability to continue to deal with the registrant.

The Commissions will not require compliance with the rule outlined in the preceding paragraph in certain circumstances and under certain conditions as follows:

(a) The first exception is available where a FI related registrant wants to disclose to its related FI confidential client information relating to an existing client (i.e. a client on the effective date of these Related Issues Principles) where:

(i) the client has purchased from the FI related registrant securities of a mutual fund sponsored by the related FI or by a corporation controlled by or affiliated with the related FI, and

(ii) such purchase was made within a branch of the related FI in which the FI related registrant employs persons who are at the same time employees of the related FI.

In these circumstances, if it would be unduly difficult to obtain written consent in accordance with the preceding paragraph, the FI related registrant must give the client written notice within thirty days of the effective date of these Related Issues Principles that confidential client information has been and will be disclosed to the related FI. In giving the client such notice, the FI related registrant must advise the client of the matters referred to in (a) to (d) of the preceding paragraph, as well as the fact that the client may object to the transfer of confidential client information to the related FI and the effect that such an objection will have.

(b) The second exception is where a FI related registrant engaged in full service or discount brokerage activities (the "full service dealer") wants to disclose the name, address and phone number of a client to a specific individual at the related FI so that individual can contact the client to discuss a specific product or service offered by the related FI. For example, a salesman employed by a full service dealer may ask a client whether the client would be interested in discussing a specific product or service offered by the related FI with a specific individual at the related FI and, if so, whether the client would object to his name, address and phone number being given to the individual at the related FI. In these circumstances, if it would be unduly difficult to obtain written consent in accordance with the preceding paragraph, the full service dealer must obtain the client's oral consent and record in writing that consent was obtained. In obtaining the oral consent of the client, the full service dealer must advise the client of the matters referred to in (a) to (d) of the preceding paragraph.

(c) The third exception is where a FI related registrant trades money market instruments on behalf of its related FI and wants to disclose to its related FI confidential client information concerning purchases by an institutional client of money market instruments

from the registrant (i.e. the name of the client and the amount purchased) where such information is important to the related FI in respect of its funding operations. In this case, if it would be unduly difficult to obtain written consent in accordance with the preceding paragraph, the registrant must give the client prior written notice of the intention to disclose such confidential client information to its related FI.

(d) The fourth exception is where a FI related registrant wants to disclose confidential client information to its related FI for purely internal audit, statistical or record keeping purposes and such information will not be used by the related FI for any other purpose. In this case, the FI related registrant will not be required to obtain client consent to do so. For example, where under the Mutual Fund Principles a related FI is maintaining the books and records on behalf of its FI related registrant, information may be transferred for that purpose from the FI related registrant to its related FI without the clients' consent.

Subject to the exception hereinafter referred to in this paragraph, a FI related registrant must not make it a condition of a client dealing with the registrant that the client initially consent to the registrant transferring confidential client information to its related FI. A FI related registrant may require that the client initially consent to the FI related registrant transferring confidential client information to the rela FI as a condition of dealing with the registrant where the FI related registrant employs persons who are at the same time employees of the related FI.

When confidential client information is being held by a FI related registrant in a central computer or other system to which its related FI might have access, safeguards must be put in place to prevent access by the related FI where the required client consent to transfer information to the related FI has not been obtained.

3. Settling Securities Transactions Through Client's Account at Related FI

The CSA has a concern that in some cases an arrangement that a FI related registrant may enter into with its related FI and clients under which the registrant may debit client accounts at its related FI to settle securities transactions may be contrary to the interests of investors. In some cases the arrangement will constitute a networking arrangement pursuant to the Regulations of Nova Scotia, Quebec, Ontario and British Columbia and Policy 7.1 in Alberta, with respect to which the FI related registrant must give prior written notice to the Commission in each of those provinces in which the registrant intends to operate under the arrangement. Irrespective of whether the arrangement constitutes a networking arrangement, this section of these Related Issues Principles sets out the procedure all Commissions will require a FI related registrant to follow prior to debiting a client's account at its related FI. In cases where the arrangement constitutes a networking arrangement, the

Commissions in those provinces which require prior notice of the arrangement may impose additional conditions depending on the terms of the arrangement.

If a FI related registrant wishes to settle securities transactions through a client's account at a related FI the registrant must first obtain the client's account at a related FI, the registrant must first obtain the client's informed written authorization to do so. Such prior informed written authorization may be obtained either at the time the client opens a securities account with the FI related registrant or subsequently, provided that:

(a) the client lists the specific account or accounts at the related FI to which the authorization relates;

(b) the FI related registrant ensures that the client is aware of the fact that he is authorizing the registrant to debit certain of his accounts at the related FI to settle securities transactions and the effect of such authorization; and

(c) the FI related registrant does not make it a condition of the client having a securities account with the registrant that the client give authorization to debit more than one of his accounts at the related FI to settle securities transactions.

A FI related registrant that settles clients' securities transactions through client accounts at its related FI must continue to comply with all relevant legislation and SRO By-laws, Regulations and Rules regardi cash accounts and margin accounts.

4. National Clearing System for Notices of Networking Arrangements and for Other Matters Arising from Principles of Regulation

Under the Regulations of Nova Scotia, Quebec, Ontario and British Columbia and Policy 7.1 in Alberta, a registrant that intends to enter into a networking arrangement with a FI must give prior written notice to the Commission in each of those provinces in which it intends to operate under the networking arrangement and each such Commission will consider whether or not to object to the arrangement. Under these Related Issues Principles as well as under the Mutual Fund Principles and the Full Service Principles (together the "Three Sets of Principles"), a FI related registrant that intends to carry on specified activities in specified ways must notify the Commission in each jurisdiction in wh the registrant proposes to carry on the activities and such Commission will consider whether the activit should be permitted.

In order to facilitate the clearing in more than one Canadian jurisdiction of notices of networking arrangements and other matters arising from the Three Sets of Principles and to provide for more uniformity in approach to such notices, the CSA has agreed upon a procedure which may be followed

by a registrant wishing to obtain the non-objection or permission, as the case may be, from the Commissions in more than one jurisdiction.

The procedure is as follows:

(a) The registrant shall file a written notice of networking arrangement or notice of a proposed activity ("Notice") contemporaneously with the Commission in each jurisdiction in which it proposes to operate under the networking arrangement or carry on the subject activity, where such jurisdiction requires the filing of a Notice.

(b) The registrant shall select the principal jurisdiction and shall indicate in the Notice whicl jurisdiction will be the principal jurisdiction and in which other jurisdictions the networking arrangement or other activity will be carried on (the "other jurisdictions"). It is intended that the principal jurisdiction will be either the one in which the registrant has its principal place of business or the main one in which the registrant will carry on the networking arrangement or other activity. A jurisdiction may decline to act as principal jurisdiction.

(c) The principal jurisdiction will review the Notice and will use its best efforts to provide its comments on the Notice to the other jurisdictions by way of letter, telex, telecopy or telephone within 15 days from receipt of the Notice. If the principal jurisdiction will not be able to provide its comments within the 15 day period it will inform the other jurisdictions of that fact.

(d) The other jurisdictions will review the Notice and will use their best efforts to inform the principal jurisdiction of any additional comments they may have by way of letter, telex, telecopy or telephone within 7 days from the receipt of comments from the principal jurisdiction. If one of the other jurisdictions has no comments on the Notice it will inform the principal jurisdiction of that fact or if one of the other jurisdictions requires more time to consider the Notice it will inform the principal jurisdiction of that fact.

(e) If more information is required from the registrant in order for the Commission to properly assess the Notice, the principal jurisdiction will request such information and the registrant will forward the additional information to the principal jurisdiction and the other jurisdictions.

(f) If the principal jurisdiction and the other jurisdictions all concur on their responses to the Notice, the principal jurisdiction will inform the registrant of that fact by letter and will provide each of the other jurisdictions with a copy of the letter.

(g) If some of the jurisdictions object to the Notice and others do not object, the principal

jurisdiction will inform the registrant of that fact by letter, will provide each of the other jurisdictions with a copy of the letter and will advise the registrant to deal directly with the jurisdictions which object in order to resolve the matter with those jurisdictions. The registrant will inform the principal jurisdiction and the other jurisdictions if it intend to make any changes to the networking arrangement or the proposed activity described in the Notice in order to satisfy a jurisdiction which objected to the Notice.

This procedure is for the convenience of registrants. It involves no surrender of jurisdiction by any Commission. Each Commission will retain its discretion in formulating its response to a Notice.