

**Saskatchewan Local Policy Statement 4.5  
Commodity Pool Programs**

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## **Saskatchewan Local Policy Statement 4.5**

### **Commodity Pool Programs**

This policy is modelled on the Ontario Securities Commission Local Policy 11.4 - "Commodity Pool Programs". Saskatchewan does not have separate legislation relating to trading in commodity futures contracts ("commodity futures legislation"). The only commodity futures legislation in Saskatchewan is found in Part VIII of *The Securities Act, 1988* (the "Act"). Therefore there are substantive differences in the policy, particularly with respect to the requirements for dealers, salespersons, managers, promoters and advisers.

#### **A. General**

The Saskatchewan Securities Commission (the "Commission") is of the view that a Program constituted to invest in commodity futures contracts and related products is essentially highly speculative. The legislation and policies relating to mutual funds apply, subject to this policy. However, neither a filing pursuant to National Policy Statement No. 36 nor an abbreviated form of preliminary prospectus and prospectus permitted by subsection 58(4) of the Act will be accepted, in view of the extent of the risks inherent in the investment and the educational function of such a prospectus.

Where a Program is established by way of limited partnership rather than a corporation, the Director must be satisfied as to the limited liability of the investors in the jurisdiction of organization of the limited partnership and in all jurisdictions where the limited partnership carries on business. In the absence of a satisfactory legal opinion from Saskatchewan counsel as to the limited liability of Saskatchewan investors, other assurances such as insurance and indemnities will be required and adequate disclosure provided. Further, where a Program is established by way of limited partnership, the limited partnership agreement must be attached to the prospectus as well as described in the text.

(Saskatchewan Local Policy Statement 4.1 - "Disclosure of Cash Calls and Like Obligations in Limited Partnerships" has special provisions regarding disclosure of cash calls). Generally, the Commission requires that the rights of limited partners under limited partnership agreements come as close to statutory rights of voting shareholders of a corporation as possible without sacrificing limited liability.

The policy requires that dealers and their individual salespersons be registered under Part VI of the Act and comply with Part VIII of the Act. As well, the promoter and manager of the program must meet the requirements of Part VIII of the Act. However, the Commission will consider the appropriateness of granting an exemption from these requirements on an ad hoc basis where the particular circumstances so warrant.

#### **B. Definitions**

As used in this policy, the following terms shall mean:

1. Adviser

Any person or company who for any consideration engages in the business of advising another, either directly or indirectly, as to the value, purchase or sale of commodity futures contracts or related products, including commodity futures options, stock index futures contracts or options thereon, options on commodities whether or not exchange-traded, or precious metal certificates, whether or not exchange-traded, or actuals. An Adviser is required to be registered as a Commodity Trading Adviser with the National Futures Association (the "NFA") for at least three years and to have at least three years experience as an adviser immediately prior to being engaged by a Program.

2. Capital Contributions

The total investment in a fund by a Participant or by all Participants, as the case may be.

3. Commodity Futures Contract

A contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's bylaws, rules or regulations, or such a contract calling for cash settlement.

4. Commodity Futures Option

A right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract.

5. Dealer

A person or company registered under the Act as a dealer and who has also complied with Part VIII of the Act.

6. Futures Broker

A person or company who engages in the business of trading in commodity futures contracts or commodity futures options or related products in the capacity of principal or agent. A Futures Broker is required to comply with Part VIII of the Act or to be registered with the Commodity Futures Trading Commission (the "CFTC") as a futures commission merchant.

7. Manager

Any person or company who administers or participates in the administration of the affairs of a Program. A Manager is required to comply with Part VIII of the Act or to be registered with the CFTC as a futures commission merchant or to be registered under commodity futures legislation in another jurisdiction in Canada.

8. Net Assets or Net Asset Value

The total assets, less total liabilities, of the Program determined on the basis of generally accepted accounting principles. Net Assets shall include any unrealized profits or losses on open positions and any other credit or debit accruing to the Program but unpaid or not received by the Program.

9. Net Asset Value Per Unit

The net assets divided by the number of units in the Program outstanding.

10. Net Profits

The sum of (a) the net of any profits and losses realized by all positions closed out during the period, and (b) the net of any unrealized profits and losses on open positions as of the end of the period minus (c) the net of any unrealized profits or losses on open positions as of the end of the preceding period and (d) all expenses incurred or accrued during the period.

Comment: When computing incentive fees under section II(2) of Part E, Net Profits may include interest earned on funds of the Program, including proceeds of the offering.

11. Organizational and Offering Expenses

All expenses incurred by the Program in connection with and in preparing the Program for a public offering and subsequently offering and distributing its units to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including the underwriter's legal fees), expenses for printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories, experts, expenses of qualification of the sale of its units under provincial laws, including taxes and fees, accountants' and legal fees.

12. Participant

The holder of a Program Interest.

13. Program

An entity formed, whether a corporation or a limited partnership, and operated for the purpose of investing in commodity futures contracts and commodity futures and related products.

14. Program Broker

A Futures Broker that effects trades for the account of a Program.

15. Program Dealer

A Dealer who sells units in the Program on an underwritten or best efforts basis.

16. Program Interest

The units in the Program held by a Participant.

17. Promoter

Any person or company, directly or indirectly, instrumental in organizing a Program, including a Program Dealer or Futures Broker, who pays any portion of the organizational expenses of the Program and which may include a Manager or Adviser. Promoter does not include wholly independent third parties such as lawyers, accountants and underwriters whose only compensation is for professional services rendered in connection with the offering of the units. The term "Promoter" shall be deemed to include its affiliates (as defined in the Act). A Promoter is required to comply with Part VIII of the Act or to be registered with the CFTC as a futures commission merchant or to be registered under commodity futures legislation in another jurisdiction in Canada.

18. Related Party

A Related Party where the term is used in respect of a person or company means:

- a) any person or company, directly or indirectly, owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of such person or company; or

- b) any person or company 10% or more of whose outstanding voting securities are, directly or indirectly, owned, controlled or held with power to vote, by such person or company;
- c) any person or company, directly or indirectly, controlling, controlled by, or under common control of such person or company;
- d) any officer, director or partner of such person or company; or
- e) if such person or company is an officer, director or partner, any person or company for which such person or company acts in any such capacity.

19. Unit

An interest evidencing an unlimited right to participation in distributions during the life of the Program and on liquidation or winding up in the Program, having a retractable feature based on the Net Asset Value of the Program.

20. Valuation Date

The date as of which the Net Assets of the Program are determined.

21. Valuation Period

A regular period of time between Valuation Dates.

**C. Requirements of the Promoter, Manager and Adviser**

1. Experience

The Managers of a Program must be able to demonstrate sufficient knowledge and experience to carry out the Program policies and objectives and to manage Program operations. Ordinarily, a minimum of three years of relevant experience will be sufficient.

2. Financial Condition

The financial condition of the Promoters, Manager and Adviser must be commensurate with any financial obligations assumed in the operation of the Program. Evaluation will be made of contingent liabilities to determine the appropriateness of their treatment in the computation of

net worth.

3. Investment in the Program

The Promoters may make an investment in the Program at the formation of the Program. If the Promoters elect to make such an investment, then it shall be maintained during the existence of the Program. There shall be disclosed in the prospectus whether the Promoters are making such an investment.

The foregoing shall not be taken to prohibit the Promoters from making an investment in the Program subsequent to the formation of the Program.

4. Reports

The Program or the Manager shall submit to the Commission any information required to be filed with the Commission, including, but not limited to, reports and statements required to be distributed to Participants.

5. Tax Ruling or Opinion

A favorable tax ruling from Revenue Canada or an opinion of qualified tax counsel in a form acceptable to the Director concerning the tax status of the Program and the tax consequences to the Participants must be obtained, disclosed in the prospectus and placed on the public file.

6. Liability and Indemnification

- a) A Promoter, Manager or Adviser shall not pass on to the Program any liability imposed on such person or company by law, except that it may be provided that such person or company shall bear no liability to the Program or to any Participant for any loss suffered by the Program which arises out of any action or inaction of such person or company if such course of conduct did not constitute negligence or misconduct of such person or company and if such person or company, in good faith, determined that such course of conduct was in the best interests of the Program.
- b) A Promoter, Manager or Adviser may be indemnified by the Program against expenses, including legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by such person or company in connection with the Program, provided such expenses were not the result of negligence or misconduct on the part of the Promoter, Manager or Adviser, as the case may be.



- c) Any exculpation under paragraph 1 or indemnification under paragraph 2 above, unless ordered by a court, shall be made by the Program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that exculpation or indemnification of such person or company is proper in the circumstances because such person or company has met the applicable standard of conduct set forth in paragraph 1 or 2 above.
- d) The Program may not incur the cost of that portion of liability insurance which insures a Promoter, Manager or Adviser for any liability as to which such person or company is prohibited from being indemnified under this section VI.

## 7. Additional Requirements

A Promoter, Manager, Adviser, Program Dealer and Program Broker (collectively called the "Program Group") must satisfy the Director that it is or will be in compliance with applicable registration requirements under applicable securities and commodity futures legislation in the jurisdiction where each member of the Program Group operates or carries on business.

If a member of the Program Group is not required to be registered under securities and commodity futures legislation or if there is no such legislation in the jurisdiction where the member of the Program Group operates or carries on business, the Director may impose additional requirements on that member before the Program can be traded in Saskatchewan.

### **D. Suitability of the Participants**

#### 1. Standards to be Imposed

In view of the limited transferability, the relative lack of liquidity and the high risk of loss of many commodity pool programs, suitability standards related to the risks to be undertaken will be required for the Participants and must be set forth in both the prospectus and written subscription forms to be executed by each Participant. The prospectus must set forth the investment objectives of the Program, a description of the type of investor who could benefit from the Program and the suitability standards to be applied in marketing the Program.

#### 2. Sale to Appropriate Participants

- a) The Program Dealer shall make every reasonable effort to ensure that interests are offered or sold only to potential Participants for whom the investment is appropriate in light of the Program suitability standards set forth in the prospectus as required and

each potential Participant's investment objectives and financial situation.

- b) The Program Dealer shall determine that:
  - (i) The potential Participant has the capacity of understanding the fundamental aspects of the Program, which capacity may be adduced from the following:
    - (A) nature of employment experience;
    - (B) educational level achieved;
    - (C) access to advice from qualified sources such as legal, accounting and tax advisory; and
    - (D) prior experience with investments of a similar nature.
  - (ii) The potential Participant apparently understands the following aspects of the Program being sold:
    - (A) the fundamental risks and possible financial hazards of the investment;
    - (B) the lack of liquidity of the investment;
    - (C) management and control by the Promoters; and
    - (D) the tax consequences of the investment.
  - (iii) The potential Participant can bear the economic risk of the investment; for purposes of determining the ability to bear the economic risk, unless the Commission approves a lower suitability standard, Participants should have a minimum annual gross income of \$30,000 and a net worth of \$30,000 or, in the alternative, a net worth of \$75,000; in high-risk offerings, higher suitability standards may be required.
- c) Net Worth shall be determined exclusive of home, home furnishings and automobiles.
- d) In the case of sales to fiduciary accounts, the suitability standards shall be met by the fiduciary or by the fiduciary account or by a donor who, directly or indirectly, supplies the funds to purchase the Program Interests.

### 3. Maintenance of Suitability Records

The Program or the Program Dealer shall retain for at least six years all records necessary to substantiate that Program Interests were sold only to purchasers for whom such investments were suitable. The Director may require the Program or the Program Dealer to obtain from the potential Participant a letter justifying the suitability of such investment.

### 4. Minimum Investment

The minimum subscription shall not be less than \$2,000 and shall be paid in cash at the time of purchase. Although assessments may be necessary on improper distributions, dividends and repayments of capital, assessments of any other kind shall be prohibited.

## **E. Fees, Compensation and Expenses**

### 1. Organizational and Offering Expenses

- a) The Promoters shall be responsible for the Organizational and Offering Expenses of the Program subject to recoverability of these Expenses out of up to 15% of the gross proceeds of the Program, provided such Expenses are reasonable and provided further that full disclosure is provided on the face page of the prospectus. There shall be included on the face page of the prospectus an indication that the Capital Contribution of a Participant will be subject to dilution resulting from recovery of the Organizational and Offering Expenses (if applicable).
- b) The Program shall not, directly or indirectly, pay or award any commissions or other compensation to any person or company engaged to sell Program Interests or give investment advice to a potential Participant, provided, however, that this clause shall not prohibit the payment to a Program Dealer or registered representative of normal sales commissions for selling Program Interests and the payment of compensation to sales agents from a percentage of commodity brokerage commissions (trail commissions).

### 2. Compensation

#### a) Management Fee

The aggregate annual expenses of every character paid or incurred by the Program, including management and advisory fees based on the Net Assets of the Program but excluding commodity brokerage commissions, incentive fees, legal, audit and

extraordinary expenses, calculated at least quarterly on a basis consistently applied, shall be reasonable but in no event shall exceed one half of 1% of Net Assets per month (not to exceed 6% annually), provided a Manager shall not receive a management fee if he or it receives any portion of the brokerage commissions. This prohibition may be waived by the Director if the Program can demonstrate adequate safeguards against conflicts of interest.

The Manager shall reimburse the Program quarterly for the amount by which such aggregate monthly expenses exceed the amounts herein provided, up to an amount not exceeding its management and advisory fees for the period for which reimbursement is made, prior to publication of the company's quarterly report and shall promptly notify the Commission if the aggregate expense limitation is exceeded by reason of any extraordinary expenses.

b) Incentive Fees

The Adviser will be entitled to an incentive fee not to exceed 25% (on an annualized basis) of the Net Profits of the Program, calculated not more often than quarterly on the Valuation Date, over the highest previous Net Profits on a previous Valuation Date. For purposes of this calculation, Program losses shall be carried forward but shall not be carried back.

c) Brokerage Commissions

The Program shall seek the best price and services available in its commodity futures brokerage transactions. The Program shall not effect any transactions in Commodity Futures Contracts and/or Commodity Futures Options with any Futures Broker affiliated, directly or indirectly, with any Promoter or with any Adviser providing the Program with research information, recommendations or other services which might be of value to the Program, unless such transactions are effected at competitive rates. If a Promoter or Manager receives any portion of the brokerage commissions from Program operations, the Adviser may not be affiliated with the Promoter or Manager. This prohibition may be waived by the Director if the Program can demonstrate adequate safeguards against conflicts of interest between the Program Broker, the Promoter, the Manager and the Adviser. The Director may require the Program to file periodic reports concerning all brokerage transactions. A charge for brokerage services of a flat fee of a percentage of the Net Asset Value on a continuing basis will be acceptable.

If the Adviser acts as Adviser to other commodity pools, the prospectus should indicate whether the proposed rates for the fund are higher or lower than other pools which are advised by the Adviser (together with any other information concerning brokerage charges to those other pools which the Program deems relevant).

d) Other Income

- (i) Any interest or other income earned by any portion of the Program assets shall accrue solely to the benefit of the Program.
- (ii) A Promoter, Manager or Adviser shall not take any action with respect to the assets or property of the Program which does not benefit the Program. Such a prohibited action, among others, would be the utilization of Program funds as compensating balances for such person or company's own benefit.

e) Expenses of the Program

All expenses of the Program shall be billed directly to and paid by the Program. Reimbursements to any Promoter shall not be allowed, except for reimbursement of the actual cost of legal and audit services used for or by the Program. Expenses incurred by the Manager in connection with administration of the Program, including, but not limited to, salaries, rent, travel expenses and such other items generally falling under the category of Manager's overhead, shall not be charged to the Program.

Only those items of compensation permitted herein will be allowed. Any variance must be adequately justified to the Director.

**F. Continuous Disclosure - Financial Statements**

1. The Program will be required, pursuant to the Act to comply generally with the continuous disclosure requirements of the Act relating to mutual funds. Since some of these requirements will be inappropriate for the Program, an application to the Commission should be filed pursuant to section 89 of the Act at the time of filing a preliminary prospectus for the Program. This application should request an exemption from the continuous disclosure requirements of the Act which are inappropriate for the Program and substituting the financial disclosure set forth in this Part. The applications must be granted and an order issued prior to the final receipt for the prospectus being issued. The prospectus must fully describe the financial reporting that will be required of the Program.

2. The following information shall be filed with the Commission and distributed to Participants:
- a) For each month, within 30 days of the date to which it is made up, both for the preceding month and, on a cumulative basis, for the period commencing from the start of the fiscal year of the Program, an Account Statement which shall be presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value. The Account Statement must be made up and certified as required by *The Securities Regulations*, R.R.S., c. S-42.2, Reg 1 (the "Regulations") and in accordance with generally accepted accounting principles.
    - (i) The portion of the Account Statement which must be presented in the form of a Statement of Income (Loss) must separately itemize the following information:
      - (A) The total amount of realized net gain or loss on positions liquidated during the month or period;
      - (B) The change in unrealized net gain or loss on open positions during the month or period;
      - (C) The total amount of net gain or loss from all other transactions in which the Program engaged during the month or period, including interest;
      - (D) The total amount of all management fees during the month or period;
      - (E) The total amount of all advisory fees during the month or period;
      - (F) The total amount of all brokerage commissions during the month or period;
      - (G) The total amount of other fees for commodity interest and other investment transactions during the month or period;
      - (H) The total amount of all other expenses incurred or accrued by the Program during the month or period.
    - (ii) The portion of the Account Statement that must be presented in the form of a Statement of Changes in Net Asset Value must separately itemize the following information:

- (A) The Net Asset Value of the Program at the beginning of the month or period;
  - (B) The total amount of additions to the Program, whether by way of new subscriptions or reinvestment of returns on the investments of the Program made during the month or period;
  - (C) The total amount of withdrawals from and redemption of units in the Program, whether voluntary or involuntary, for the month or period;
  - (D) The total net income or loss of the Program during the month or period;
  - (E) The Net Asset Value of the Program as of the end of the month or period;
  - (F) (1) The Net Asset Value per unit in the Program as of the end of the month or period; or  
  
(2) The total value of the Participant's Program Interest as of the end of the month or period.
- (iii) The Account Statement must also disclose any material business dealings between the Program, the Program's Manager, Adviser, Program Dealer, Program Broker or the principals thereof that previously have not been disclosed in the Program's prospectus or any amendment thereto, other Account Statements or Annual Reports.
- b) Within 140 days after the end of the fiscal year, an Annual Report. The Annual Report must be made up and certified as required by the Regulations and in accordance with generally accepted accounting principles. The Annual Report must contain the following:
- (i) The Net Asset Value of the Program as of the end of each of the Program's two preceding fiscal years.
  - (ii) (A) The Net Asset Value per unit outstanding in the Program as of the end of each of the Program's two preceding fiscal years, or  
  
(B) The total value of the Participant's Program Interest as of the end of each of

the Program's two preceding fiscal years.

- (iii) A Statement of Financial Condition as of the close of the Program's fiscal year and preceding fiscal year.
  - (iv) Statements of Income (Loss) and Changes in Net Assets for the period that commenced on the date of incorporation or organization and ended as of the close of the first fiscal year or, if the Program has completed a fiscal year, the last fiscal year; and the period covered by the fiscal year next preceding the last fiscal year, if any.
  - (v) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading.
3. A Statement of Income (Loss) required by this Part must itemize brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total net gain or loss realized on positions closed out and change in unrealized net gain or loss on open positions during the Program's fiscal year. Gains and losses need not be itemized by commodity or by specific delivery or expiration date.
  4. For greater certainty, semi-annual financial statements, apart from those referred to in paragraph (a) of section II will not be required.
  5. Where applicable, the Program will provide that all information necessary for the preparation of the Participants' income tax returns will be provided to Participants no later than March 15 of each year.
  6. The Program shall calculate the Net Assets of the Program daily and shall make available, upon the request of a Participant, the Net Asset Value per unit.

#### **G. Rights of Participants**

It is not intended for the exercise of the following rights to result in a loss of Participants' limited liability; accordingly, this section of the Policy is qualified by the principle that the specified rights may be exercised unless doing so would jeopardize Participants' limited liability. A legal opinion of Saskatchewan counsel satisfactory to the Director will be necessary to establish that the exercise of these rights would result in a loss of Participants' limited liability.

1. Meetings



Meetings of the Participants should be held at least annually and may be called by the Board of Directors or the Participants holding more than 10% of the then outstanding units, for any matters for which the Participants may vote as set forth in a charter document or bylaws of the Program. Such call for a meeting shall be deemed to have been made upon receipt by the Program of a written request from holders of the requisite percentage of units stating the purpose of the meeting. The Program shall mail within 15 days after receipt of said request written notice to all Participants of the meetings and the purpose of such meeting, which shall be held on a date not less than 30 or more than 60 days after the date of mailing of said notice at a reasonable time and place.

## 2. Voting Rights of Participants

The bylaws of the Program must provide and the prospectus disclose that holders of a majority of the then outstanding units may, without the necessity for concurrence by any Promoter, vote to:

- a) amend the charter document or bylaws;
- b) wind up or dissolve the Program;
- c) remove any or all directors and elect a director or directors;
- d) cancel any contract for services with a Promoter without penalty upon 60 days written notice;
- e) approve the removal or appointment of the Program's auditor; and
- f) make a material change in the investment objectives or structure of the Program.

## 3. Access to Program Records

- a) The Manager shall maintain at the principal office of the Program a list of the names and addresses and the interests owned by all Participants. Such list shall be made available for the review by any Participant or his representative at reasonable times and, upon request, either in person or by mail, the Program shall furnish a copy of such list to any Participant or his representative upon payment of the cost of reproduction and mailing. If the Promoter proposes to oblige Participants to certify that they will not use such list for commercial purposes, then the prospectus must so indicate.

- b) The Participants and their representatives shall be permitted access to all records of the Program, after adequate notice, at any reasonable time. The Program shall maintain and preserve such records for a period of not less than six years.

## **H. Disclosure and Marketing Requirements**

### **1. Minimum Program Capital**

The Minimum amount of the funds to activate a Program shall be \$500,000, after deduction of all front-end charges, but including any amounts provided by the Promoters. All funds received prior to activation of the Program must be deposited with an independent custodian, acceptable to the Director, whose name and address shall be disclosed in the prospectus.

### **2. Contents of the Prospectus**

#### **a) Face Page**

It must be prominently disclosed on the face page:

- (i) that a Participant who invests in the Program must be able and prepared to lose his entire investment;
- (ii) that the investment is highly speculative;
- (iii) that there are substantial management and advisory fees and brokerage commissions payable before a Participant is entitled to a return on his investment;
- (iv) that the Adviser, Manager, Program Dealer or Program Broker are subject to conflicts of interest (if applicable);
- (v) that the tax consequences to the Program or a Participant are not certain (if applicable);
- (vi) that the Promoters shall be entitled to recover the Organizational and Offering Expenses of the Program out of up to 15% of the gross proceeds of the Program, but such a statement is required only where the Promoters intend to exercise this right of recoverability; and

(vii) that the Capital Contribution of a Participant will be subject to dilution resulting from recovery of the Organizational and Offering Expenses (if applicable).

b) Conflicts of Interest and Transactions with Affiliate

- (i) Any conflicts of interest between the Program and any Promoter, Manager, Adviser, Program Dealer, Program Broker or any Related Party thereto must be fully disclosed.
- (ii) Goods and services provided to the Program by a Promoter must be provided at rates and terms at least as favorable as those which may be obtained from third parties in arm's-length negotiations.
- (iii) A Promoter shall also be required to disclose the steps that will be taken to alleviate any real or potential conflict of interest.
- (iv) If the Program pays higher than competitive commission rates for commodity brokerage transactions, such fact shall be set forth along with a justification.
- (v) Prohibitions

Certain conflicts of interest are presumed to be materially sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interests of the Participants and shall be controlled as follows:

- (A) No loans may be made by the fund.
- (B) The funds of a Program shall not be commingled with the funds of any other person or company. Funds used to satisfy margin requirements will not be considered commingled.
- (C) No rebates or give-ups may be received by a Promoter nor may a Promoter participate in any reciprocal business arrangements which would circumvent these guidelines.
- (D) A Program's charter document shall prohibit the Adviser or any other person acting in such capacity from receiving an advisory fee if he shares or participates, directly or indirectly, in any commodity brokerage commissions generated by the Program. As stated in

paragraph 3 of section EII, this prohibition may be waived by the Director if the Program can demonstrate adequate safeguards against conflicts of interest between the Adviser and Program Broker. The maximum period covered by any contract of the Program with the Adviser, Manager or a Promoter shall not exceed one year. The agreement must be terminable without penalty upon 60 days' written notice by the Program.

- (E) Any other agreement, arrangement or transactions, proposed or contemplated, may be restricted in the discretion of the Director if it would be considered unfair to the Participants in the Program.
- (F) All of the foregoing restrictions shall be disclosed in the prospectus and contained in the charter document or bylaws of the Program.

c) Notification

Each Participant shall be notified within seven business days from the date of any decline in the Net Asset Value Per Unit to less than either:

- (i) 50% of the Net Asset Value Per Unit at the beginning of the year; or
- (ii) 50% of the Net Asset Value per Unit on the last Valuation Date.

Included in the notification shall be a description of the Participant's voting rights pursuant to section G.II.

d) Material Changes

Any material changes in the Program's basic investment policies or structure shall require the approval of the holders of a majority of the then outstanding units. A material change shall include, specifically, any transfer or withdrawal of the Promoter's interest in the Program.

e) Financial Information Required in Prospectus

The Program shall provide as part of the prospectus the financial statements required by the Act and the Regulations and, in addition, the Director may, where consistent with the protection of Participants, request additional financial statements of a Manager,

Promoter or Adviser, or any affiliate thereof, and require disclosure of such statements where they would be material to a Participant in determining whether he would invest in the Program.

f) Winding Up

Disclosure should be made to potential Participants as to whether the Program will automatically wind up when the Net Asset Value Per Unit falls below a certain predetermined level; if so, disclosure must be made in the prospectus as to the level at which this will occur.

g) Investment in the Program

Disclosure must be made in the prospectus whether the Promoters are making an investment in the Program at the formation of the Program.

**I. Miscellaneous Provisions**

1. Redemptions

The Program shall provide for the redemption of Program Interests at least quarterly except that redemption need not be offered until six months after the date on which the final receipt is issued for the prospectus. The Program shall state the Valuation Date in the prospectus. A Participant must notify the fund in writing at least 10 business days prior to the Valuation Date of his wish to redeem his Program Interest. The Program must redeem such Program Interests at the Net Asset Value on the Valuation Date unless the number of redemptions would be detrimental to the tax status of the Program; in which case, the Program shall select by lot so many redemptions as will, in its judgment, not impair the Program's status. Participants shall be notified in writing within ten business days after the Valuation Date whether or not their Program Interests have been redeemed. Payment for the redeemed Program Interests shall be made within 30 days after the Valuation Date. The Program may provide that redemptions may be temporarily suspended if, in the Program's judgment and with the consent of the Director, additional redemptions would impair the ability of the program to meet its objectives.

2. Dealers and Salespersons

- a) The prospectus must be executed by a Dealer who has entered into a contractual arrangement with the Program to distribute units in the Program to the public. Registration sought by a program or a promoter for the sole purpose of distributing

units in the Program will not normally be granted.

- b) Individual salespersons must be registered under the Act and have complied with the requirements of Part VIII of the Act.

3. Track Records

The prospectus must include the track records of the Adviser and/or the Manager in respect of other publicly offered commodity pool programs in which the Adviser or Manager, as the case may be, has acted in that capacity during the previous three years, together with appropriate cautions to the effect that similar performances cannot be assured. Where appropriate, the Director may waive this requirement.

Adopted by the Commission effective  
the 26th day of February, 1990

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