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

AND

IN THE MATTER OF
GREAT PACIFIC MANAGEMENT CO. (ALBERTA) LTD.

Hearing Held August 21, 1990

Before: Marcel de la Gorgendiere, Chairman
Herbert Dow, Vice Chairman
Morley Meiklejohn, Commission Member

James Hall, representing Commission staff
Kenneth Karwandy, representing the respondent

DECISION

The Notice of Hearing states the matter to be decided by the Saskatchewan Securities Commission (the "Commission") at a hearing is whether Great Pacific Management Co. (Alberta) Ltd. ("Great Pacific") met its obligations as a registrant under The Securities Act, 1988, S.S. 1988, C.S-42.2 (the "Act") and complied with National Policy Statement 19, Mutual Sales Companies: "Commingling of Funds and Securities" ("NP 19"). It was also to determine whether the sum of $33,279.00 and interest was payable in accordance with NP 19, to certain mutual funds or could be retained by Great Pacific. Finally, it was to consider whether Great Pacific's application for withdrawal from registration should be accepted pursuant to Section 29(4) of the Act.

At the commencement of the hearing a Schedule of Admissions was filed by agreement which is attached as Appendix 1. The Notice of Hearing filed is attached as Appendix 2. The Schedule of Admissions follows the same order as the Notice of Hearing.

The Commission feels that it would be a fair statement of the above admitted facts and evidence heard to say that Great Pacific:

1. as a registrant authorized to sell mutual funds received certain payments to be applied to the purchase of such mutual funds;

2. in the time period in question, deposited the purchase proceeds in an interest bearing trust account;

3. paid the amounts required for purchase of the funds;

4. paid further bank charges from the account for the operation of the account;

5. made a further payment to the respective mutual fund companies or distributing companies equivalent to what it thought was the interest earned on amounts payable for the mutual funds; and

6. retained for its own benefit, the interest on the amounts payable to it for commissions on the sales that it had not immediately withdrawn to its own general account. This amount is determined by Great Pacific and the Commission to be $33,279.00 and is held by Great Pacific's solicitors pending a disposition order by this Commission.

The question for determination is whether in such a circumstance the failure to effect an immediate withdrawal of Great Pacific's commissions entitles it to subsequently retain the interest received, or whether all such interest received is pursuant to NP 19, in effect for the period in question, payable to the mutual funds in which the investors were investing.

A word might now be said about national policies like NP 19 and its successor National Policy 39 ("NP 39") as issued by the Canadian Securities Administrators. The Manitoba Securities Commission in its decision in regard to W. G. Knight and Associates Inc., which also involved the same two policies said:

> "These policy statements do not have the force of law and are not intended to have such ef f ect. They are, however, intended to set forth certain basic policies of the Commission relating to securities regulation in the Province of Manitoba and the role of the Commission with respect thereto 'and accordingly the commission expects issuers to comply with The Manitoba securities Commission policy statements unless compliance is waived.91

The Commission, however, recognized that the application of a particular policy statement may work a hardship or be otherwise inappropriate and,

> **"if it is not prejudicial to the public interest to do so"** upon application, **"the statements made in the policy statement will not be applicable".**

The Saskatchewan Commission agrees that while the national policy statements must be applied because it is in the public interest that there be a clear realization of policies to be followed in securities matters, to the greatest possible extent, that circumstances may arise which require a Commission to exercise the discretion that is left to it under the Act in order to ensure that equity is not lost in the desire for standardization.

In the Commission's mind the application must be looked at to see, firstly, whether the policy was in fact breached and, secondly, if in fact it was breached whether the particular facts in question merit a different application of the policy. Naturally, in this matter the interpretation of NP 19 is not without contestation.

To facilitate the reading of this decision, NP 19 in its entirety is set out in Appendix 3 and in Appendix 4 a portion of NP 39 is set out, namely the objectives of Sections 11 and 12 (Section 11.01) as well as Section 12).

The Commission was urged by the staff solicitor that "**anv interest**" where it occurs in Section 1(c) of NP 19, in a literal and a plain interpretation, can only mean that all of the interest earned, less bank charges, must be turned over to a mutual fund. Counsel for Great Pacific feels that **any** has a meaning which can be restricted by the context and that dictionary definitions show that the word is capable of meaning **some** or **all**.

The Commission is not quite prepared to grant the staff's contention that the wording of the policy has the meaning they state. In the end, however, a decision on that point does not solve the issue in this case. That is because the Commission concludes that it was entirely possible for Great Pacific and its firm of chartered accountants to have a different opinion and not be acting in a spirit contrary to the principle on which the policy was based and not to be considered as trying to hide behind or circumvent the intention of the policy:

> **"by hair splitting and the interpretation of a word or phrase to suit or justify their means"**

as was suggested in the Manitoba case ref erred to above. What then is the basic principle? The Commission notes when NP 39 was instituted it was clearly stated in objective 3 of Section 11.01 that the interest on a trust account established for investors purchase of funds

> **"accrues to the benefit of either the mutual fund or the investor"**

and in Section 12.01, subsection 4 provides:

> **".... all interest earned on the trust accounts referred to in clause (1) less any bank charges applicable thereto shall be paid to the mutual fund no less frequently than monthly and..... the participating dealer shall not be entitled under any circumstances to any interest earned on the trust account or trust accounts referred to in clause (1);"**

The same provision is made for sub-distributors in Section 12.03, subsection 4.

one can argue whether the difference in the use of **all** or **anv** interest in policies NP 19 and 39 is a substantive change or not, or whether it constitutes mere hair splitting. However, the Commission notes with interest that the Ontario Securities Commission in a release dated the 22 of March 1989, which was entitled "OSC Settles Interest Issue With Mutual Fund Dealers" that the Ontario Commission staff acknowledged

> **"some inherent uncertainty in the provisions and effect of National Policy 19."**

They stated, however, their firm faith that the interest on the sums deposited should not go to the dealers on the ground that

> **"fiduciary obligations existed in the circumstances and retention of interest constituted an unjust enrichment and created a potential conflict of interest for the mutual fund dealers."**

This is more extensive but still in basic agreement with the Manitoba Commission's interpretation that NP 19's intention is:

> **"that no person receiving money from the public should retain the interest earned on that money if and when deposited in its account".**

This Commission can certainly accept these statements as being a fair and proper interpretation of the policy. But, it is also true that the Ontario Commission staff at least felt there could be a bona fide uncertainty caused in the mind of dealers like the applicant and that the resolution of this particular unique issue involves an examination of the circumstances in order to see whether any exist which could warrant the retention of the interest.

Counsel for Great Pacific contends that the circumstances in this particular case are unique. In this particular case, Great Pacific felt that it was clearly required to pay the mutual funds the purchase price required in a timely fashion and that it was

entitled to deduct from the trust account bank charges for the operation of the account. However, it also felt that while it was entitled to forthwith deduct earned commissions, it was not obligated to do so immediately. In the rushed and harried circumstances of the boom year of 1986-87, made worse by the stroke and death of the principal owner, it had sufficient income from the payments of commissions from the mutual funds that had received the entire deposit from the customers. These cheques went directly to the firm's general account from which it was able to meet its salespersons' commissions and operating expenses. It did not attend to the timely withdrawal of commissions and this circumstance was probably not contemplated by the lawyers who drafted the policy. They would not likely imagine someone not transferring fees when earned from a trust to a general account.

When reporting to the Manitoba Securities Commission, as part of its annual return and subsequently thereto, it was determined that Great Pacific should have paid some interest to the mutual funds. According to its accountant's evidence, it thereupon had its accounting firm do an elaborate reassessment of the interest paid to it, calculated the amount that would be payable on the monies due to the funds in which its customers invested as a result of the arrangement made with its bankers for payment based on the average account float. It retained to itself that amount which its accountants determined as being interest on the commissions which it had not paid to itself and remained in the account. The accountant's methodology for determining this was outlined to the Manitoba Securities Commission in 1986 for the company's 1985 year which method of computation was deemed acceptable in a letter from the Manitoba Commission dated the 26 day of June, 1986.

Some question arose as to whether in fact this methodology was accepted by the Manitoba Commission as a proper resolution to the requirements of NP 19. The Commission did not allow the Commission staff to bring in by telephone rebuttal evidence of Mr. Schaefer of the Manitoba Securities Commission after the Commission staff had closed its case. The Commission was satisfied that there were enough facts in front of it on which to base a decision as to how it viewed the requirements of NP 19. It is to be noted that the Manitoba Commission in its order of May 18, 1988 in regard to W. G. Knight and Associates Inc., as referred to above, acknowledged as follows on page 6:

> **"Mr Riley did present evidence that one fund, Great Pacific Management (Alberta) Ltd., where Mr. Knight was employed at that time, had not paid the interest earned to the mutual funds. However, evidence later proved that after having this failure drawn to its attention, the Broker-Dealer remitted the interest to the mutual fund in compliance with NP 19."**

That evidence confirms Exhibit R.2, a letter to the accounting firm from the Manitoba Securities Commission, dated June 26, 1986, which

stated:

> **"In response to your letter of June 12, 1986 and our telephone discussion yesterday, wherein you clarified the methodology employed.....please be advised that the method of computation is acceptable.... We will also require confirmation from your client that these procedures, in accordance with National Policy No. 19, will hereinafter be consistently applied."**

It may be that the conversation and the letter did not constitute approval. Manitoba requested Saskatchewan to inquire into trust account interest for subsequent years finally leading to this application. Whether either Commission accepted the "methodology" is not essential in determining that Great Pacific had some bona fides in its failure to change that methodology. What is more important in light of the reason for the policy is whether Great Pacific unjustly profited from someone else's money by retaining the interest earned on that money when deposited to its account.

The Commission accepts the contentions of Ms. Pamela Ann Weiler who managed the account for the national accounting firm involved. In determining the amounts of interest received, she is satisfied that more than a fair amount of interest was paid to the mutual funds for the time in which the monies payable to it were held in the account. Over thirty-three million dollars was handled involving some thirteen thousand entries. After test calculations on an individual client basis she felt these averaged less than two cents an account and this was more than compensated for in the funds that were remitted. The interest rate factored in as payable on the average cash flow was a weighted average of 6% which was higher than the actual average which she felt was 5.85%. We accept that her methodology used was reasonable in determining the amount paid. She also felt that at all times she had advised her client so as to proceed in accordance with the intent of NP 19 and that her client had not received any benefit from the monies for the time period that they were in the account and belonged either to the client or to the mutual fund. Her client paid tax on the amount it retained.

The Commission must decide then, in light of these unique circumstances, who should receive the funds. It is certain that at this time if the monies are paid to the mutual funds that were the original recipients of the investments that they will with no degree of certainty end up benefitting in any way the original purchasers. Should the funds nevertheless be the recipient, even though it is clear that they have received the interest that they would have received had Great Pacific immediately transferred its commissions? In that event, Great Pacific would be out not only the interest on its trust account that pertained to its own commissions, it would also be out the additional $13,000 to $15,000 paid in accounting fees in order to determine the interest that was payable to the mutual funds so that it could establish that it had

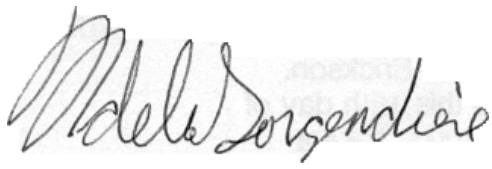
not retained interest on money received from the public to which the public was entitled.

The Commission notes that the Ontario settlement previously referred to allowed for a 25% payment from the total interest received to cover not only bank charges but also to compensate dealers for some other costs for maintaining the separate trust account. It was admitted as being in no way an exact determination but accepted as rough justice. In this particular case the amount being retained, while not perfectly accurate, is reasonably so. In any event, because Great Pacific has paid the costs of making an actual determination it is not necessary to speculate, as the Ontario Commission did, that the costs approximated between 20% and 80% of the interest. We know to a reasonable degree that more than the interest due to the funds has been paid.

The Commission finds that it is not necessary to determine the point as to whether NP 19 has been followed in order to decide the disposition of the funds. As NP 19 is no longer in existence a decision would not have any value in that regard. We find that there has been compliance with its principal intent that there be no benefit from the use of the funds that pertained to its clients. The funds paid to Great Pacific's solicitors can be released to Great Pacific. There has been no undue enrichment and no deliberate breach of policy because Great Pacific's retention was done in a bona fide belief that it was correct and its customers have not suffered any loss.

The Commission further agrees that Great Pacific's application for withdrawal from registration pursuant to Section 29(4) of the Act should be accepted.

DATED at the City of Regina, in the Province of Saskatchewan, this 19th day of September, 1990.



MARCEL de la GORGENDIERE, Q.C.
CHAIRMAN
SASKATCHEWAN SECURITIES COMMISSION

Attachments:
Appendix 1 to 4

APPENDIX 1

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

AND

IN THE MATTER OF
GREAT PACIFIC MANAGEMENT CO. (ALBERTA) LTD.

Schedule of Admissions

J. M. Hall
Advisor to the Commission

K. J. Karwandy
Counsel for the Respondent

Schedule of Admissions

1. Great Pacific was incorporated pursuant to the laws of the Province of Alberta on May 27, 1969;

2. Great Pacific was first registered as a mutual fund dealer in Saskatchewan in 1970 and at all material times in this matter was so registered to sell mutual funds within the Province of Saskatchewan;

3. Since incorporation Great Pacific has been primarily engaged in the business of selling units of mutual funds as an agent for mutual funds and has done business in the Provinces of Manitoba, Saskatchewan & Alberta;

4. Great Pacific has never been a member of a stock exchange recognized by the Commission or of the Investment Dealers' Association of Canada;

5. In April 1990, Great Pacific, applied to withdraw from registration as a mutual fund dealer within the meaning of the Act and ceased to do business in the Province of Saskatchewan from and after that date;

6. In 1971 the Commission adopted NP 19 and it remained in effect until December 31, 1987; (balance deleted)

7. In October 1987, the Commission adopted National Policy Statement No. 39 "Mutual Funds" (“NP 39"), effective January 1, 1988; (balance deleted)

8. (No agreement on wording);

9. When the Act came into force, the Commission reaffirmed the adoption of NP 39 on November 7, 1988, in Saskatchewan Local Policy Statement 1.1 "General";

10. Section 12 of NP 39 was subsequently amended in the fall of 1988; (balance deleted)

11. Throughout Great Pacific’s financial year from August 1, 1986 to July 31, 1987 (the "Relevant Period") Great Pacific maintained a trust account numbered 41-00212 at the Canadian Imperial Bank of Commerce, Albert Street and Gordon Road (Southland Mall) branch, Regina, Saskatchewan (the "Trust Account");

12. During the Relevant Period, NP 19 was in effect in Saskatchewan; (balance deleted)

13. Great Pacific deposited into the Trust Account all funds received from its clients for investment and it paid from the Trust Account, inter alia, mutual funds for the purchase of units in such mutual funds for the benefit of its clients.

Great Pacific also deposited into the Trust Account all funds received from various mutual funds on behalf of clients with respect to the redemption of mutual funds and it paid from the Trust Account its clients for the redemptions of units in such mutual funds;

14. During the Relevant Period, $69,480.00 was credited to the Trust Account with respect to interest earned on (word deleted) funds held on deposit in the Trust Account and bank charges in the amount of $12,513.00 were incurred by Great Pacific leaving a balance of $56,967.00 in the Trust Account;

15. Great Pacific allocated $23,688.00 of the $56,967.00 credited to the Trust Account to interest earned on the funds of clients held on deposit in the Trust Account and remitted the money to the mutual funds purchased by clients during the year in the same proportion as the original purchases. The money remitted augmented the mutual funds for the indirect benefit of Great Pacific's clients;

16. Following such allocation, Great Pacific claimed ownership of the balance of the interest of $33,279.00 on the basis that it was interest earned on commissions due to Great Pacific that had not been paid out of the Trust Account;

17. (No agreement on wording);

18. (No agreement on wording);

19. (No agreement on wording);

20. By written agreement between the staff of the Commission and Great Pacific dated April 20, 1990 the sum of $33,279.00 has been deposited in an interest bearing trust account by Great Pacific with its solicitors in Regina, Saskatchewan, pending the direction of the Commission;

21. Not applicable;

APPENDIX 2

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

AND

IN THE MATTER OF

GREAT PACIFIC MANAGEMENT CO. (ALBERTA) LTD.

NOTICE OF HEARING

TAKE NOTICE that the Saskatchewan Securities Commission (the "Commission") will hold a hearing pursuant to section 9 of The Securities Act, 1988, S.S. 1983, c. S-42.2 (the "Act") at the offices of the Commission, 8th Floor, Toronto-Dominion Bank Building, 1914 Hamilton Street, Regina, Saskatchewan, on Tuesday the 21st day of August, 1990 at 9:00 o'clock in the forenoon;

TO CONSIDER:

1. Whether Great Pacific Management Co. (Alberta) Ltd. ("Great Pacific") has met its obligations as a registrant under the Act and has complied with National Policy Statement No. 19 "Mutual Fund Sales Companies: Commingling of Funds And Securities" ("NP 19") with respect to the retention by Great Pacific of the sum of $33,279.00 earned as interest on its trust account;

2. The disposition of the sum of $33,279.00, and the interest thereon, currently held in trust by the solicitors for Great Pacific, being interest earned on monies received from clients for investment in mutual funds and upon redemption of clients' shares in mutual funds; and,

3. Whether Great Pacific's application for withdrawal from registration should be accepted pursuant to section 29(4) of the Act.

BY REASON OF THE FOLLOWING MATTERS AND ALLEGATIONS:

1. Great Pacific was incorporated pursuant to the laws of the Province of Alberta on May 27, 1969;

2. Great Pacific was first registered as a mutual fund dealer in Saskatchewan in 1970 and at all material times in this matter was so registered to sell mutual funds within the Province of Saskatchewan;

3. Since incorporation Great Pacific has been primarily engaged in the business of distributing mutual funds and has done business in the Provinces of Manitoba, Saskatchewan & Alberta;

4. Great Pacific has never been a member of a stock exchange recognized by the Commission or of the Investment Dealers' Association of Canada;

5. In April 1990, Great Pacific, applied to withdraw from registration as a mutual fund dealer within the meaning of the Act and ceased to do business in the Province of Saskatchewan from and after that date;

6. In 1971 the Commission adopted NP 19 and it remained in effect until December 31, 1987. Section 1 of NP 19 required that all mutual fund distributors receiving money for investment in a mutual fund or upon redemption of shares of the mutual fund, deposit such money in a trust account. Any interest earned on the trust account, less bank charges, was to be remitted to the mutual fund for the benefit of all shareholders or unitholders;

7. In October 1987, the Commission adopted National Policy Statement No. 39 "Mutual Funds" ("NP 39"), effective January 1, 1988. NP 39 represented a comprehensive statement of national policies applicable to all mutual funds. As such it consolidated the majority of national policies on mutual funds, including NP 19;

8. Section 12 of NP 39 restated the requirement from NP 19 that all mutual fund distributors deposit monies received for investment or on redemption in a trust account (now interest-bearing). As well, all interest earned on the trust account, (unless paid to the investors pro rata), less bank charges, is to be remitted to the mutual fund;

9. When the Act came into force, the Commission reaffirmed the adoption of NP 39 on November 7, 1988, in Saskatchewan Local Policy Statement 1.1 "General";

10. Section 12 of NP 39 was subsequently amended in the fall of 1988 to explicitly provide that mutual fund dealers shall not be entitled under any circumstances to any interest earned on the trust accounts containing monies received for investment or on redemption;

11. Throughout Great Pacific's financial year from August 1, 1986 to July 31, 1987 (the "Relevant Period") Great Pacific maintained a trust account numbered 41-00212 at the Canadian Imperial Bank of Commerce, Albert Street and Gordon Road (Southland Mall) branch, Regina, Saskatchewan (the "Trust Account");

12. During the Relevant Period, NP 19 was in effect in Saskatchewan and Great Pacific was subject to its provisions;

13. Great Pacific deposited into the Trust Account all funds received from its clients for investment and it paid from the Trust Account various mutual funds for the purchase of units in such mutual funds for the benefit of its clients. Great Pacific also deposited into the Trust Account all funds received from various mutual funds on behalf of clients with respect to the redemption of mutual funds and it paid from the Trust Account its clients for the redemptions of units in such mutual funds;

14. During the Relevant Period, $69,480.00 was credited to the Trust Account with respect to interest earned on clients' funds held on deposit in the Trust Account and bank charges in the amount of $12,513.00 were incurred by Great Pacific leaving a balance of $56,967.00 in the Trust Account;

15. Great Pacific allocated $23,688.00 of the $56,967.00 credited to the Trust Account to interest earned on the funds of clients held on deposit in the Trust Account and remitted the money to the mutual funds purchased by clients during the year in the same proportion as the original purchases. The money remitted augmented the mutual funds for the indirect benefit of Great Pacific's clients;

16. Following such allocation, $33,279.00 remained as a net credit to the trust account for the Relevant Period;

17. Great Pacific subsequently claimed ownership of the sum of $33,279.00 and has refused to remit to the mutual funds the sum of $33,279.00 earned as interest on clients' funds, despite receiving directions to do so from the staff of the Commission;

18. In retaining the sum of $33,279.00 earned as interest on clients' funds during the Relevant Period, Great Pacific was and is knowingly in violation of National Policy 19;

19. The actions of Great Pacific in retaining the sum of $33,279.00 and in contravening NP 19 in so doing are contrary to the public interest;

20. By written agreement between the staff of the Commission and Great Pacific dated April 20, 1990 the sum of $33,279.00 has been deposited in an interest bearing trust account by Great Pacific with its solicitors in Regina, Saskatchewan, pending the direction of the Commission;

21. Such further matters and allegations as counsel may advise and the Commission may allow;

AND TAKE FURTHER NOTICE that Great Pacific may be represented by counsel at the hearing and may make representations and lead evidence;

AND TAKE FURTHER NOTICE that Great Pacific is required to give written notice of its intention to attend or not to attend the said hearing, such notice to be addressed to the Secretary of the Commission, 850 - 1914 Hamilton Street, Regina, Saskatchewan, S4P 3V7, at least two days before the said date of the hearing;

AND THAT upon failure of any person to attend at the time and place as aforesaid, the hearing may proceed in the absence of such person and no further notice of the proceeding will be given to such person.

DATED at the City of Regina, in the Province of Saskatchewan, this 18th day of July, 1990.

Barbara L. Shourounis
Director
Saskatchewan Securities Commission

Note: Documentary evidence to be used at the hearing may be obtained by Great Pacific or its counsel at the Commission's office, 850 - 1914 Hamilton Street, Regina, Saskatchewan, prior to the date of the hearing by appointment with the Advisor to the Commission, whose telephone number is (306) 787-5645.

APPENDIX 3

NATIONAL POLICY No. 19

MUTUAL FUND SALES COMPANIES: COMMINGLING OF FUNDS AND SECURITIES

The registrations of all mutual fund contractual plan (distributors or underwri- holding provincial registration, excepting members of a stock exchange recognized in the particular province or of the Investment Dealers' Association of Canada, must comply with the following requirements-

1. All monies received by a contractual distributor or underwriter of a mutual fund
   (a) for investment in the shares of the mutual fund either directly or through the medium of the plan, or
   (b) upon redemption of shares of the mutual fund either directly or through the distributor or underwriter-,

   shall, when received by the distributor or underwriter be separately accounted for and be deposited in a trust account out of which may be paid the sales charges, service fees and monies received for purposes other than investment in shares of the mutual fund to which the distributor or underwriter may be entitled, but which monies shall not be otherwise commingled with the assets of the distributor or underwriter or used in any way to finance its operations;
   (c) any interest earned on monies deposited in the trust account less bank charges on the account should be turned over to the mutual fund as received for the benefit of all shareholders or unitholders. In the case of a trust account used for more than one fund a pro rata application shall be made based on cash flow-,
   (d) monies received for the purchase of shares or units shall be transferred to the mutual fund within two business days following the determination of the price of the shares or units purchased.
2. Contractual distributors or underwriters of a mutual fund are prohibited from transferring, pledging, encumbering or dealing with in any way, shares of a mutual fund held for investors for safekeeping, under plans or otherwise, except to the extent specifically provided for in any written agreement between such distributors or underwriters and the investor setting out the terms under which such mutual fund shares are being held.
3. To ensure compliance with these provisions each contractual distributor or underwriter of a mutual fund is required to file with the administrator (Commission) annually the auditor's report that in the opinion of such audifor the company has complied with the provisions of this policy statement regarding commingling of funds or shares.
4. The failure to comply with these provisions shall be deemed conduct making a registrant subject to discipline by the administrator (Commission).
5. A contractual distributor or underwriter of a mutual fund shall be deemed to comply with paragraph 1 of the foregoing provisions,
   (a) if all the monies received from investors are placed in the same trust account %with the monies received from the fund for redemption of shares and the netting of proceeds from sales against proceeds from redemptions anti the furnishing of one money settlement for both types of transactions is within the intent of the foregoing provisions, or
   (b) if all the monies received from investors are separately accounted for and the not amount to be invested in the shares of the mutual fund is paid to the mutual fund by certified cheque simultaneously with the deposit in the distributor's or underwriter's general bank account of the monies received from the investor provided the said deposit is made within the time limits provided by paragraph l(d).

SECTION II

SALE AND REDEMPTION OF SECURITIES OF A MUTUAL FUND

SECTION 11.01 - OBJECTIVES

The provisions of Sections 11 and 12 of this policy are aimed at:

(1) ensuring that an investor's funds which are to be invested in a mutual fund are received by the mutual fund promptly and preferably concurrently with the investor's order being accepted by the mutual fund

(2) eliminating or at least reducing the opportunity for loss of an investor's funds during the period from the delivery of such funds by the investor in respect of the investor's purchase of securities of the mutual fund to the time of receipt of such funds by the mutual fund;

(3) ensuring that interest earned on an investor's funds during the period from the delivery of such funds by the investor in respect of the investor's purchase of securities of the mutual fund to the time of receipt of such funds by the mutual fund, accrues to the benefit of either the mutual fund or the investor;

(4) ensuring that interest earned on an investor's funds during the period from the acceptance by the mutual fund of the investor's order for redemption of securities of the mutual fund to the time of receipt of such funds b y the investor, accrues to the benefit of the mutual fund, regardless of whether the redemption monies are paid directly by the mutual fund or by an agent of the mutual fund.

The provisions of Sections 11 and 12 are to be interpreted with these objectives in mind and all arrangements between or among a mutual fund, its principal distributor, it manager, any dealer participating in the distribution of securities of the mutual fund or anyone else should be made or brought into line to give effect to these objectives and their intent. In particular, and without limitation, in making arrangements for services to or in respect of the mutual fund, it should e ensured that an investor's funds which are required by Section 12 of this policy to be held as trust funds retain their character as trust funds in the hands of respective parties providing services and provision should be made for the mutual fund, its manager and its principal distributor, through their designated representative, to examine the books and records of the respective parties providing services to or in respect of the mutual fund for the purpose of monitoring compliance with the requirements of the agreements and of this policy.

In order to implement these objectives, it is essential that all persons participating in the distribution of securities of a mutual fund be adequately organized to do so and have adequate facilities and procedures in place to do so. In addition, in order to shorten the period between the placing of an order for the purchase of securities of a mutual fund and the time that the funds in respect of that order are actually received by the mutual fund, a dealer receiving an order for the purchase of securities of a mutual fund must at the time of receipt of the investor's order obtain from the investor all relevant documentation, information and registration instructions so that the same is available at the time the order is transmitted to the mutual fund or its principal distributor for transmittal in conjunction with the acceptance of the order by or on behalf of the mutual fund. Similarly, in order to shorten the period between the placing of an order for the redemption of securities of a mutual fund and the payment to the investor of the redemption proceeds, a dealer receiving an order for redemption must at the time of receipt of the investor's order obtain from the investor all relevant documentation required by the mutual fund in respect of the redemption including, without limitation, any written request for redemption that may be required by the mutual fund, duly completed and executed, and any certificates representing the mutual fund securities to be redeemed so that all required documentation is available at the time the redemption order is transmitted to the mutual fund or its principal distributor for transmittal in conjunction with the acceptance of the order by or on behalf of the mutual fund.

In all arrangements that are made with respect to the distribution of securities of a mutual fund, a dealer transmitting an order for the purchase of securities of a mutual fund shall be responsible for ensuring that payment of the issue price of such securities is made when due. Accordingly, dealers participating in the sale of mutual fund securities should ensure that their arrangements with their clients are adequate to cover such obligations as any loss which arises due to a failure of an investor to deliver funds or to a cheque being dishonoured on presentation for payment or for any other reason shall be borne as between the mutual fund, its principal distributor and the dealer in question by the dealer or principal distributor and not by the mutual fund. Similarly, on the redemption of securities of a mutual fund, any loss resulting from the failure to verify the identity of the person requesting the redemption of securities of a mutual fund shall be borne as between the mutual fund and anyone participating in the distribution or redemption of securities of the mutual fund by such other participants and not by the mutual fund.

SECTION 12

COMMINGLING OF MONEY

SECTION 12.01 – PRINCIPAL DISTRIBUTORS – COMMINGLING OF MONEY

Subject to Section 12.02, a principal distributor of a mutual fund shall comply with the following requirements:

all monies received by a principal distributor:

(a) for investment in securities of the mutual fund; or

(b) upon the redemption of securities of the mutual fund:

shall be separately accounted for and shall be deposited in an interest-bearing trust account or trust accounts, but may not otherwise be commingled with the assets of the principal distributor and may not be commingled with money received by the principal distributor with respect to the sale of redemption of securities other than mutual fund securities or with respect to the sale or redemption of investment contracts;

(2) the principal distributor shall not use any of the monies referred to in clause (1) to finance its own or any other operations in any way;

(3) (i) remitting the net amount to be invested in the securities of the mutual fund to the mutual fund;

(ii) paying redemption proceeds to the investors entitled thereto; or

(iii) paying sales charges, service fees and any other similar amounts to which the principal distributor may be entitled;

(4) unless the interest is paid to the investors *pro rata*, all interest earned on the trust account or trust accounts referred to in clause (1) less any bank charges applicable thereto shall be paid to the mutual fund no less frequently than monthly and where the monies in the trust account or trust accounts are held for more than on mutual fund, the amount payable on account of interest shall be prorated among the mutual funds based on cash flow; the participating dealer shall not be entitled under any circumstances to any interest earned on the trust account or trust accounts referred to in clause (1);

(5) all monies received by the principal distributor for the purchase of securities of the mutual fund shall be paid to the mutual fund forthwith and in any event no later than the second business day following the date of receipt;

(6) the principal distributor shall not transfer, lend pledge, encumber or otherwise deal in any way with securities of a mutual fund held for investors in safekeeping or under plans or otherwise except to the extent expressly provided for in any written agreement between the principal distributor and the investor setting out the terms on which the securities of the mutual fund are held and may be dealt with.

SECTION 12.02 – DEEMED COMPLIANCE

Where the principal distributor commingles in one trust account the monies referred to in Section 12.01(1)(a) and (b), the principal distributor may net the proceeds from sales against the proceeds from redemptions and make on cash settlement.

SECTION 12.03 – SUB-DISTRIBUTORS – COMMINGLING OF MONEY

Where any dealer participates with a mutual fund or with the principal distributor of the mutual fund (the "participating dealer") in the distribution of securities of the mutual fund, such participating dealer shall comply with the following requirements:

(1) all monies received by the participating dealer for investment in securities of the mutual fund shall be separately accounted for and shall be deposited in an interest-bearing trust account or trust accounts, but may not otherwise be commingled with the assets of the participating dealer and may not be commingled with money received by the participating dealer with respect to the sale or redemption of securities other than mutual fund securities or with respect to the sale or redemption of investment contracts;

(2) the participating dealer shall not use any of the monies referred to in clause (1) to finance its operations in any way;

(3) the participating dealer shall be entitled to withdraw monies from the trust account or trust accounts referred to in clause (1) only for the purpose of

(i) remitting the net amount to be invested in the securities of the mutual fund to the mutual fund or the principal distributor of the mutual fund; or

(ii) for the purpose of paying sales charges, service fees and any other similar amounts to which the participating dealer or the principal distributor may be entitled;

(4) unless the interest is paid to the investors *pro rata*, all interest earned on the trust account or trust accounts referred to in clause (1) less any bank charges applicable thereto shall be paid to the mutual fund no less frequently than monthly and where the monies in the trust account or trust accounts are held for more than one mutual fund, the amount payable on account of interest shall not be prorated among the mutual funds bused an cash flow; the participating dealer shall not be entitled under any circumstances to interest earned on the trust account or trust accounts referred to in clause (1);

(5) all monies received by the participating dealer for the purchase of securities of the mutual fund shall be paid to the mutual fund or its principal distributor as soon as practicable and in any event no later than the Settlement Date;

(6) the mutual fund or the principal distributor, as the case may be, shall be entitled through their respective auditors or other designated representatives to examine the books and records of the participating dealer for the purchase of securities of the mutual fund shall be paid to the mutual fund or its principal distributor as soon as practicable and in any event no later than the Settlement Date;

(6) the mutual fund or the principal distributor, as the case may be, shall be entitled through their respective auditors or other designated representatives to examine the books and records of the participating dealer for the purpose of verifying the participating dealer's compliance with the foregoing.

SECTION 12.04 – COMPLIANCE REPORT

The principal distributor of a mutual fund and each of the participating dealers referred to in Section 12.03 shall complete and file with the securities authorities a report with respect to its compliance during the last completed financial year with the applicable requirements of Section 12, such compliance report to be filed within 120 days of the applicable fiscal year end and to be accompanied by a letter form the auditors of the principal distributor of the mutual fund or the participating dealer, as the case may be, advising whether the auditors are in agreement with the information given in the report as to compliance with the applicable requirements of Section 12.

SECTION 12.05 - EXEMPTION

The provisions of Section 12 of this policy, with the exception of Sections 12.01(5), 12.03(5), 12.03(6) and 12.04, do not apply to members of The Investment Dealers Association of Canada.