

**SASKATCHEWAN LOCAL INSTRUMENT 32-501
DEPOSIT AGENTS**

PART 1 INTERPRETATION

Interpretation

1 In this Local Instrument:

- (a) **“Act”** means *The Securities Act, 1988*;
- (b) **“Commission”** means the Saskatchewan Financial Services Commission;
- (c) **“deposit agent”** means a person who or company that trades in guaranteed investment certificates, including accepting, receiving or soliciting money from investors for transmission to a financial institution for investment in a guaranteed investment certificate;
- (d) **“Director”** means the Director of the Securities Division of the Commission;
- (e) **“financial institution”** means:
 - (i) a bank;
 - (ii) a credit union;
 - (iii) an insurance company licensed pursuant to *The Saskatchewan Insurance Act*;
 - (iv) a trust corporation or a loan corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997*;
 - (v) an association to which the *Cooperative Credit Associations Act* (Canada) applies; and
 - (vi) an authorized foreign bank as defined in the *Bank Act* (Canada) that is set out in Schedule III of that Act;
- (f) **“GIC exemption”** means an exemption in Saskatchewan securities laws from the requirement to be registered pursuant to section 27 of the Act to trade in GICs, including:
 - (i) the exemption in paragraph 2.34(2)(d) of National Instrument 45-106, *Prospectus and Registration Exemptions*; and
 - (ii) an exemption granted by the Commission or the Director pursuant to the Act;
- (g) **“guaranteed investment certificate”** or **“GIC”** means:
 - (i) evidence of indebtedness of or guaranteed by a financial institution; or
 - (ii) a certificate or receipt issued by a financial institution for money received for guaranteed investment;
- (h) **“official”** means an individual who is a partner, director or officer of a deposit agent and who trades in GICs on behalf of the deposit agent;
- (i) **“registered”** means registered pursuant to the Act;
- (j) **“registered deposit agent”** means a deposit agent who or that is registered and whose registration is not suspended or cancelled;
- (k) **“salesperson”** means an individual, other than an official, that is employed or engaged by a deposit agent to trade in GICs on behalf of the deposit agent.

PART 2 REGISTRATION

Exemption removed

2 The GIC exemptions are not available to a deposit agent, an official or a salesperson.

Registration required

3(1) Subject to section 4, no person or company shall act as a deposit agent unless that person or company is registered as a dealer in the category of deposit agent.

(2) No individual shall act as a deposit agent.

(3) Subject to section 4, no person or company shall act as an official unless that person or company is registered as an official of a registered deposit agent.

(4) Subject to section 4, no person or company shall act as a salesperson unless that person or company is registered as a salesperson of a registered deposit agent.

(5) Subsections (3) and (4) do not apply to who are persons engaged in administrative, clerical or accounting duties in the employ of the registered deposit agent and who are not engaged in trading in GICs.

Exemptions from registration

4 This Local Instrument does not apply to:

(a) a trade by a financial institution or any of its employees in a GIC of the financial institution;

(b) a trade in a GIC of a financial institution by another financial institution or any employee of the other financial institution if a principal and agent relationship exists between the financial institution and the other financial institution;

(c) a trade in a GIC by a registered instrument dealer or an official or salesperson of the registered investment dealer for the account and through the facilities of the registered investment dealer;

(d) a trade in a GIC by a registered mutual fund dealer that is a member of The Mutual Fund Dealers Association of Canada or an official or salesperson of that registered mutual fund dealer for the account and through the facilities of the registered mutual fund dealer only if the registered mutual fund dealer:

(i) files a report with the Commission in accordance with Form 32501F1 before the exemption in this clause is used for the first time;

(ii) files a report in accordance with Form 32-501F1 with the Commission by December 31 of each year; and

(iii) advises the Commission within 10 days of any changes to the information on the most recent Form 32-501F1 that it has filed;

(e) a trade in a GIC by a person who or company that is recognized at law as a fiduciary on behalf of others for whom they act if the fiduciary does not receive a commission; or

(f) a trade in a GIC by a person who or company that receives funds from another person or company for transmittal to a financial institution if:

(i) the person or company does not ask for or receive a commission or remuneration;

(ii) the transaction is not made in the course of continued and successive transmissions of the same character; and

(iii) the trade is not made by a person or company whose usual business is trading in GICs.

Officials to act for one deposit agent only

5 No official shall carry on business or act as a deposit agent:

- (a) on his or her own account; or
- (b) on behalf of any deposit agent other than the deposit agent with whom he or she is registered.

Salespersons to act for employer only

6 No salesperson shall carry on business or act as a deposit agent:

- (a) on his or her own behalf; or
- (b) on behalf of any deposit agent other than the deposit agent with whom he or she is registered.

Engaging unregistered officials and salespersons prohibited

7 Unless a person or company is registered as an official or salesperson on behalf of the deposit agent, no deposit agent shall:

- (a) employ or engage that person or company as an official or salesperson; or
- (b) directly or indirectly, pay to any person or company a commission, salary or other remuneration in connection with that person's activities as an official or salesperson.

Non-liability agreement prohibited

8 No deposit agent shall enter into an agreement with an official or salesperson in which the parties agree to limit the liability of the deposit agent for the actions of the salesperson or official.

Initial application for registration

9 A person who or company that wishes to be registered shall apply for initial registration as:

- (a) a deposit agent by completing and filing Form 32-501F2; and
- (b) as an official or salesperson by completing and filing Form 32-501F3.

PART 3 ONGOING REGISTRATION REQUIREMENTS

Exemption from registration requirements

10 A deposit agent is exempt from the requirements in Part IV Registration of *The Securities Regulations* other than section 15.

Insurance

11(1) In this section, "**Standard Form of Financial Institution Bond**" means the standard form of financial institution bond that is approved by the Investment Dealers Association of Canada.

(2) Every deposit agent shall maintain insurance in the Standard Form of a Financial Institution Bond issued by an insurer licensed pursuant to *The Saskatchewan Insurance Act* that covers:

- (a) any loss resulting from dishonest or fraudulent acts of officials, salespersons and employees, committed anywhere and whether committed alone or in collusion with others, including loss of property through any act of any of the officials, salespersons and employees;
- (b) any loss of cash and securities or other property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage or destruction while within any of the deposit agent's offices, the offices of any financial institution or clearing house or within any recognized place of safe-deposit, as more fully defined in the Standard Form of Financial Institution Bond;

- (c) any loss of cash and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit or in the mail, as more fully defined in the Standard Form of Financial Institution Bond; and
 - (d) any loss resulting from forgery or alterations of any cheques, drafts, promissory notes or other written orders or directions to pay sums in cash, excluding securities, as more fully defined in the Standard Form of Financial Institution Bond.
- (3) The minimum amount of insurance that must be maintained for each clause in subsection (2) is \$200,000.
- (4) The maximum deductible for the insurance that must be maintained pursuant to subsection (2) is \$10,000.
- (5) Every financial institution bond required pursuant to subsection (2) shall be endorsed by the insurer stating that the insurer will give:
 - (a) 15 days notice to the Director of any intended change in or intended cancellation of the financial institution bond; and
 - (b) prompt notice of any claim made under the financial institution bond.
- (6) Every deposit agent shall file with the Director a certified copy of the financial institution bond required pursuant to subsection (2):
 - (a) with its initial application for registration; and
 - (b) concurrently with the filing of its report pursuant to section 14.
- (7) Every deposit agent that is a company shall file with the Director a certified copy of a resolution of its directors, and every deposit agent that is a person shall file with the Director a statutory declaration, stating that:
 - (a) full consideration has been given to the amount of insurance necessary to cover the insurable risks in the business of the deposit agent; and
 - (b) either:
 - (i) the minimum amount of coverage required in subsection (3) is sufficient; or
 - (ii) the minimum amount of coverage required in subsection (3) is not sufficient and stating an amount of coverage that in the person's or company's opinion, would be sufficient.
- (8) Every deposit agent that is a company shall file the directors' resolution required pursuant to subsection (7):
 - (a) with the deposit agent's application for registration; and
 - (b) concurrently with the filing of its report pursuant to section 14.
- (9) Every deposit agent that is a person shall file the statutory declaration required pursuant to subsection (7):
 - (a) with the deposit agent's application for registration; and
 - (b) concurrently with the filing of its report pursuant to section 14.
- (10) Every deposit agent shall notify the Director in writing of any claim that it makes under a financial institution bond promptly after making that claim.
- (11) Notwithstanding any other provision of this section, if the Director is satisfied that a deposit agent has insurance coverage that is equivalent to the insurance required by this section, the Director may accept that equivalent insurance as being in compliance with the requirements of this section.

Change of control

12(1) In this section, “**change of control**” means a change in ownership of voting securities which results in direct or indirect ownership by a security holder or an affiliated group of security holders of 10% or more of securities.

(2) If there is a change of control of a deposit agent, the deposit agent must give notice of details of the change to the Director within 10 days of the change.

(3) The notice required in subsection (2) must include proof:

(a) that notice of change of control has been given pursuant to the financial institution bond required pursuant to section 11; and

(b) that the financial institution bond provides coverage of the deposit agent after the change of control.

Compliance systems

13 A deposit agent shall maintain effective systems to ensure that its officials and salespersons are:

(a) in compliance with the requirements of this Local Instrument; and

(b) dealing honestly, fairly and in good faith with the deposit agent’s clients.

Annual reporting requirement

14 A deposit agent shall file a report with the Director in accordance with Form 32-501F4 on or before December 15 of each year.

Holding out

15 Every official and salesperson carrying on the business of a deposit agent shall hold themselves out as an official or salesperson only under the name of the deposit agent with whom the official or salesperson is registered.

Trust compliance report

16 A deposit agent that operates a trust account must file annually within three months after the deposit agent’s financial year end the report of an auditor acceptable to the Commission in accordance with Form 32-501F5.

Business records

17 Every deposit agent must maintain books and records necessary to properly record the deposit agent’s business transactions including the following:

(a) a file for each client that must contain the following:

(i) a copy of the application for each GIC in which the client invests;

(ii) a copy of the client’s or financial institution cheque for each transaction;

(iii) a copy of the receipt for cash received from the client;

(iv) a copy of the financial institution deposit slip for each investment;

(v) a copy of the investment confirmation received from the financial institution;

(vi) written documentation of oral instructions from the clients if permitted under section 20, including the name of the client, details of oral instructions and the date and time they were received;

(b) a copy of commission statements from financial institutions.

Business office

18 Every deposit agent that does not have a place of business in Saskatchewan shall comply with all of the following conditions:

- (a) the deposit agent must have a place of business in Canada;
- (b) the deposit agent must have at least one official resident in Canada and registered in Saskatchewan as an official of the deposit agent;
- (c) the deposit agent must not have any officials or salespersons who reside in Saskatchewan;
- (d) the deposit agent must file an executed submission to jurisdiction and appointment of agent for service of process substantially in the form set out in Appendix A to this Local Instrument;
- (e) the deposit agent must file with the Director a written undertaking substantially in the form set out in Appendix B to this Local Instrument;
- (f) the deposit agent must maintain in its home jurisdiction in Canada those books and records necessary to properly record its business transactions in Saskatchewan; and
- (g) the deposit agent must provide a disclosure statement to each new client substantially in the form set out in Appendix C to this Local Instrument.

PART 4 WRITTEN AGREEMENTS

Application forms

19(1) If an official or salesperson receives money from an investor for investment in a GIC, the deposit agent must complete an application form containing the following information:

- (a) the name of the investor and a third party, if any, designated by the investor as the beneficial owner of the GIC;
- (b) the name of the financial institution with whom the investor wishes to invest;
- (c) the amount of the money invested;
- (d) the interest rate of the investment and how interest is to be calculated and paid;
- (e) the term of the investment;
- (f) whether or not the investment can be redeemed or transferred prior to maturity and any costs or charges applicable;
- (g) the date of the application;
- (h) the address or account where the investor wishes to receive interest and maturity cheques;
- (i) the address where the investor wishes to receive communications from the financial institution;
- (j) a statement in bold print and in a minimum 10 point size substantially in the following words:

“The financial institution will send a confirmation of this investment directly to you within 15 days after receiving your money. If you do not receive this confirmation, you should contact the financial institution.”;
- (k) a declaration by the deposit agent that all money or certificates are held by the deposit agent in trust for the investor.

- (2) The application form mentioned in subsection (1) must be approved by the financial institution with which the money is to be invested before the application form is used.
- (3) No official or salesperson shall designate a third party beneficiary in the application form who or that is directly or indirectly associated with the deposit agent, its officials or salespersons.
- (4) No official or salesperson shall designate the deposit agent's, the official's or the salesperson's own address as the address for the purposes of clause (1)(h) or (i).
- (5) The official or salesperson and the investor must sign the application form immediately after it is completed.
- (6) Immediately after the application form is signed, the official or salesperson shall give to the investor:
 - (a) a copy of the completed application; and
 - (b) a clear explanation of the investment process in writing.

Deposit agent signing application

- 20(1)** An official or salesperson may sign an application on behalf of an investor only if:
- (a) the purpose is to enable the reinvestment on behalf of the investor of a maturing GIC with a financial institution;
 - (b) there is no change of beneficial ownership;
 - (c) the investor gives oral or written instructions to the deposit agent; and
 - (d) either:
 - (i) the investor is away from the investor's principal residence for an extended period of time; or
 - (ii) it is significantly inconvenient for the investor to attend at the deposit agent's office.
- (2) The oral or written instructions mentioned in clause (1)(c) must include:
- (a) the source of the money for reinvestment;
 - (b) the terms on which the money is to be reinvested;
 - (c) the address where interest and maturity cheques should be sent or deposited;
 - (d) the address where the financial institution should send the confirmation notice for the reinvestment required in section 30; and
 - (e) the time period in which the deposit agent is authorized to sign the application on behalf of the investor.
- (3) If an official or salesperson signs an application form for an investor in accordance with subsection (1), the deposit agent must send a copy of the completed application form within 24 hours to:
- (a) the investor's then current address if it is different from the investor's principal residence as provided by the investor to the registrant; and
 - (b) the investor's principal residence.

PART 5 HANDLING OF MONEY

Manner of payment

21(1) No official or salesperson shall accept money from investors for investment in GICs unless the investment is by:

- (a) a cheque payable to the financial institution with whom the investor wishes to invest;
 - (b) cheques or other negotiable instruments endorsed to the credit of the payee for deposit to the financial institution with whom the investor wishes to invest;
 - (c) cash; or
 - (d) a third party cheque payable to the investor if the investor wants to invest the money in GICs of several financial institutions.
- (2) If an official or salesperson receives from an investor either cash or a third party cheque payable to the investor, the official or salesperson shall immediately:
- (a) provide a written receipt for the money to the investor; and
 - (b) deposit the cash or cheque into a trust account.

Requirement to turn over money to deposit agent

22 Every salesperson and official of a deposit agent shall, on receipt, pay over to the deposit agent all money received in connection with the business of the deposit agent.

Pooled money prohibited

23 No deposit agent, official or salesperson shall pool money received from more than one investor, and invest that pooled money in a GIC on behalf of those investors.

Deposit agent holds deposits as trustee

24 All funds received by a deposit agent, official and salesperson in connection with the purchase of a GIC are deemed to be trust funds.

Trust accounts

25(1) Any trust account that a deposit agent operates must be established under a written trust agreement between the deposit agent and the financial institution.

(2) The trust agreement established pursuant to subsection (1) must contain the following terms:

- (a) an acknowledgment by the deposit agent that the deposit agent holds the money in trust;
- (b) an acknowledgment by the deposit agent that the deposit agent will not overdraw the trust account;
- (c) a direction by the deposit agent to the financial institution to make records relating to the trust account available to the Director on the Director's request;
- (d) an acknowledgment by the financial institution that it will pay the money in the trust account to another financial institution or an investor, but not to the deposit agent;
- (e) an acknowledgment by the financial institution that it will credit any interest, or other consideration or set off as a result of the operation of the trust account to the investor.

- (3) A deposit agent may deposit only the following into the trust account:
- (a) cash; or
 - (b) a third party cheque payable to the investor if the investor wants to invest the money in GICs of several financial institutions.
- (4) A deposit agent shall operate a trust account established under subsection (1) in accordance with the following provisions:
- (a) the deposit agent must not deposit into the trust account the deposit agent's own money or money from any other business the deposit agent may operate;
 - (b) the deposit agent must credit to the investor any interest, other consideration, or set off as a result of the operation of the trust account;
 - (c) the deposit agent must not make any payments from the trust account to anyone other than a financial institution or an investor;
 - (d) the deposit agent must not overdraw the trust account;
 - (e) the deposit agent must clear the trust account to a zero balance at the end of each day by forwarding money to the financial institutions.

Remitting money to financial institution

26(1) A deposit agent shall send money received from an investor together with the completed application form in accordance with section 19 to the financial institution either:

- (a) on the day that the deposit agent receives the money; or
 - (b) on the next business day if the deposit agent receives the money after the financial institution has closed for the day.
- (2) A deposit agent shall send all of the money received from an investor to a financial institution, and the deposit agent shall not make any deductions for commission or for any other reason.
- (3) Subject to subsection (4), a deposit agent shall send the money to the financial institution in any of the following ways:
- (a) by depositing the money into an account in the name of the financial institution;
 - (b) by courier; or
 - (c) by mail.
- (4) A deposit agent shall send the money to the financial institution pursuant to subsection (3) in the most expeditious way.

PART 6 FINANCIAL INSTITUTIONS

Dealing with registered entities

27 No financial institution shall accept, receive or solicit money for the purchase of a GIC:

- (a) from a deposit agent unless the deposit agent is a registered deposit agent; or
- (b) from an official or a salesperson unless the official or salesperson is acting on behalf of a registered deposit agent.

Contract with deposit agent required

28(1) No financial institution shall accept, receive or solicit money from a deposit agent unless the financial institution has a written agreement with that deposit agent.

(2) The written agreement between a financial institution and a deposit agent mentioned in subsection (1) must include the following:

- (a) an acknowledgment that the deposit agent may accept, receive or solicit money from investors for investment in a GIC with the financial institution;
- (b) a provision that the deposit agent must remit money to the financial institution only in accordance with this local instrument;
- (c) a provision that the deposit agent must accept, receive or solicit money from investors only in accordance with this local instrument;
- (d) a provision that the deposit agent must use an application form approved by the financial institution and prepared in accordance with this Local Instrument;
- (e) a provision that the deposit agent shall send the completed application form to the financial institution, in the most expeditious and reasonable way considering the amount invested, no later than the next business day after the money has been received and are deposited;
- (f) an acknowledgment that all money accepted, received or solicited by the deposit agent shall be held in trust for the investor;
- (g) an acknowledgment that the deposit agent shall operate trust accounts, if any, in accordance with this Local Instrument.

Payments to investors

29 A financial institution shall:

- (a) make all payments due under a GIC payable to the beneficiary designated in the application form relating to that GIC; and
- (b) send all payments due under a GIC to the address or account designated by the investor:
 - (i) on the application form; or
 - (ii) in any other written direction signed by the investor that the financial institution has subsequently received.

Confirmation notice

30(1) A financial institution shall promptly, but in any event no later than 15 days after receiving or reinvesting an investor's money for a GIC, send a written notice to the investor stating:

- (a) that the financial institution has received the money;
- (b) the amount of money received;
- (c) the interest rate at which the money has been invested, and how interest will be calculated and paid;
- (d) the term of the investment including the start and maturity date;
- (e) whether or not the investment can be redeemed prior to maturity and any costs or charges applicable; and
- (f) the name of the investor or person designated as owner of the GIC.

(2) The financial institution shall send the notice mentioned in subsection (1) to the address specified by the investor on the application.

(3) The financial institution shall send a copy of the confirmation notice to the deposit agent who transmitted the money.

Reporting to the Commission

31 A financial institution shall, within 10 days of the event, advise the Commission of:

(a) the name and address of any deposit agent with which it has entered an initial agreement pursuant to section 28 for the first time;

(b) when it terminates a contract with a deposit agent, and the reasons for the termination; and

(c) when it ceases to accept, receive or solicit money for the purchase of GIC from deposit agents.

Annual reporting

32 A financial institution shall file a report with the Commission on or before December 31 of each year in accordance with Form 32-501F6.

PART 7 EXEMPTION APPLICATIONS

Exemption

33 The Commission or the Director may grant an exemption to this Local Instrument, in whole or in part, subject to any conditions or restrictions that may be imposed in the exemption.