

**ALBERTA SECURITIES COMMISSION
NOTICE 33-703**

Sale of Deposit Notes by Mutual Fund Salespeople

April 30, 2004

Purpose

The purpose of this Notice is to advise all mutual fund dealers registered with the Alberta Securities Commission (the "Commission") of procedures that may be used when a mutual fund dealer and its salespersons ("Salespersons") want to be able to offer Deposit Notes to their clients in Alberta.

Background

In this Notice, "Deposit Note" means an evidence of deposit issued by a financial institution whereby the obligation to repay the principal of the deposit is a direct, unsubordinated obligation of the issuing financial institution and the return on the deposit is determined in whole or in part by reference to an underlying interest (such as a security, index, basket, commodity, financial instrument, currency, interest rate, foreign exchange rate, market price, exchange rate, reference rate or other financial reference, interest, benchmark or variable) specified in the terms of the Deposit Note. For these purposes, "financial institution" has the meaning given in the *Securities Act* (Alberta) (the "Act").

Staff of the Commission ("Staff") recommends that mutual fund dealers seek independent legal counsel to ensure that any potential product would qualify as a "Deposit Note".

Deposit Notes are deposits issued by a financial institution and are excluded from the definition of "security" pursuant to sub-paragraph 1(ggg)(v)(B) of the Act. Accordingly, registration under the Act as a dealer or salesperson is not required to sell Deposit Notes. However, subsection 41(1) of the Alberta Securities Commission Rules (the "Rules") requires a Salesperson must to be employed full time as a Salesperson. The Staff considers that the sale of Deposit Notes by a Salesperson, other than in accordance with the procedures set out in this Notice, is inconsistent with the requirement that a Salesperson be employed full time as such.

Under paragraph 41(2)(h) of the Rules, Salespersons may be employed other than full time as a salesperson if the individual is carrying on activity that, in the opinion of both the Executive Director and the individual's employer:

- (i) will not in the circumstances interfere with the individual's duties and responsibilities as a salesperson; and
- (ii) will not result in a conflict of interest between the individual's duties as a salesperson and the individual's outside activity.

Procedure

As an alternative to filing a separate notice with the Executive Director for each Salesperson who will be selling Deposit Notes, Salespersons may sell Deposit Notes issued by a financial institution without receiving prior consent of the Executive Director provided:

- a) the financial institution offering the Deposit Notes has notified Staff of its intention to sell the Deposit Notes through Salespersons, and
- b) the mutual fund dealer with which the Salespersons are registered has provided its written consent

Staff will normally expect the notice from the financial institution to include a copy of the information statement, offering memorandum or similar disclosure document that will be delivered to purchasers of the Deposit Notes

Staff will normally expect the mutual fund dealer to provide separate consent for each financial institution whose deposit notes the mutual fund dealer's Salespersons will be selling. The consent may extend generally to all Deposit Notes of a financial institution or may be restricted to a particular issue or series of Deposit Notes of the financial institution. The consent may be in respect of all Salespersons of the dealer or may specify one or more Salespersons in respect of whom consent is given.

Exception

When the Commission adopted *ASC Notice 19A – Distribution of Mutual Funds by Financial Institutions – Principles of Regulation* in 1988, the Commission recognized that mutual fund salespeople employed by a financial institution would continue to carry out their duties with the financial institution. Those duties typically include dealing with clients with respect to deposit instruments of the financial institution. Accordingly, those duties are deemed not to represent a conflict of interest and no separate filings are required with respect to Salespersons employed by a financial institution who are dealing in deposit instruments of the financial institution.

Questions regarding the content of this Notice may be referred to Jim Wahl, Manager, Registration and Compliance at (403) 297-4281.