

ALBERTA SECURITIES COMMISSION

ORDER

Certain MFDA Members: Commingling of Funds

Background

1. Sections 11.1(1)(b) and 11.2(1)(b) (the **Commingling Prohibitions**) of National Instrument 81-102 *Mutual Funds* (NI 81-102) prohibit a principal distributor or a person or company providing services to the mutual fund or the principal distributor, or a participating dealer or a person or company providing services to a participating dealer, from commingling cash received for the purchase or redemption of mutual fund securities (**Mutual Fund Monies**) with cash received for the purchase or redemption of other securities or investments that the participating dealer or principal distributor is permitted to sell (**Non Mutual Fund Monies**).
2. The terms of registration of certain members (**MFDA Members**) of the Mutual Fund Dealers Association of Canada (the **MFDA**) may permit them to offer to clients securities and investment products other than mutual fund securities (**Non Mutual Fund Products**), in addition to mutual fund securities. The Commingling Prohibitions would require that clients of such MFDA Members who wish to purchase both mutual fund securities and Non Mutual Fund Products make separate payments for the two types of investment rather than making a combined payment, and that the money so paid be kept separate.
3. The rules of the MFDA contain a prohibition similar to the Commingling Prohibitions (the **MFDA Prohibition**). By an MFDA decision document dated June 23, 2006, the MFDA granted relief from the MFDA Prohibition to “Level 3 and Level 4” MFDA Members (**Eligible MFDA Members**) subject to equivalent relief being granted by securities regulatory authorities.
4. The Commission considers that limited relief from the Commingling Prohibitions would not be detrimental to investors.

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5. Under section 213 of the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**), the Commission orders that Eligible MFDA Members that are registered under the Act as mutual fund dealers are exempt from the Commingling Prohibitions provided, in respect of an Eligible MFDA Member that seeks to rely on this Order, that the Eligible MFDA Member:
 - (a) deposits Mutual Fund Monies and Non Mutual Fund Monies of clients into, and holds such monies until they are paid out in accordance with sections 11.1 and 11.2 of NI 81-102 within, one or more accounts at a

Canadian financial institution that are designated by the financial institution as "trust accounts";

- (b) ensures that all monies received from clients are received, accounted for and paid out in accordance with sections 11.1 and 11.2 of NI 81-102;
- (c) maintains clear records with respect to commingled Mutual Fund Monies and Non Mutual Fund Monies of clients, reconciled in accordance with MFDA rules and properly accounted for daily; and
- (d) complies with all requirements of Part 11 of NI 81-102 with respect to the handling and segregation of client cash other than the Commingling Prohibitions.

6. This Order:

- (a) applies only to Mutual Fund Monies and Non Mutual Fund Monies commingled within an account or accounts of the Eligible MFDA Member and does not permit commingling of client monies between Eligible MFDA Members or between an Eligible MFDA Member and any other person or company; and
- (b) does not authorize the Eligible MFDA Member to apply monies obtained from one client to a transaction for another client.

7. This Order ceases to have effect upon the coming into force of any change in the rules of the MFDA Investor Protection Corporation (**MFDA IPC**) that has the effect of reducing the coverage provided by the MFDA IPC relating to Mutual Fund Monies and Non Mutual Fund Monies held in client trust accounts.

Glenda A. Campbell, QC, Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission