



**Securities
Commission**

Blanket Order No. 47

**IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED**

AND -

**IN THE MATTER OF
THE DISTRIBUTION OF MUTUAL FUNDS ESTABLISHED
FOR EMPLOYEES OF A COMPANY
AND ITS AFFILIATES**

**RULING
(Subsection 80(1))**

WHEREAS:

Pursuant to applications filed by a registered dealer, the Nova Scotia Securities Commission (the "Commission") has issued rulings that section 58 of the Securities Act, R.S.N.S. 1989, Chapter 418, as amended (the "Act") does not apply to the distribution of units of certain mutual funds established for the sole purpose of providing employees of certain companies and their affiliates with the ability to indirectly acquire an interest in shares of those companies for the employees' personal savings plans or for spousal registered retirement savings plans sponsored by either the companies or their affiliates;

It is expected that the offering of shares of a company (a "Company") to employees of the Company or its affiliates (collectively, "Employees") indirectly through a mutual fund (a "Fund") will be beneficial to the Employees by allowing the pooling of investments so that shares of the Company may be purchased in sufficient quantities to keep brokerage costs to a minimum and to provide the Employees with a higher level of liquidity than would be the case with a direct investment;



The holding of an interest in shares of the Company by an Employee indirectly through the Fund is analogous in policy to the Employee holding an interest in shares of the Company directly; and

The Commission is satisfied that it would not be prejudicial to the public interest to issue a blanket ruling for the distribution of units of a Fund to Employees, subject to certain terms and conditions;

IT IS RULED pursuant to subsection 80(1) of the Act that the distribution by a Fund of units of the Fund to Employees, including to an Employee Plan, as defined below, through a dealer registered under the Act (the "Dealer") is not subject to section 58 of the Act provided that:

- (a) The Dealer is registered in a capacity which would enable it to trade in securities of a mutual fund, the Dealer has given the Director of Securities (the "Director") written notice that it intends to establish Funds and to rely upon this ruling and the Director has not informed the Dealer in writing within 10 business days following the giving of the notice that he objects to the Dealer's reliance on this ruling for the distribution of units of Funds;
- (b) The Dealer has given the Director written notice of the proposed distribution of units of a Fund pursuant to this ruling and has paid a fee of \$450 for each Fund;
- (c) The Fund is established by way of a declaration of trust pursuant to the laws of a province or territory of Canada;
- (d) The Fund is a mutual fund as defined in the Act and is not a reporting issuer under the Act;
- (e) The sole investment objective of the Fund, aside from maintaining a minimal cash reserve to facilitate trades, is to acquire stock exchange listed shares of the Company that employs the Employees or whose affiliate employs the Employees;
- (f) Units of the Fund will only be distributed to:
 - (i) Employees for their personal employer sponsored savings plans including, but not limited to,

taxable savings accounts, group registered retirement savings plans, deferred profit sharing plans, employee profit sharing plans, locked-in retirement accounts, locked-in retirement savings plans, registered pension plans, registered retirement income funds, life income funds and locked-in retirement income funds; or

(ii) Spouses of Employees for spousal registered retirement savings plans ("spousal RRSPs");

(the plans referred to in subparagraphs (i) and (ii) above are collectively referred to as the "Employee Plans")

- (g) An Employee and his or her spouse through a spousal RRSP may only purchase units of the Fund during the currency of the Employee's employment, and purchases of units of the Fund made after the termination of the Employee's employment will only be through the automatic reinvestment of distributions from the Fund;
- (h) The Employees are not induced to purchase units of the Fund by expectation of employment or continued employment;
- (i) Units of the Fund are not transferable;
- (j) The Dealer or an affiliate thereof is the manager and trustee of the Fund and the custodian of the Fund meets the requirements of Section 7.02 of National Policy Statement No. 39 ("NP 39"), or the equivalent provision of any successor National Instrument (an "Equivalent Provision") or is otherwise approved by the Director;
- (k) Prior to the distribution of units of the Fund to an Employee, the Employee is provided with:
- (i) a disclosure document disclosing, without limitation, the objective of the Fund, the method of valuation of a unit of the Fund for purchases and redemptions, the voting rights of unitholders, tax considerations, risk factors and any applicable statutory rights under the Act; and
 - (ii) a statement that as a consequence of this ruling certain protections, rights and remedies

associated with a prospectus provided by the Act, including statutory rights of rescission and damages, will not be available in respect of the units of the Fund purchased by the Employee;

- (l) The Employees are provided with audited annual and unaudited semi-annual financial statements for the Fund concurrently with the provision of these statements to unitholders of the Fund resident in the jurisdiction under whose laws the Fund is established, which statements will include disclosure of the management expense ratio of the Fund in the manner set out in Section 8.03 of NP 39 or an Equivalent Provision;
- (m) The Fund is governed in such a manner that if NP 39 or any successor National Instrument were to apply to the Fund, the Fund would comply with Sections 2 (other than Section 2.04(1)(a)), 3.02, 4, 6, 7 (other than Section 7.02), 11 (other than Section 11.08), 12 (other than Section 12.04), 13, 14, and 15 of NP 39 or any Equivalent Provision, except in respect of any requirements contained therein relating to prospectus disclosure or the need to prepare and file a prospectus;
- (n) To the extent that the Fund engages in advertising, any performance data that is used will be calculated and used in the manner set out in Section 16 of NP 39 or an Equivalent Provision except that:
 - (i) the performance data may be calculated and used from the inception of the Fund; and
 - (ii) the performance data calculated in this manner may be shown in client statements without the warnings required by Section 16 of NP 39 or an Equivalent Provision;
- (o) The Fund will flow through to its unitholders the voting and continuous disclosure rights and other rights and entitlements, such as the right to tender into a take-over or issuer bid, with respect to ownership of shares of the Company held by the Fund; and
- (p) The Fund's management expense ratio may not exceed 1.00% during any fiscal year and any expenses in excess of 1.00% will be borne by the Dealer, the Company or an

affiliate of the Company but not by the Fund or the unitholders of the Fund.

DATED at Halifax, Nova Scotia this 13th day of May, 1998.

NOVA SCOTIA SECURITIES COMMISSION

"Robert B. MacLellan"

Robert B. MacLellan, Chair

"Daniël F. Gallivan"

Daniel F. Gallivan, Vice Chair

"Kiki Kachafanas"

Kiki Kachafanas, Member