

MSC Notice 2009-9
Notice of Intention Not to Proceed on Adopting
Local Rule 33-501 *Regulation of Deposit Agents*

Under *The Securities Act*, deposits (such as GICs), are securities. The Commission has rules that exempt persons selling such securities from the requirements of *The Securities Act* which have been in effect for many years. People operating under the exemptions do not need to comply with the requirements of *The Securities Act* to be registered or use a prospectus as long as they sell the products in a fashion that meets the requirements of the exemption.

Deposit brokers or deposit agents (“agents”) are persons who sell deposits to investors on behalf of financial institutions which issue the deposits. Because of the exemptions under *The Securities Act*, registration is not required for persons limiting themselves to the sale of deposits.

On July 18, 2008, the Commission published for comment Local Rule 33-501 *Regulation of Deposit Agents*, a proposed rule that would require registration of deposit brokers or deposit agents. The intention was to enhance investor protection in an area which is currently exempted from regulation, as has been the case for many years. As part of the comment process, a request was made to determine the number of persons who would require registration under the proposed rule. The proposed rule contemplated that agents would be exempt from registration if they were exclusive agents of a single financial institution, or they were otherwise registered with the Commission or with insurance regulators.

Staff has received a number of comments concerning the rule from interested persons. In the responses, several financial institutions did provide names of agents. Based upon our review of these lists, it became apparent that there are only a very small number of agents who would require registration. The scope of the unregulated market is actually quite small in Manitoba. It is also important to note that staff has not received any complaints concerning the sale of deposits by participants in this market who are not registered with either the Commission or Insurance regulators.

On this basis, the Commission is proposing not to proceed with the proposed rule at this time as there does not appear to be of sufficient number of unregulated agents to merit registration. Also, the Commission is of the opinion that it has sufficient tools under its current legislation to protect investors who might deal with any unregulated agents.

These tools include:

- The ability to prohibit unregulated persons from selling deposits;
- The ability to prosecute unregulated persons acting as deposit brokers if an agent fails to comply with the requirements of the regulations;
- The ability to order compensation for financial loss against the agent, and in certain instances the financial institution

The ability to make an order of compensation for financial loss is a particularly useful tool. In addition to being able to make such an order against the agent, if the requirements under the legislation are satisfied, the Commission may also order that the agent's employer or a person on whose behalf the agent is acting in selling deposits be jointly liable for the amount of compensation. It is the position of Commission staff that financial institutions can be liable for compensation for financial loss arising from the actions of an agent acting on their behalf. This applies to any agent and any financial institution, not just those registered with the Commission.

May 29, 2009