

THE SECURITIES ACT

)

Order No. 4905

)

Section 20(1)

)

October 21, 2005

# REGISTRATION AND PROSPECTUS EXEMPTION FOR CERTAIN CAPITAL ACCUMULATION PLANS

## WHEREAS:

(A) The Manitoba Securities Commission (the "Commission") is publishing MSC Notice 2005-48 with the intention of making amendments to National Instrument 45-106 Prospectus and Registration Exemptions to create a new exemption from the prospectus requirements and dealer registration requirements for trades made in connection with certain capital accumulation plans.

(B) The Commission believes that it is appropriate to make the exemption available for use while the amendments to National Instrument 45-106 Prospectus and Registration Exemptions are published for comment by an order under s. 20(1) of The Securities Act, R.S.M. 1988, c. S50 (the "Act").

(C) For the purposes of this order, the following definitions apply:

"**capital accumulation plan**" means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan and in Québec and Manitoba, includes a simplified pension plan.

"**member**" means a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

(a) his or her spouse,

(b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or

(c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan.

"**plan sponsor**" means an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the

plan sponsor has delegated its responsibilities to the service provider.

"service provider" means a person or company that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

**IT IS ORDERED:**

**1. THAT**, under section 20(1) of the Act, the dealer registration requirement does not apply to a trade by a person or company in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member's participation in the capital accumulation plan, if the following conditions are met:

(a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan,

(b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision,

(c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in,

(i) the name of the mutual fund,

(ii) the name of the manager of the mutual fund and its portfolio adviser,

(iii) the fundamental investment objective of the mutual fund,

(iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,

(v) a description of the risks associated with investing in the mutual fund,

(vi) where a member can obtain more information about each mutual fund's portfolio holdings,

(vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and

(viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund,

(d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including:

- (i) any costs that must be paid when the mutual fund is bought or sold,
- (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,
- (iii) mutual fund management fees,
- (iv) mutual fund operating expenses,
- (v) record keeping fees,
- (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,
- (vii) account fees, and
- (viii) fees for services provided by service providers

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

(e) the plan sponsor has within the past year, provided the members with performance information about each mutual fund the members may invest in, including,

- (i) the name of the mutual fund for which the performance is being reported,
- (ii) the performance of the mutual fund, including historical performance for one, three, five and 10 years if available,
- (iii) a performance calculation that is net of investment management fees and mutual fund expenses,
- (iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,
- (v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 Investment Fund Continuous Disclosure, for the mutual fund, and corresponding performance information for that index, and
- (vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance.

(f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment,

(g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan,

(h) the plan sponsor must provide the information required by sub-paragraphs 1(b), 1(c), 1(d) and 1(g) prior to the member making an investment decision under the capital accumulation plan, and

(i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant; and

**2. THAT** under section 20(1) of the Act the prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in paragraph 1, if

(a) the conditions in paragraph 1 have been complied with, and

(b) the mutual fund complies with Part 2 of National Instrument 81-102 Mutual Funds.

**3. THAT** before the first time a mutual fund relies on the exemption in paragraph 2, the mutual fund must file a notice in the form found in Appendix A to this order in each jurisdiction in which the mutual fund expects to distribute its securities.

**4. THAT** this order takes effect on October 21, 2005.

**BY ORDER OF THE COMMISSION**

**Deputy Director**

**Appendix A**  
**Notice of Intention to Rely on Exemption in paragraph 2**

**Issuer information**

1. State the full name, address and telephone number of the mutual fund that distributed or intends to distribute the security.

2. State whether the mutual fund is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

3. List each jurisdiction where the mutual fund is, or intends to distribute mutual fund securities in reliance on the exemption for capital accumulation plans and deliver the notice to the relevant securities regulatory authority listed in the attached Schedule.

**Certificate**

On behalf of the mutual fund, I certify that the statements made in this report are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of mutual fund (please print)

\_\_\_\_\_  
Print name and position of person signing

\_\_\_\_\_  
e-mail address of person signing

\_\_\_\_\_  
Signature