IN THE MATIER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATFER OF

AN APPLICATION TO AMEND THE DEPOSIT AGENT RULES
HALMAC AND ASSOCIATES (1980) LTD.

D E C I S I O N

Hearing Held May 17, 1994

Before: Marcel de la Gorgendiere, Q.C., Chairman
Herbert Dow, Vice Chairman
Rand Flynn, Commission Member
N. K. (Jim) Owen, Commission Member

Appearances: Barbara Shourounis, Representing Commission staff

Mark Mulatz of Gerrand, Mulatz, Representing the Respondent

Decision dated: July 14, 1994

DECISION

Halmac and Associates (1980) Ltd. ("Halmac") made an application to the Saskatchewan Securities Commission ("the Commission") to amend the Business Practice Rules ("Rules") for Deposit Agents ("DAs"), as amended to October 21, 1993.

A Notice of Hearing was given to all DAs who had filed with the Commission under the Rules. The essence of the application was whether Halmac, as a DA operating under the Rules in association with approximately 100 sub-agents and the protection of a surety bond in the amount of $100,000, should be allowed to use a trust clearing account ("Trust Account") as defined in the Rules to accept direct deposits from its customers in more circumstances than are presently contemplated in Rule 8. That rule provides for use of the Trust Account when an investor wants to deposit cash or to split a third party cheque among a number of financial institutions.

Before dealing with the merits of this application the Commission wants to comment on the process regarding the implementation and subsequent change of the Rules. In its March 18, 1993 Decision it stated that the public interest required a standardization of practice on the part of those accepting funds for deposits in certain financial institutions in order to protect investors from improper use of the funds. The Commission, as has been pointed out by the applicant, aimed at requirements that "should be effective yet not a hindrance to the convenience of or an additional expense to the investors". In assessing the application the staff of the Commission is saying in effect that while the suggested change may save some money and thus result in less expense, and may be convenient to both the investor and the DA, it will not be effective in protecting investors. The Commission feels that effectiveness flows from the fact that all applications will be usually handled by all funds received being made payable to a financial institution ("FI"). The two exceptions referred to in Rule 8 above were made with some reluctance because the representations at the original hearings seemed to show that they were important to a number of investors. It was thus a compromise between convenience and effectiveness.

The Commission, after originally stressing its willingness to update the rules, is now facing an application that reconsiders a matter raised at the original hearing. The fact that it has been made so soon would lead one initially to reject the application as premature. However, the Commission wants to establish within the bounds of reasonableness an open attitude to consideration of what constitutes the limits on either "effectiveness", "convenience" and "limitation of expense". The Commission in its Decision undertook to be flexible in administration leaving "subsequent changes to the usual policy process brought

about by applications from those concerned." In short, while preferring more time to test the original rules, the Commission is not about to refuse out of hand consideration of a request to change.

Having heard the applicant and having considered the representations of the Commission staff, the Commission still does not feel that it can make changes to the Rules at this time. However, the applicant is not operating in the way of all other DAs. It has been authorized under a special order of the Commission to operate as a DA using sub-agents. The provisions of Rule 8 appear, from support given by other DAs filed at the hearing, to be effective and not the cause of difficulty with their customers. The Commission accepts that the applicant's operations and customers take a different approach to investing in GICS. How then can this difference be accommodated?

Given that the applicant is the only DA to use a Trust Account and to have a surety bond in place extended to cover acts in contravention of the DA Rules, there appears to be a justification in allowing an extension to the use of deposits to that Trust Account, providing that the coverage of the bond is reasonable in relation to the volume of business and likelihood of damage to the investor from a failure to comply with instructions or the Rules.

Rather than change the rules of general application, the applicant should apply for a change in the order that authorized the terms and conditions of its operation as a DA with sub-agents. The question of volume of business and the level of the surety bond should be established in the application to be considered by the Commission considering that there would be more use of the Trust Account. If the applicant and staff cannot agree on the amount of the bond to recommend, the matter will be decided by referring the application to the Chairman. Under the provisions of *The Securities Act, 1988* the Chairman's decision can be appealed to the full Commission at a hearing.

The Commission is not allowing the application for a rule change but, rather, suggesting a new application which would vary the previous order granted the applicant. It is neither confirming nor denying that a variation will be granted. It is suggesting that an application may be granted if sufficient information is presented to and examined by the staff of the Commission that presents a reasonably effective solution. In accordance with Commission practice staff would consider it and make recommendations in support or against the application upon referral to the Chairman. The question of adequacy of insurance coverage in relationship to business volumes as mentioned above is one aspect to consider, cost is another. While it is expected that volumes may be high it should also be remembered that the account is zero balanced daily which reduces the extent of possible loss. As all cheques may not clear daily, an examination of actual balances according to bank records would be useful in

establishing amounts involved. Consideration should be given to the report, if any, of the accountant filed according to the rules or the DA's records to see if they are transmitting payments to FIs as required.

Consideration should also be given to whether the applicant is using a fax message regarding applications coupled with trust deposits allowing orders to be processed in the same day. There should also be an explanation of how instructions will be given and recorded in regard to deferred purchases. This additional information will allow the Commission to come to a decision on whether it can achieve an order which is both effective and convenient.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 14th day of July, 1994.

Marcel de la Gorgendière, Q.C.
Chairman