



NIN#89/2

NOTICE

EXECUTION OF MEMORANDUM OF UNDERSTANDING

On December 15, 1988, the Office of the Superintendent of Financial Institutions ("OSFI") on the behalf of the Federal Government, and the British Columbia Securities Commission (the "Commission") on behalf of the government of British Columbia executed a Memorandum of Understanding (the "Memorandum") concerning the respective regulation of Federal Financial Institutions ("FFIs") and their related securities dealers. A copy of the Memorandum is attached as Appendix A.

The Memorandum deals with Self Regulatory Organization membership requirements for FFI-related securities dealers as well as with applicable registration and capital adequacy rules. It also outlines a regime for the sharing of information between OSFI and the Commission, and for the ongoing regulation of FFIs and their related securities dealers.

Appended to the Memorandum is an undertaking to be executed by a FFI in connection with a proposed acquisition of shares of a British Columbia securities dealer.

Dated at Vancouver, British Columbia this 17th day of January, 1989

Douglas M. Hyndman
Chairman

APPENDIX A.

MEMORANDUM OF UNDERSTANDING

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA

- AND -

BRITISH COLUMBIA SECURITIES COMMISSION

MEMORANDUM OF UNDERSTANDING

The Office of the Superintendent of Financial Institutions Canada ("OSFI") and the British Columbia Securities Commission (the "BCSC") have reached the following understanding.

1. DEFINITIONS

1.01 In this Memorandum of Understanding:

- (a) "capital adequacy rules" means sections 18 and 19 of the the Securities Act, and sections 20 to 26, inclusive of the Regulation, including the minimum free capital, bonding, insurance, contingency trust fund and audit requirements provided by those sections, and the corresponding provisions of the by-laws of the self-regulatory organizations;
- (b) "federal financial institution (FFI)" means a body corporate to which the Bank Act (S.C. 1980-81-82-83, c. 40) other than a foreign bank within the meaning of that Act, the Trust Companies Act (R.S.C. 1970, c. T-16), the Loan Companies Act (R.S.C. 1970, c. L-12), the Canadian and British Insurance Companies Act (R.S.C. 1970, c. I-15), the Foreign Insurance Companies Act (R.S.C. 1970, c. I-16), or the Cooperative Credit Associations Act (R.S.C. 1970, c. C-29) or any statute replacing one of the above mentioned Acts applies, which has sought or is seeking approval to have an interest in the capital of an FFI-related dealer;
- (c) "FFI-related dealer" means a dealer in securities or an advisor with respect to securities that is or will be a registrant under the Securities Act and in which an FFI has sought or is seeking approval to have an interest, the purchase or acquisition of which requires the prior approval of the Minister of Finance for Canada;
- (d) "Securities Act" means the British Columbia Securities Act S.B.C. 1985 c.83 and the Regulation thereunder; and
- (e) "self-regulatory organization" means the Vancouver Stock Exchange, the Pacific District of the Investment Dealers Association of Canada or any other comparable organization recognized from time to time by the BCSC for purposes of the self-regulation of dealers or advisors under the Securities Act.

2. General Principles

- 2.01 This Memorandum of Understanding sets forth a statement of intent of OSFI and the BCSC with respect to the coordination of certain policies for the regulation of FFI-related dealers by the BCSC, and of FFIs by OSFI.

3. SRO Membership and Capital Adequacy Rules

- 3.01 The BCSC acknowledges that OSFI, in recommending that Ministerial approval be given to the acquisition by FFIs of interests in FFI-related dealers, is relying on the system of regulation currently applicable under the Securities Act and the by-laws of the self-regulatory organizations and, in particular, the capital adequacy rules.
- 3.02 The BCSC will require that an FFI-related dealer be registered in an appropriate category of registrant under the Securities Act, and be a member of a self-regulatory organization, if appropriate. Prior to any granting of the necessary approval of the Minister of Finance to the purchase of an interest by an FFI in an FFI-related dealer, the BCSC will inform OSFI of the category in which the FFI-related dealer is or will be registered, its conditions of registration, the self-regulatory organization, if any, that is or will be responsible for its audit, and any other relevant details with respect to its regulation.
- 3.03 The BCSC will not, without the prior written consent of OSFI, allow an FFI-related dealer to cease to be a member of a self-regulatory organization or to change its category of registration unless:
- (a) the BCSC requires the FFI-related dealer to be registered in an appropriate category of registration under the Securities Act having capital adequacy rules that are substantially equivalent to the capital adequacy rules of its former category of registration; or
 - (b) in the case of ceasing to be a member of a self-regulatory organization, the FFI-related dealer continues to be a member of another self-regulatory organization having capital adequacy rules that are substantially equivalent to the capital adequacy rules of the former self-regulatory organization.
- 3.04 Before making, approving or determining not to object to any material change to the capital adequacy rules, the BCSC will consult with OSFI and give it a reasonable opportunity

to review and to comment upon the proposed change. If OSFI considers that the proposed change would materially weaken the capital adequacy rules, the BCSC and OSFI will use their best efforts to reach agreement on an appropriate change, if any. If, within a reasonable period of time, no agreement is reached, the BCSC will not permit the proposed change to be implemented earlier than 180 days thereafter.

4. Activities of FFI-Related Dealers

- 4.01 The BCSC acknowledges that OSFI has legitimate policy concerns as to the scope of the business carried on by FFI-related dealers, including the concern that an FFI not make use of an FFI-related dealer to carry on a business that the FFI is not itself permitted to carry on.
- 4.02 The BCSC will not permit an FFI-related dealer to carry on directly or indirectly the business of a bank, trust company, loan corporation or insurance company if the related FFI is not then permitted to carry on that business.

5. Sharing of Information

- 5.01 Each of OSFI and the BCSC acknowledges that the other, in the ordinary course of carrying out its regulatory responsibilities, has the right to obtain certain information about, or access to the books and records of FFI-related dealers or FFIs, respectively.

Notwithstanding any legal right to do so, neither OSFI nor the BCSC will seek information about, or access to the books and records of an FFI-related dealer or an FFI, respectively, from the FFI-related dealer or the FFI, or cause or seek to cause the related FFI or FFI-related dealer, respectively, to provide such information or access to the books and records without first making a request in accordance with this paragraph.

Subject to applicable law, each of OSFI and the BCSC will cooperate with all reasonable requests of the other for such information or access.

- 5.02 Each of OSFI and the BCSC will use its best efforts to provide the other with information it has that an FFI-related dealer or an FFI, respectively, has or appears to have breached, or is expected to breach, in any material way the Securities Act or the by-laws of a self regulatory organization of which the FFI-related dealer is a member, or the governing legislation of the FFI, respectively.

- 5.03 If OSFI or the BCSC receives a request made in accordance with paragraph 5.01, and the information or books and records requested are not in its possession or subject to its control and direction, it will use its best efforts to obtain the information or books and records.
- 5.04 All requests made under paragraph 5.01 shall be made in writing and addressed to the contact officer listed in Annex "A". Each request shall specify:
- (a) a general description of the information or books and records being sought;
 - (b) a general description of the regulatory concern that forms the basis for the request, and the purpose for which the request is made; and
 - (c) the desired time period for reply.

In the case of an urgent matter, a request may be made orally, provided that the request is subsequently confirmed in writing.

Where certain information of a routine nature is requested to be provided from time to time, one specific request pursuant to paragraph 5.01 will suffice for the information to be provided on the basis set forth in the request.

- 5.05 OSFI and the BCSC will use any information or books and records furnished in response to a request made in accordance with paragraph 5.01 solely for the purpose stated in connection with the making of the request.
- 5.06 Each of OSFI and the BCSC will keep confidential any request made to it in accordance with paragraph 5.01, and any information or books and records furnished to it in accordance with this Memorandum of Understanding.

6. Ongoing Regulation

OSFI will regulate FFIs and the BCSC will regulate FFI-related dealers in accordance with the terms and underlying principles of this Memorandum of Understanding. Without limiting the generality of the foregoing, OSFI will not:

- (a) require or request any undertaking from any FFI that is inconsistent with this Memorandum of Understanding;

(b) require or request any undertaking from any FFI in respect of an FFI-related dealer, other than in the form agreed upon and attached hereto as Annex B, or publish or establish any guideline, policy or rule, or recommend any regulation that prescribes the manner in which FFI-related dealers are to carry on business or that is otherwise directed specifically at FFI-related dealers, without first giving the BCSC a reasonable opportunity to review and to comment upon it. If, within a reasonable period of time not to exceed 180 days after the date upon which the guideline, policy or rule was first released for review, no agreement is reached, the guideline, policy or rule will not be implemented earlier than 180 days thereafter.

For greater certainty, nothing in this Memorandum of Understanding restricts in any fashion OSFI's ability to set capital rules for FFIs.

6.02 Promptly after the BCSC receives notice of any change of control of any FFI-related dealer, the BCSC will give notice of the change to OSFI and will permit OSFI to review and to comment upon the change during the period which the BCSC has to review it.

7. Effective Date and Termination

7.01 This Memorandum of Understanding will be effective from the date of its execution by OSFI and the BCSC.

7.02 This Memorandum of Understanding may be terminated by OSFI or the BCSC by giving 180 days notice to the other. Neither OSFI nor the BCSC will give notice of termination on the basis of a dispute between them without first using its best efforts to resolve the dispute.

DATED this 15th day of December, 1988.

Office of the Superintendent
of Financial Institutions

British Columbia Securities
Commission

by Michael Mackenzie
Michael A. Mackenzie
Superintendent

by Douglas M. Hyndman
Douglas M. Hyndman
Chairman

ANNEX A

CONTACT OFFICERS

Office of the Superintendent
of Financial Institutions
255 Albert Street, 13th Floor
Kent Square Building
Ottawa, Ontario
K1A 0H2

Telephone: (613)
Telecopy: (613) 952-8219

Attention: Director, Rulings

British Columbia Securities
Commission
11th Floor, 865 Hornby Street
Vancouver, British Columbia
V6Z 2H4

Telephone: (604) 660-4800
Telecopy: (604) 660-2688
Telex: 04-54599

Attention: The Chairman

ANNEX B

INDIRECT INVESTMENT BY BANK IN A SECURITIES DEALER
CORPORATION

APPLICATION FOR MINISTERIAL APPROVAL UNDER PARAGRAPH 193(6.1)(b) OF THE BANK ACT BY... ("BANK") TO PURCHASE AN INTEREST IN ("HOLDCO"), WHICH HOLDS AN INTEREST IN ... ("DEALER")

WHEREAS BANK has sought the prior approval of the Minister of Finance (the "Minister") to own more than ten per cent (10%) of the shares of a class of shares of HOLDCO pursuant to paragraph 193(6.1)(b) of the Bank Act;

NOW THEREFORE, in consideration of the granting of the said approval by the Minister, BANK hereby agrees with Her Majesty the Queen in right of Canada as follows:

1. This Undertaking shall come into effect when, and shall remain in effect so long as, BANK owns more than ten per cent (10%) of the shares of any class of shares of HOLDCO and HOLDCO holds, directly or indirectly, any share of DEALER.
2. In this Undertaking,
 - (a) "subsidiary" shall mean an existing and/or future subsidiary (as defined in the Bank Act, as amended from time to time) that is (except for the purposes of paragraph 3 hereof) a Canadian corporation (as so defined), or a foreign corporation (as so defined) referred to in subsection 193(3) of the Bank Act, as amended from time to time;
 - (b) "dealing in securities", or any derivative thereof, includes portfolio management and investment counselling; and
 - (c) "Superintendent" means the Superintendent of Financial Institutions.
3. BANK represents that each of HOLDCO and DEALER owns, directly or indirectly, 100% of the issued and outstanding shares of each of its subsidiaries in existence as of the date hereof, and that the following is a complete list of all such subsidiaries:

Name of Subsidiary Activity of Subsidiary

a) HOLDCO:

b) DEALER:

4. BANK shall cause HOLDCO to refrain from carrying on any activity other than holding the shares or subordinated debt of DEALER, unless the Superintendent provides his approval of such activity.
5. BANK represents that DEALER, and each of its subsidiaries that carries on in Canada the activity of dealing in securities, are registered, where required, under the applicable securities laws in those provinces in which they carry on that activity, and that BANK shall cause DEALER and each of its subsidiaries that carries on in Canada the activity of dealing in securities, to register, where required, under the applicable securities laws in those provinces in which they hereafter carry on that activity.
6. BANK represents that DEALER, and each of its subsidiaries that carries on in Canada the activity of dealing in securities, are members in good standing of the following self-regulatory organizations and/or are registered in the following category of registrant:

<u>Name of Securities Dealer</u>	<u>Self-Regulatory Organization</u>	<u>Category of Registrant</u>
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7. Should BANK cease to exercise direct control of HOLDCO or indirect control of DEALER, either in law or in fact, BANK shall forthwith notify the Superintendent, and, where the decreased holding raises prudential concerns with respect to BANK, the Minister may require that BANK dispose of any or all of its holdings in HOLDCO in excess of ten per cent (10%) of the shares of each class of shares of HOLDCO within the period of time specified by the Minister, and BANK agrees to comply with that requirement.

8. BANK agrees that all loans (which for this purpose shall include all forms of indebtedness, other than subordinated loans which are treated as capital of HOLDCO or DEALER or any of their subsidiaries by any or all of the self-regulatory organizations of which HOLDCO or DEALER or any of their subsidiaries is a member) and guarantees made or extended by it to or on behalf of HOLDCO or DEALER or any of their subsidiaries, shall be on terms and conditions consistent with, and shall be secured to the extent that the granting of security is in accordance with, usual banking practices respecting loans and guarantees made or extended to or on behalf of corporations or partnerships dealing in securities, and in accordance with applicable guidelines respecting loans and guarantees that the Office of the Superintendent of Financial Institutions may from time to time hereinafter issue.

In the event of a conflict between usual banking practices and the guidelines, the guidelines shall, in each case, prevail.

9. Notwithstanding anything to the contrary herein contained, BANK shall cause DEALER, and each of its subsidiaries, to refrain from engaging, directly or indirectly, in any transaction in which BANK, at the time of the transaction, would be prohibited from engaging pursuant to paragraphs 174(2)(f) and (g) of the Bank Act, as amended from time to time, provided that the prohibitions and limitations set out in the said paragraphs 174(2)(f) and (g) of the Bank Act, as amended from time to time, shall not be deemed to apply to transactions between DEALER and any of its subsidiaries, and any officer, employee or director of DEALER or any of its subsidiaries, who is not an officer, employee or director of BANK.

This paragraph shall not be deemed to impose any obligation on BANK with respect to any investment made prior to the date upon which BANK acquires its indirect interest in DEALER until 90 days after BANK has acquired its interest in HOLDCO.

10. BANK shall forward to the Superintendent, within ninety (90) days next following the end of each financial year, a copy of the audited financial statements of HOLDCO and DEALER.
11. BANK shall provide the Superintendent with details of any change with respect to any matter herein represented.

12. If any representation of or by BANK contained in this Undertaking is not true and correct, or if BANK is, at any time, in default under this Undertaking, and such default is not remedied within ninety (90) days from the date on which written notice of such default is provided to BANK by the Superintendent, the Minister may require that BANK dispose of any or all of its holdings in HOLDCO in excess of ten percent (10%) of the shares of each class of shares of HOLDCO, within the period of time specified by the Minister, and BANK agrees to comply with that requirement.
13. It is agreed that, should legislation be enacted or should regulations be issued pursuant to the Bank Act, as amended from time to time, that relate to the matters governed by this Undertaking, that legislation or those regulations, whether more or less restrictive than the provisions of this Undertaking, apply to those matters in lieu of these provisions. To the extent that such legislation or regulations do not govern those matters, the provisions of this Undertaking shall remain effective and enforceable.

IN WITNESS WHEREOF BANK has executed this Undertaking and affixed its corporate seal under the hands of its proper signing officers duly authorized in that behalf.

DATED at _____, this _____ day of _____.

BANK

Per:

