

MSC Notice 2001-36

NOTICE OF POLICY

MSC POLICY 81-601

**DESIGNATION OF LABOUR-SPONSORED INVESTMENT FUNDS
AS MUTUAL FUNDS AND PROSPECTUS DISCLOSURE
REQUIREMENTS OF SUCH FUNDS**

Notice of Policy

The Commission has adopted MSC Policy 81-601, Designation of Labour-Sponsored Investment Funds as Mutual Funds and Prospectus Disclosure Requirements of Such Funds (the “Policy”), as policy in Manitoba, effective November 30, 2001.

Background

(a) Application of Mutual Fund Regulation to Labour-Sponsored Investment Funds (“LSIFs”)

In other provinces, LSIFs fall within the definition of “mutual funds” and are therefore, regulated by a combination of national instruments and companion policies as well as local policies in some jurisdictions.

In Manitoba “mutual fund company” (see section 1(1) of the *Securities Regulation*) means a company designated by the director as a mutual fund company. The director did not designate two Manitoba LSIFs, Crocus Investment Fund (“Crocus”) and ENSIS Growth Fund Inc. (“ENSIS”), as mutual fund companies when they were created. This was consistent with the director’s practice of deeming unconventional funds not to be mutual funds.

The non-designation of Crocus and ENSIS as mutual fund companies created a degree of uncertainty in Manitoba regarding the application of certain securities legislation to LSIFs. For example, three national instruments and their related companion policies (or the notices which accompanied their publication) governing mutual funds contain references to LSIFs (which are also referred to as labour-sponsored venture capital corporations or “LSVCCs”):

- National Instrument 81-101 – Mutual Fund Prospectus Disclosure (“NI 81-101”) states in Part 1 that it does not apply to mutual funds that are LSVCCs. The Notice, which accompanied the publication of NI 81-101, indicated that the regime created by the National Instrument and Forms is designed for conventional mutual funds and therefore, specifically excluded LSVCCs as well as other unconventional mutual funds.

- National Instrument 81-102 – Mutual Funds (“NI 81-102”) states in Part 1 that it applies to a mutual fund that offers, or intends to offer, securities under prospectus or simplified prospectus. The Notice that accompanied the publication of NI 81-102 indicated that NI 81-102 would regulate all publicly offered investment funds that fall within the definition of “mutual funds” contained in Canadian securities legislation. Accordingly, all publicly offered investment funds that give investors the right to redeem securities on demand at a price based on the net asset value of those securities, will be required to comply with NI 81-102. Specialized mutual funds, such as LSVCCs, mortgage funds and commodity pool funds will generally be required to comply with the Instrument.
- National Instrument 81-105 – Mutual Funds Sales Practices (“NI 81-105”). The Companion Policy to NI 81-105 indicated that, although LSVCCs were not considered to be mutual funds in Manitoba, the Commission would be issuing a local instrument to make LSVCCs in Manitoba subject to this National Instrument. On June 30, 1998, the Commission issued Local Policy 3.22 Application of National Instrument 81-105, Mutual Fund Sales Practices to Labour-Sponsored Venture Capital Corporations which made LSIFs subject to NI 81-105.

Therefore, a grey area existed in Manitoba regarding the application of mutual fund regulation to LSIFs. The director’s decision to not designate Crocus and ENSIS as mutual funds has led to regulatory uncertainty, particularly with respect to the application of NI 81-102 to LSIFs.

(b) Prospectus Disclosure Requirements

Manitoba does not have a specified form requirement for LSIFs, as does, for example, Ontario. Crocus and ENSIS therefore, file prospectuses prepared in accordance with the requirements of *The Securities Act* (Manitoba) and Regulation thereto. This base level of disclosure has been supplemented by requiring Crocus and ENSIS to comply with the additional disclosure requirements of Ontario’s Form 45. This ad hoc process has led to some uncertainty regarding the disclosure requirements for an LSIF in Manitoba.

Ontario Form 45 - Information Required to be Included in a Prospectus of a Labour Sponsored Investment Fund Corporation, has been in place since 1992. As indicated above, the staff of the Commission has been informally requiring Crocus and ENSIS to comply with the additional disclosure requirements of Ontario’s Form 45. The staff of the securities commissions of Saskatchewan and Nova Scotia have also been requiring LSIF prospectuses to comply with the disclosure requirements of Ontario Form 45.

The Commission is of the opinion that Ontario Form 45 adequately addresses the disclosure requirements for LSIFs.

Substance and Purpose of the Policy

The substance and purpose of the Policy is to clarify the application of mutual fund regulation and disclosure requirements to LSIFs in Manitoba which will lead to greater regulatory certainty, harmonization and a level playing field for all LSIFs qualified for distribution in Manitoba.

Summary of the Policy

The Policy:

- confirms the designation of LSIFs by the director as mutual fund companies as of the effective date of the Policy,
- includes transitional provisions for all existing LSIFs to obtain relief where appropriate, and
- specifies the information required to be included in a prospectus of an LSIF through the adoption of the disclosure requirements as set out in Ontario Form 45.

Prior Publication and Public Comment

The Commission published notice of the proposed MSC Policy 81-201 as MSC Notice 2001-23 on August 7th, 2001 for a 60-day comment period.

It has been noted that the proposed MSC Policy published on August 7th, 2001 was numbered incorrectly. The number should have been 81-601, not 81-201. This error has been corrected in the final Policy.

Comments were only received from Aikins, MacAulay & Thorvaldson (on behalf of ENSIS Growth Fund Inc.). It was suggested that the Policy indicate the Commission's preparedness to grant relief from certain of the provisions of National Instrument 81-102. The Commission is not prepared to make the requested amendment to the Policy, as each application will be considered on its merits.

Therefore, no material changes were made to the draft policy previously published.

Text of the Policy

The text of the Policy follows as well as Order No. 3581 of the director designating LSIFs as mutual fund companies.

Date of Notice

November 22, 2001

Questions may be referred to:

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Attention: R. B. Bouchard
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