



# Canadian Investor Protection Fund

## Fonds canadien de protection des épargnants

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Sponsored by the Alberta, Toronto, Vancouver and Winnipeg Stock Exchanges, the Montreal Exchange, the Toronto Futures Exchange and the Investment Dealers Association of Canada

### CIPF/FCPE POLICIES — September 1999

#### DEFINITION OF CUSTOMERS

A customer considered eligible for protection by CIPF/ FCPE shall be any customer having an approved securities or futures contracts account used solely for the purpose of transacting securities or futures business (dealing as principal or agent) executed directly with the insolvent Member on account of securities and segregated insurance funds received, acquired, borrowed or held for safekeeping, futures contracts and cash balances and shall include moneys left on deposit.

An approved securities account is any account opened in accordance with the rules governing new accounts prescribed by or under any provincial securities legislation.

A customer shall be an individual, a corporation, a partnership, an unincorporated syndicate, an unincorporated organization, a trust, a trustee, an executor, an administrator or other legal representative but shall not include:

- i) a Member of a sponsoring Self-Regulatory Organization (SRO) of CIPF/FCPE or a foreign securities dealer registered with a Canadian securities commission or foreign equivalent;
- ii) any individual or corporation to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the insolvent Member such that the claim represents five percent or more of any class of equity security of the insolvent Member, or any individual who has a claim which is subordinated to the claims of any or all creditors of the insolvent Member;
- iii) a general partner or director of the insolvent Member;
- iv) a limited partner with a participation of five percent or more in the net assets or net profits of the insolvent Member;
- v) someone with the power to exercise a controlling influence over the management or policies of the insolvent Member;
- vi) a clearing corporation;
- vii) a customer of an institution, securities dealer or other party dealing with a Member of an SRO on an omnibus basis; or
- viii) a customer who caused or materially contributed to the insolvency of a Member of an SRO.

#### LIMITS OF COVERAGE

The determination of the amount of financial loss suffered by a customer of an insolvent Member of an SRO for the purposes of payment by CIPF/FCPE and the maximum limits of such payments shall be in accordance with this Policy. In addition,

the Board of Governors may exercise its discretion, in respect of determining customers eligible for protection and the amount of financial loss suffered, in a manner that is consistent with the right and extent to which a person may be entitled to claim against the customer pool fund of a Member under the *Bankruptcy and Insolvency Act* (Canada), subject to other restrictions in this Policy and the sole discretion of the Governors to determine protection by CIPF/FCPE. The Governors may rely on the trustee in bankruptcy or the receiver under applicable law in determining the amount and validity of claims of a customer and for the purpose of calculating financial loss. Persons who deal with CIPF Members through accounts used for business financing purposes such as securities lending and purchase/repurchase transactions are not eligible for coverage in respect of such accounts. The Governors may also determine that persons who do not deal at arm's length with an insolvent Member or with a person who is excluded as a customer are not customers entitled to protection.

In the case of any question or dispute as to the amount of the financial loss incurred by a customer for the purposes of payment by CIPF/FCPE, and the maximum amounts to be paid to a customer, the interpretation of the Board of Governors of this Policy shall be final and conclusive. The Board of Governors reserves the right in the appropriate circumstances to authorize any payments in a manner other than as prescribed in this Policy.

#### Determination of Customer Losses

The financial loss of a customer in respect of which the Governors may authorize payment by CIPF/FCPE shall be determined as at the date of the insolvency of the Member (as fixed by the Board of Governors) after taking into account the delivery of any securities or property to which the customer is entitled and the distribution of any assets of the insolvent Member. Accordingly, the maximum amount of securities, cash and other property which CIPF/FCPE may pay to a customer shall be calculated as the balance of the customer's financial loss as a result of the insolvency of the Member net of such deliveries or payments. The Board of Governors may in its discretion reduce the amount of the financial loss of a customer for the purposes of authorizing payments by the amount of compensation the customer may receive from any other source.

The date at which the financial loss of a customer is determined shall be fixed by the Governors as the date of bankruptcy of the Member, if applicable, or the date on which, in the opinion of the Governors, the Member became insolvent.

The amount of securities delivered to a customer in satisfaction of a claim shall be the amount of securities to which the customer was entitled as at the date for determining financial loss without regard to subsequent market fluctuations. In lieu of satisfying a claim by the delivery of securities, cash in an amount equal to the value of the securities as at the date for determining financial loss may be paid to the customer even though the amount of such cash is not equal to the value of such securities as at the date of payment.

#### **Maximum Limits of Payments**

The Board of Governors may authorize payments to be made to each customer considered eligible for protection by CIPF/FCPE who has suffered financial loss to a maximum amount of \$1,000,000 (including claims for cash) with respect to each of (i) the aggregate of all the customer's General Accounts and (ii) each type of aggregated Separate Account of the customer, as such General and Separate Accounts are determined by the Board of Governors. The amount of a customer's claim for cash will be reduced to the extent that the customer is entitled to deposit insurance in respect of all or any of the cash held for an account or to compensation in respect of other securities or property.

#### **GENERAL ACCOUNTS**

Each account of a customer considered eligible for protection by CIPF/FCPE which is not a Separate Account shall be one of the General Accounts of such customer. All General Accounts of a customer, or any interest the customer may have therein, shall be combined or aggregated so as to constitute a single account of such customer for the purposes of determining the payments to be made to the customer. The interest of a customer in an account which is held on a joint or shared ownership basis shall be treated as if it were a Separate Account and combined with the General Accounts of the customer. An account held by a nominee or agent for another person as a principal or beneficial owner shall, except as otherwise provided in this Policy, be deemed to be the account of the principal or beneficial owner.

#### **SEPARATE ACCOUNTS**

Each account of a customer held by it in the capacity or circumstance set out below shall be considered a Separate Account of the customer. Unless otherwise indicated below, each Separate Account held by a customer in the same capacity or circumstance shall be combined or aggregated so as to constitute a single Separate Account. The burden shall be on the customer to establish each capacity or circumstance in which the customer claims to hold Separate Accounts. An account of a customer shall not be a Separate Account if it existed on the date of insolvency primarily for the purpose of increasing protection by CIPF/FCPE.

**Registered Retirement Plans:** accounts of registered retirement or deferred income plans such as registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs), life income funds (LIFs), locked-in retirement accounts or plans (LIRAs or LIRSPs) and locked-in retirement income funds (LRIFs) established for the account of a customer (excluding spousal plans) which comply with the requirements under the Income Tax Act (Canada) for such plans and which have been accepted by the Minister under such Act, where the customer is entitled to the benefits of the

plan. Accounts established with respect to a customer through the same or different trustees shall be combined and aggregated.

**Registered Education Savings Plans:** accounts of education savings plans which comply with the requirements under the Income Tax Act (Canada) for registered education savings plans and which have been accepted by the Minister under such Act, where the customer is the subscriber of the plan. Accounts established with respect to a customer through the same trustee shall be combined and aggregated by trustee, but not if established through different trustees.

**Joint Accounts:** joint accounts which are owned on a joint or shared basis by the owners and for which each co-owner is authorized to act with respect to the entire account, except to the extent that the proportionate interest of a co-owner is required to be combined with a General Account.

**Testamentary Trusts:** accounts held in the name of a decedent, his or her estate or the executor or administrator of the estate of the decedent. Accounts of testamentary trusts held by the same executor or administrator shall not be combined or aggregated unless held in respect of the same decedent.

**Inter-vivos Trusts and Trusts Imposed by Law:** accounts of inter-vivos trusts which are created by a written instrument and trusts imposed by law. Such Separate Accounts of customers shall be distinct from the trustee, the settlor or any beneficiary.

**Guardians, Custodians, Conservators, Committees, etc.:** accounts maintained by a person as a guardian, custodian, conservator, committee or similar capacity in respect of which accounts such person has no beneficial interest. Such accounts held by the same person in any such capacity shall not be combined or aggregated unless held in respect of the same beneficial owner.

**Personal Holding Corporation:** accounts of corporations controlled by a customer shall be Separate Accounts provided that the beneficial ownership of a majority of the equity capital of the corporation is held by persons other than the customer.

**Partnerships:** accounts of partnerships controlled by a customer shall be Separate Accounts provided that the beneficial ownership of a majority of the equity interests in the partnership is held by persons other than the customer.

**Unincorporated Associations or Organizations:** accounts of unincorporated associations or organizations controlled by a customer shall be Separate Accounts provided that the beneficial ownership in a majority of the assets of the association or organization is held by persons other than the customer.

**Introducing/Carrying Brokers:** all accounts which are carried in accordance with SRO requirements on a fully disclosed basis for the same customer, which has been introduced by another broker and which by agreement is the customer of the carrying broker, shall be combined or aggregated to constitute a single account, unless such accounts are otherwise Separate Accounts under this Policy. Accounts introduced by different brokers shall not be aggregated or combined except as provided in the foregoing sentence. Accounts of foreign affiliates of a Member which are carried by the Member in accordance with SRO requirements are eligible for coverage.