



September 8, 1992

Money Concepts Group Capital Corp.
190 Attwell Drive,
Suite 204
Rexdale, Ontario
M9W 6H8

**Att: Richard E. Austin,
General Counsel & Vice-President,
Business Affairs**

Re: Registration of Money Concepts Group
Capital Corp.-New Brunswick Securities Act

Dear Sirs:

I acknowledge receipt of your letter of August 26, 1992 in response to my request for your comments on a Memorandum dated August 7 received by me from the Deputy Administrator relating to disciplinary action affecting Money Concepts Group Capital Corp. It is my understanding that your lengthy reply constitutes the full extent of your representations in this matter.

I. POSITION AND ARGUMENT OF THE DEPUTY ADMINISTRATOR:

In his Memorandum the Deputy Administrator argues that disciplinary action should be taken against Money Concepts Group Capital Corp. for its alleged failure to adequately supervise the activities of Money Concepts salespersons who were the subject matter of earlier investigations and administrative action by this Office. In particular, he recommends that a Letter of Reprimand be placed on the registration file of the broker. Additionally, he requests that Money Concepts Group Capital Corp. bear a certain portion of the costs of the investigation and administrative hearings which have been previously shared by the individual registrants.

In support of his recommendations the Deputy Administrator argues that the public interest would not be served by more severe administrative action such as suspension or cancellation of the broker's registration. The registration of employees who have already been disciplined would necessarily also be suspended or cancelled. This consequence would not be appropriate. Additionally, he emphasizes the positive actions taken by the broker in improving its system of compliance and supervision.

II. POSITION AND ARGUMENT OF BROKER:

In response to the Deputy Administrator's recommendations, Money Concepts Group Capital Corp. takes issue with the suggestion that the amended compliance plan effected by the broker is an admission of liability or fault. It argues that its obligation to supervise its employees is limited to activities under its auspices which did not and do not include the sale of securities other than those for which it is registered to distribute. The broker suggests that the violations of the Act perpetrated by its salespersons resulted from their failure to appreciate the technical distinctions between "trading" and "selling".

Furthermore, the broker argues that if a Letter of Reprimand is placed on its file the Administrator should take certain factors into consideration. These include the implementation of a revised compliance policy as well as a recognition that the broker fully cooperated with the investigator prior to and during the administrative hearings.

Money Concepts Group Capital Corp. rejects the Deputy Administrator's recommendation that costs be assessed against it as its share of the investigation and hearing expenses. In response it argues that the majority of these costs should have been assessed against the two individuals who were the "master minds of the conspiracy", namely, Fernand Robichaud and Donald MacKay.

III. DISCUSSION:

In reaching a decision as to whether administrative action should be taken against Money Concepts Group Capital Corp. and, if so, the nature of such action, it is important to emphasize the unusual nature of the broker's operations and business structure in New Brunswick. The franchise system for a securities dealer is unique in New Brunswick. No other dealer or broker operates to my knowledge in this fashion. The franchise system poses different regulatory problems than other types of business operations, particularly with regard to supervision and compliance.

In 1988, when Money Concepts Group Capital Corp. was first registered in New Brunswick, these potential difficulties were recognized by this Office. Registration was made conditional upon the employer "exercising responsibility for licensed salespersons of its franchises". In imposing this condition we emphasized that, regardless of its corporate or legal structure, for purposes of the Securities Act the head office of the broker would be held accountable for the activities of those individuals operating within the Money Concepts system in New Brunswick. This approach conformed to our normal requirement that the broker be ultimately responsible for employees.

In fulfilling this condition of registration it was and remains reasonable to expect that the broker would implement supervisory procedures to ensure compliance by its registered salespersons with securities legislation, if not the broker's own internal procedures. The regional vice-president agreement submitted in evidence in previous hearings was no doubt an attempt to carry out these obligations. Unfortunately, it would appear that the broker relied totally on one individual in the field and had no other mechanism to assure itself that essential compliance was occurring.

It is fundamental to any regulatory scheme that a registrant can only do what it is licensed to do. There is no disagreement that Money Concepts was and remains restricted to distributing mutual funds only. This restriction applies equally to its employees. Furthermore, after the recent hearings there can be no dispute that these employees were acting contrary to the Securities Act.

I believe there is sufficient evidence to conclude that the broker failed in its duty to ensure that its registrants were acting within the Securities Act and their registration restrictions. That this duty is not set out in detail in legislation or regulation does not obviate this simple but fundamental responsibility. Furthermore, while Money Concepts Group Capital Corp. was not represented, evidence was submitted to me during the MacKay and Robichaud hearings to suggest that the broker was informed of the scheme. I am not aware of any action taken by the broker to prevent it. Regardless, minimum supervisory standards were not met and for its failure Money Concepts, like any other broker in similar circumstances, must suffer the regulatory consequences.

In determining what these administrative consequences should be I am guided by the overriding public interest concerns expressed in previous decisions involving Money Concepts registrants. These individuals were sanctioned for their improper activities whether these activities were intended or not, whether they were technical breaches or not. In my opinion the public interest demands that the broker also be sanctioned for its neglect, whether intentional or not.

I accept the Deputy Administrator's recommendation that it is not in the public interest to suspend or cancel the registration of Money Concepts Group Capital Corp. The co-operation shown by Money Concepts while conducting the investigation, as well as the steps taken by it to prevent a re-occurrence of the unfortunate circumstances support his recommendation.

I cannot, however, accept the arguments of the broker regarding apportionment of the expenses of the investigation and hearings. The fact that the monetary penalty for some registrants was greater than others is balanced by the differing lengths of suspension of registration. Furthermore, some registrants made voluntary contributions to the province in return for avoiding the time and expense of hearings. These payments cannot be viewed as "fines" which are outside the authority of the Administrator.

Therefore, I do not think it unreasonable that the broker, being ultimately responsible for the activities of its registered employees, bear a significant portion of the cost of the investigation and hearings. The sum of \$10,000.00 does not appear unreasonable. The fact that the broker has incurred considerable expense to date in this matter is unfortunate but perhaps an unavoidable consequence of its supervisory failure.

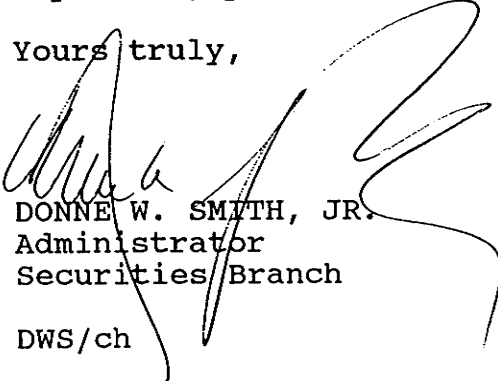
IV. ORDER:

Having considered the representations of the Deputy Administrator and Money Concepts Group Capital Corp., I order that this letter serve as a Letter of Reprimand and be placed on the registration file of Money Concepts Group Capital Corp. This letter and the circumstances surrounding it may be brought forward at some future occasion if and when other administrative action is considered which involves the suitability of registration for the broker.

Furthermore, I order that as a condition of continuing registration, Money Concepts Group Capital Corp. pay to the Minister of Finance on or before October 31, 1992 the sum of \$10,000.00 being its total contribution towards expenses incurred by the Office of the Administrator in this series of investigations and hearings.

Should you have any questions with regard to this Letter of Reprimand, please contact me directly.

Yours truly,



DONNE W. SMITH, JR.
Administrator
Securities Branch

DWS/ch

cc: Edouard O. LeBlanc