RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REÉÉ DU CANADA

VIA EMAIL

September 14, 2012

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

RE: Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* – Cost Disclosure, Performance Reporting and Client Statements - Released for comment June 14, 2012

The members of the RESP Dealers Association of Canada (RESPDAC) are pleased to provide the Canadian Securities Administrators (CSA) with comments on the CSA's proposals to amend National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to provide for mandatory reporting to clients on investment charges, investment reporting and client statements.

The members of RESPDAC are C.S.T. Consultants Inc., Global RESP Corporation, Heritage Education Funds Inc., Knowledge First Financial Inc. and Universitas Management Inc. Together these entities manage and administer over $9 billion in group and self-directed RESPs

that are qualified for sale to the public in each province and territory of Canada—for Universitas in Québec and New Brunswick—under prospectuses. RESPDAC members are committed to facilitating Canadians' ability to plan for their children's and beneficiaries' future, by providing them with the tools to save for future costs of post-secondary education.

Each RESPDAC member is registered as a scholarship plan dealer in each province and territory of Canada—for Universitas in Québec and New Brunswick—and is also registered with the Ontario Securities Commission—for Universitas with the AMF—as an investment fund manager[1] with respect to its activities as an investment fund manager (as defined) of its various RESPs so offered to the public.

The RESPs administered and distributed by RESPDAC members are commonly referred by the CSA as "scholarship plans". We use the terms RESP and scholarship plan interchangeably in this letter.

RESPDAC members use their scholarship plan dealer registration to trade in the RESPs [essentially, an investment contract] that they manage and administer. For the purposes of the comments provided in this letter, it is important to note that a RESPDAC member does not distribute any other security using this registration, other than its own RESPs.

Before providing you with our members' detailed comments on the revised proposals, we wish to emphasize, as we did in our earlier letter commenting on the first "CRM-2" proposals, that RESPDAC members are completely in favour of providing clear and concise information to accountholders/investors about their investment in scholarship plans – both at point of sale and on an on-going basis - so as to facilitate a greater understanding and to permit accountholders to thoroughly comprehend the nature of their investments, but also to allow accountholders to better plan for the costs of post-secondary education for their children and other beneficiaries. Our members consider this is not only the best way forward to put subscribers' interests first, but it is also good, ethical business practice. Our comments are designed to tailor the CSA's proposed disclosure for scholarship plans, but also to ensure that our members provide information to a client that is meaningful, material and not clearly duplicated elsewhere.

We urge the CSA to keep in mind two important considerations while reviewing our specific comments:

- RESPs are sold via prospectus by our members and those members are also the managers of those RESPs (an affiliate in the case of Global RESP Corporation), and accordingly investors receive a complete prospectus for their RESPs. They also receive a contract that sets out the terms of their investment. These facts are critical to understanding our comments as they differentiate the distribution of RESPs from (say) mutual funds that are sold by dealers with no connection to the fund manager. We continue to consider that duplicative information provided to subscribers at or shortly after the point of sale, will only serve to overwhelm investors with "information", rather than allow them to better understand their investments and to plan for future educational costs. The risks of receiving too

[1] An affiliate of Global RESP Corporation is so registered as an IFM.

much "information" are that clients may find it, at best confusing and, at worst, will be deterred from reading any of it (due to its length and repetitive nature).

- Earlier this year, we outlined our concerns with a perceived lack of coordination between the work of the CSA staff developing the new prospectus rules for RESPs and the work of the CSA staff working on these "cost and performance" reporting requirements. Our comment letter on the proposals to amend National Instrument 41-101 outlined our concerns in this regard and set out our proposals to essentially "combine" the RDI-required disclosure and the Plan Summary-required disclosure in one document that would be provided to subscribers at the point of sale. Please see our comment letter of January 24, 2012 – in particular our comments on pages 10-12 of that letter (we have extracted those comments and attached them for ease of reference to this letter). We urge the CSA to reflect on this proposal and provide the necessary flexibility for our members' to take this reasonable and client-focused approach.

Although we continue to have comments on the revised proposals published in June 2012, we very much appreciate that the CSA took our earlier comments into account when developing them after meeting with our members to discuss our comments so as to better understand RESPs and the sales process. We consider that these revised proposals are very close to being appropriate for our members and our clients.

Our comments on the specific CSA proposals follow the ordering of the revised NI 31-103 publication for ease of reference.

1. ***Comments on subsection 14.2 (2) Relationship Disclosure Information***

Paragraph (n) is new. We have two comments on this additional required disclosure for the relationship disclosure information that is provided by our members to their clients in their capacity as registered dealers. We emphasize that our members have long considered it of utmost importance to provide potential subscribers with the information proposed in this paragraph (n) – it is not accurate to assert that presently this information is "buried" or difficult to locate.

(a) The paragraph assumes incorrectly that clients will lose "contributions". Clients do not forfeit contributions, although fees will be deducted from contributions repaid to the client on maturity of the contract or, at their request, on early termination of the contract. On maturity, the client always will receive the contributions back (less fees), which is consistent with the federal income tax requirements, as well as National Policy Statement No. 15 (see section 11). Clients are also entitled to receive their contributions (less fees) if their contract is terminated (for whatever reason).

(b) While we consider it important that subscribers be provided this information, we have concerns with the proposal that the RDI essentially duplicate what is in the prospectus for the plans. This information is clearly set out in the plans' prospectuses, which is an integral part of our member's initial sales materials to

subscribers. These are features of the products themselves – and are not part of the "services" provided to the client or of the "relationship" of the client with the dealer. The CSA's proposals for a new prospectus document for plans will also clearly require this information to be provided front and centre in the Plan Summary (a separate document), as well as the prospectus document. As we noted above, we do not consider it helpful for subscribers to receive duplicative information – to do this runs the risk of confusing or overwhelming subscribers.

We recommend that paragraph (n) be rephrased as:

(n) *if the registered firm is a scholarship plan dealer, a statement that a client or their designated beneficiary may lose earnings on the principal deposited into the plan and government contributions to the plan, if the client or the designated beneficiary does not meet the terms of the plan; and that clients are encouraged to review the terms of the plan with the dealer and its dealing representatives and read the prospectus of the plan carefully before making a decision to invest in the plan. Include a statement that fees are deducted from the contributions deposited into the Plan and therefore the subscriber will not receive back all of amounts paid into the Plan if the subscriber's contract is terminated before the Plan's maturity. Include a statement that the subscriber will have options if the subscriber or their designated beneficiary cannot meet the terms of the plan, which he or she can discuss with the registered firm or its dealing representatives in that event.*

We continue to have comments on the revised Companion Policy to NI 31-103.

(a) The new second paragraph included as a new paragraph under the heading *Relationship disclosure information* conforms to the business practices of RESPDAC members. RESPDAC members train their dealing representatives about the particular RESPs distributed by the applicable dealer. Dealing representatives spend substantial one-on-one time with prospective clients, usually in the clients' home. We continue to recommend, however, that this paragraph refer specifically to the prospectus that is available for prospectus-qualified investments, such as securities issued under an IPO, investment funds and RESPs. Particularly given the focus of the CSA in recent years in ensuring clear and concise disclosure documents (through Fund Facts, the proposed Plan Summary and other summary prospectus information), we believe the CSA should specifically encourage dealers and their dealing representatives to refer to these documents as part of the sales process to ensure that investors understand the nature of the prospectus and the information provided therein.

(b) The new paragraph under the new heading *scholarship plan dealers* includes the following sentence: *To be complete, this prescribed disclosure could include any options that would allow the investor to retain notional earnings in the event that they do not maintain prescribed payments under the plan.*

The options that are available to a subscriber who cannot maintain their payment schedule are described in the prospectus. A subscriber may always contact the applicable dealer of the plans to renegotiate his or her contract. Our members

consider it a matter of good business practice to work with clients who, for whatever reason, are unable to fulfil the terms of their contract to ensure that earnings and government grants are not forfeited. Those options should not be exhaustively outlined in the RDI (which will be provided to the subscriber oftentimes many years before the subscriber will need to call for a renegotiated contract), but at the very least the RDI should alert the subscriber to the ability to renegotiate his or her contract by contacting the firm in the event of change in circumstances of the subscriber or his or her beneficiary. We believe the concept behind the quoted statement is useful and we suggest it be part of the rule (and not simply referred to in the Companion Policy). Our revisions to paragraph (n) above, includes this concept.

2. ***Comments on section 14.14 [Annual Client Statement].***

We appreciate that the CSA have retained the requirement that scholarship plan dealers provide an annual statement to clients (rather than a quarterly statement), which is consistent with the current requirements and reflects the nature of RESP investments.

However we are confused with the section references in paragraph 14.14(7)(b). We do not consider these can be the correct references [i.e. the client statements must provide the information required under paragraphs (5), (6) and (6.1)]. We recommend that paragraph (7)(b) refer only to paragraphs (5) and (6.2), given the nature of the "security" inherent in RESPs [essentially RESPs are held in "client name" – registered on the books of the plans in the name of the subscribers].

However, the new proposed requirements of proposed subsection (6.2) are not translatable to the type of investment made by customers of RESPDAC members in RESPs and we recommend that subparagraph (7) acknowledge this in some way.

In addition to other material information, RESPDAC members provide the following information to clients on account statements in compliance with the current requirements of section 14.14:

- The amount of total deposits that have been made by a client in the RESP – both for the year to date, as well as since inception of the client's own plan. The fact that fees are deducted from these total deposits is referred to.

- The amount of total government grants (itemized by type of government grant, where a client may have received money from federal as well as provincial programs) - again for the year to date, as well as since inception of the plan.

- The amount of income that has been attributed to the client's principal invested in the Plan – broken out to show income on the deposits made by the client and income on the government grants.

Because investors in scholarship plans make regular deposits into an RESP[2] – the concept of a "market value" and "book cost" of a "security" (the RESP contract) does not apply. In essence, the above-noted information will provide investors with the "market value" of their investment in a RESP, as well as comply with the "investment performance" requirements. Because of the specificity of paragraph 6.2, we consider it important that paragraph (7) acknowledge that RESPs annual statements will not provide a "book cost". Further explanation could also be provided for in the Companion Policy on the type of information that is provided to investors in RESPs and explain why this information is appropriate and meets the CSA's goals.

3. Comments on section 14.15 [Report on charges and other compensation]

We ask the CSA to confirm that the references to operating charges and transaction charges in this section relate to such charges paid by the client (directly or indirectly) to the *registered dealer firm*, which is consistent with the drafting of this section.

For instance, the reports of our members (the dealers) to their clients will not include any information about the charges that are paid (indirectly) by subscribers through charges levied by the fund manager or Foundation at a Plan or subscriber level. This information is available to subscribers in the continuous disclosure information prepared at a Plan level by each RESP pursuant to National Instrument 81-106.

While we have no issue with providing information about "unpaid" enrolment fees, we do not understand the reference to "other charge" in paragraph (f). If this is intended to refer to other charges akin to the enrolment fees (that is, a commission charged by and payable to the registered firm), we do not have a problem with this requirement. However the word is so broad that it could conceivably cover any and all charges paid by subscribers out of their RESP account, which we do not consider appropriate (given they are plan charges fully disclosed in the prospectus), nor are those charges capable of being laid out in the manner suggested by paragraph (f) [i.e. forecasted into the future as a specific dollar value].

4. *Comments on sections 14.16 and 14.7 – [Investment Performance Report]*

We appreciate the CSA's tailoring of the requirements of the content of the investment performance report for scholarship plan dealers. We consider that the proposed requirements are correct and appropriate, except, in a similar fashion as our first comment (above), the account statement should refer to the prospectus for the consequences and terms of the contract (early termination or beneficiary not qualifying) – it should not repeat the prospectus. We consider that our proposed redrafting of (n) above will work in the context of this investment performance report.

Our members will continue to adher to RESPDAC's *The Members' Code Providing Prospective and Current Subscribers with Illustrations of Expected Future Benefits for Beneficiaries.* In order to comply with this Code, additional information will be necessary in conjunction with

[2] We note that these payments are not "trades" in a security nor are they necessarily "transactions" within the meaning of more traditional securities investments. They are payments according to a contract where such payments are agreed to between the subscriber and the Plan when the contract is first entered into (that is, when the "security" was first acquired).

information required in the "annual investment performance" report and we assume that the CSA will permit this. For clarity and to ensure future certainty, we would prefer that the Companion Policy specifically refer to this Code and permit RESPDAC members to include the additional information, which is considered important disclosure.

5. *Permission to Combine Required Reports*

We ask the CSA to expand on the requirements by stating positively that scholarship plan dealers can combine the required annual "holdings" report with the "annual charges" report and the "annual performance" report. We do not think that a combined report should be prohibited (or is prohibited under the rules as drafted), but for future certainty we consider this issue to be important to have addressed in some way. Our members would prefer to retain the current structure of their client statements (OSC staff has been provided with our members' sample reports), with, of course, the additional required information – we do not consider that subscribers will benefit from having three separately labelled reports, particularly since the information that will be provided to them by our members achieve the CSA's desired outcomes. In particular, we do not consider a separate report labelled "annual performance" report can even be provided, given that it is really subsumed in the annual "holdings" report.

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We hope that the CSA will consider the comments made in this letter, as well as in RESPDAC's past submissions in moving forward with this important initiative. Thank you for considering our comments. Please contact James Deeks, RESPDAC's Executive Director, at 416-689-8421 or jdeeks@primarycounsel.com if you have any questions about our comments or you would like to meet with our members to discuss them. Our members would be very amenable to meeting with staff to answer any questions or to provide any additional information necessary to understand RESPs and the information that is most important and relevant to investors in these vehicles.

Yours very truly,

Peter Lewis
Chair

James Deeks
Executive Director

Excerpt from RESPDAC Comment Letter on NI 41-101 Prospectus Disclosure

(January 2012)

6. *Lack of Coordination with Other Regulatory Documents*

In our June 2010 comment letter, we reminded the CSA that investors in group RESPs are also required to be provided with a copy of certain "relationship disclosure" in advance of entering into a contract. We pointed out that the disclosure in the Plan Summary and prospectus will be duplicative of much of the disclosure required to be provided by our members under National Instrument 31-103 and, with the CSA's proposed cost and performance disclosure proposals, this duplication can be expected to increase. The CSA's response to our earlier comment suggests to us that there remains some misunderstanding about the sales process with group RESPs and exactly what documents are provided at which point in time to subscribers.

When our members meet with subscribers (generally face-to-face) to discuss setting up a group RESP, the subscriber is left with a package of documentation so that he or she can review this information in order to make an informed decision and is given additional information for their files once the contract is entered into. This documentation generally includes:

- The "relationship disclosure information" required by section 14.2 of NI 31-103. We provided OSC staff with copies of this disclosure currently being used by all members.
- The executed plan contract
- The account opening form
- The applicable government incentives application forms
- Plan prospectus (although some of our members are or may in the future electronically deliver the prospectus and/or post these documents on individual client account portals).
- Insurance information and forms, including an Insurance Distribution Guide as required by applicable insurance laws in Quebec.
- Other forms as may be appropriate to meet plan requirements or to address various compliance issues, inclusive of federal grant or tax requirements.
- Trade confirmation (after the contract is entered into) as required by law.
- Promotional, explanatory material.

The vast majority of information provided to subscribers is mandated by applicable laws – that is, promotional material is only a small portion of the information, and not all members provide such material at or during the account opening process. As you can appreciate, subscribers receive a lot of mandatory information and we wish to ensure that to the greatest extent possible

none of that information is duplicative. In our experience, duplicative information tends to dilute the significance of the documents for a reader (i.e. they may feel they have "read this already", so will not read ***any*** of the documentation) and can lead to inconsistencies in details and hence confusion for subscribers.

There is generally no other time during the life of an RESP set up for a subscriber, that a subscriber will ever receive another prospectus or another copy of "relationship disclosure", although some of our members may deliver a new prospectus when a subscriber increases contributions and subscribes for additional units. Both the prospectus and the "relationship disclosure" documents are provided at "account opening" and entry into of the plan contract. If a subscriber wishes to set up another group RESP for another beneficiary or beneficiaries, our members treat that subscriber as a wholly new subscriber and account, and the subscriber will receive another copy of RDI, as well as a new prospectus at the time he or she sets up the new account.

We would like to explore with the CSA the ability to essentially "combine" the information required by section 14.2 of NI 31-103 with the information required to be provided in the Plan Summary. We consider that all of the required disclosure set out in section 14.2 of NI 31-103 is already required to be provided in the revised Plan Summary, except for the following items, each of which could easily be included, with minimal additional space requirements, in the Plan Summary [the alphabetized bullets are references to the sub-paragraphs of section 14.2 of NI 31-103]:

- (d) *risks of borrowing money to invest*
- *(i) account reporting*
- *(j) disclosure of dispute resolution resources*
- *(k) statement about suitability obligations of the dealer*
- *(l) description of the KYC information the dealer collects.*

In our view, this objective could be easily accomplished by the CSA acknowledging that the section 14.2 "relationship disclosure" (NI 31-103) could be provided in the Plan Summary. We do not consider that a formal exemption from NI 31-103 is necessary, but if the CSA consider this is necessary, we would be prepared to seek this exemption on behalf of our members. The CSA would have to amend the disclosure form for the Plan Summary to permit this additional disclosure.

We note that, at the invitation of staff in the OSC's Registrant Regulation & Compliance Branch, we will be meeting with CSA staff on January 24, 2012 to discuss the CSA's proposals for additional "cost and performance" disclosure in the context of group RESPs. Our comments on the CSA's proposals to amend NI 31-103 to require this additional disclosure – both at point of sale and annually thereafter -- are outlined in our letter dated September 23, 2011. We have urged the applicable OSC staff to consider these comments on the CSA's proposals for group RESP prospectus disclosure when developing their revised proposals regarding cost and

performance disclosure, given the significant overlap between the "relationship disclosure" required under NI 31-103 and the proposed Plan Summary and prospectus for group RESPs.

Although we consider the above proposal as inherently more beneficial to subscribers, as an alternative, if the CSA consider that three documents are necessary (the Plan Summary, the Prospectus and the RDI), we strongly recommend that group RESP dealers be permitted to bind the RDI with the Plan Summary, so that a subscriber will have in one bound document, all applicable regulatory disclosure (even though much of it will be duplicative). This will enhance the importance to a subscriber of reading this information – to do otherwise will run the risk of the subscriber reading none of the information because of information and document overload and lack of understanding of the importance of these documents.

Please keep in mind when considering this comment, that our members essentially only distribute group RESPs and except for a very minor degree, our members' group RESPs are **only** distributed by the related scholarship plan dealer of the applicable product sponsor and manager. Our proposal would apply only where the sponsor and manager of the applicable group RESP is within the same financial group as the applicable scholarship plan dealer.

We wish to emphasize that this comment is written primarily with a view to enhancing a subscriber's ability to read and understand the applicable mandatory information. Our primary objective is the same as the CSA's – namely to ensure that subscribers understand the nature of their investments, by making it easier for them to access and absorb the information that our members are mandated to give them.