

USC

**EDUCATION SAVINGS PLANS INC.
RÉGIMES D'ÉPARGNE-ÉTUDES INC.**

**THE INTERNATIONAL SCHOLARSHIP FOUNDATION
LA FONDATION INTERNATIONALE DES BOURSES**

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August 25, 2005

Submission regarding Proposed National Instrument 81-107

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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Dear Mr. Stevenson:

Re: Proposed National Instrument 81-107
Independent Review Committee for Investment Funds

On behalf of The International Scholarship Foundation (our "Foundation") and USC Education Savings Plans Inc. ("USCI"), we are providing this submission for your consideration on the review of the proposed National Instrument 81-107 *Independent Review Committee for Investment Funds* (released May 2005).

USC Education Savings Plans ("USC Plans") are sponsored and promoted by our Foundation, a not-for-profit Canadian corporation and one of the country's

leading providers of group RESPs, with approximately \$1.9 billion in assets under administration at April 30, 2005. Our Foundation has been providing education savings plans for the benefit of Canadian families for 40 years. We are federally incorporated as a not-for-profit organization and our objective is to help families save for the cost of post-secondary education.

USCI is a wholly-owned subsidiary of our Foundation and is the exclusive administrator and distributor of the USC Plans. USCI is registered under the *Securities Act* (Ontario) as a dealer in the category of scholarship plan dealer and is similarly registered as a scholarship plan dealer or its equivalent in all the other Provinces and Territories in Canada.

USC Plans are sponsored and promoted by our Foundation under the terms of National Policy 15. The trustee of the USC Plans is The Royal Trust Company.

Scope of the Proposed National Instrument

The Proposed National Instrument is intended to apply to all publicly offered investment funds, including Scholarship Plans.

National Policy 15, *Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses* in the Ontario Securities Legislation (the "Policy"), was developed in 1971 and was last amended in 1984. The Policy sets out the conditions which must exist before a prospectus, with respect to the sale of Scholarship Plans, will be acceptable for filing with the securities regulators.

One of the conditions described in the Policy, is the separation of the not-for-profit foundation and the distributor. Another condition deals with the obligation of the "foundation" to secure the best interest rate possible for the subscribers' deposits and the fact that the income is to be administered for the benefit of the beneficiaries of the plans, namely the students.

Scholarship Plans are not unitized in the same manner as other investment funds. They are unitized in order to provide an equitable distribution of income to a cohort of students at the end of a contract, rather than for valuation purposes over the term of an agreement. The units are a measure of the proportionate share of the final scholarship pool that the plan holder is eligible to participate in. The "units" subscribed for by an investor are more indicative of the final value of the contract, rather than the current value. This is more similar to an endowment savings plan than a money purchase investment plan.

For example, an investor may subscribe for a unit of a group scholarship plan and depending on the deposit plan (monthly, annual or one-time), the principal invested, as well as the income earned, the "unit value" could be substantially different at any point prior to maturity of the plan. The "unit" will, however, have a similar amount of income associated with it at the date of maturity as any other unit within its 'cohort group'.

All plans within the “cohort group”, i.e.: with the same year of maturity, participate in the pool of income for the payment of education assistance payments (“EAPs”) to qualifying students within that group. Scholarship plans are not unitized incrementally throughout their term to maturity, as is a mutual fund for example, but rather attain value primarily at maturity. Since the income value of the plan is accumulated for the benefit of the “group”, each plan within the “group” will only be eligible to receive the income value subject to the rules surrounding the student’s eligibility for EAPs. Should the eligibility rules not be met, or if the investor terminates their plan prior to maturity of the plan, the income from those “units” remains in the group and is distributed to those students within the same cohort that meet the payment eligibility rules.

As such, due to the nature of the investment, the structure of the instrument and the current regulatory structure within which the plans exist, there are no conflicts which arise in the same way as for other investment funds. Accordingly, we would submit that Scholarship Plans be excluded from the application of the Proposed Instrument.

The Investment Funds Must Establish an Independent Review Committee

The Proposed Instrument requires each public investment fund to have an independent review committee (“IRC”) consisting of at least three individuals, all of whom must be independent.

As a ‘scholarship plan dealer’ USCI, through its licensed sales representatives, provides an investor (the subscriber to a USC Plan) with the opportunity to establish a registered education savings plan. The subscriber agrees to make contributions over an agreed upon period of time. Those contributions are pooled with the contributions of the other plan holders and invested by our Foundation, through fund managers with whom it contracts with and whose activities are directed by the Board through its Investment Committee.

As a not-for-profit Canadian corporation, our Foundation does not have shareholders and therefore lacks the control groups that, in certain circumstances could advance the interests of owners over those of our investors. Our Foundation exists for the benefit of the families who choose to use the USC Plans to save for the cost of their children’s post-secondary education. Because of this, we have a rather unique governance structure which we believe far surpasses most of the industry in protecting the interests of investors.

None of the Directors of either our Foundation or USCI are employees and as such are completely independent of the management team. Rather they are professionals who are either presently employed in other senior full-time positions or who are retired. It is extremely important to note that none of the Directors receive any financial reward (other than a small honorarium), or have

the potential for financial reward for their services. They perform their duties very much in the same way that the public directors of a charitable organization do, namely in the spirit of the not-for-profit organization with the objective to help students and their families save for the cost of their post-secondary education.

To ensure that the Board of Directors carries out its fiduciary responsibilities effectively, our Foundation has adopted best practices in governance, including:

- A complete separation between management and the Board of Directors; and
- The Chief Executive Officer (CEO) as well as the entire management team serves at the pleasure of the Board; and
- An Audit, Finance & Risk Management Committee of the Board, chaired by Chairman of the Board, that is responsible amongst other things for:
 - overseeing and monitoring the integrity, credibility and objectivity of our Foundation's and the Plans' financial reporting and management information process and system of internal controls regarding financial reporting, auditing compliance and funds management; and
 - overseeing and monitoring the independence, effectiveness and performance of our Foundation's and the Plans' external auditors and internal financial and compliance personnel; and
 - providing effective communications among the Board of Directors, management (including Internal Audit) and the external auditors for financial and internal control matters; and
 - overseeing and monitoring the financial affairs of our Foundation; and
 - overseeing and monitoring its and the Plans' risk assessment and management practices.
- An Investment Committee of the Board, chaired by the Vice-Chairman of the Board that is responsible amongst other things for assisting the Board of Directors in fulfilling its oversight responsibilities in respect of the investment of the material assets of our Foundation including the Plans that it sponsors from time to time, so that such assets are prudently invested in a manner which avoids undue risk of loss and obtains a reasonable rate of return and
 - fulfills applicable regulatory requirements; and
 - meets our Foundation's objectives to Plan subscribers and beneficiaries; and
 - achieves the policy objectives of our Foundation; and
- A Governance Committee of the Board, chaired by an independent Director, which shapes our Foundation's overall approach to governance issues and key corporate governance principles, and implements, monitors, assesses and reviews:
 - matters pertaining to governance rules, procedures and policies, as well as compliance therewith; and

- matters pertaining to the organization and composition of the Board of Directors, including the organization and conduct of Board meetings and the education, effectiveness and independence of the Board of Directors, its Committees and individual Directors; and
- matters pertaining to the Foundation's values, beliefs, policies and practices in respect of regulatory compliance, conflict of interest, standards of ethical conduct and market conduct; and
- Fund investments are handled by external managers selected and overseen by the Investment Committee with the assistance of a third-party asset consultant; and
- At each meeting of the Board of Directors, the Chair of the Investment Committee reports to the full Board in writing on the work of the Committee which has been undertaken since the last report as well as annually with respect to its compliance with and the discharge of its responsibilities.

Despite the fact our Foundation's entire governance structure is designed to promote and protect the interests of its investors, it appears that our public directors will not be allowed to serve as members of our Foundation's independent review committee (IRC) because they would not be considered as "independent".

We support the Proposed Instrument as a step in the direction of improving corporate governance in the mutual fund industry. However, we object to the fact that it is not sufficiently flexible in recognizing corporate structures such as ours, that go far beyond the scope of the Proposed Instrument in protecting the interests of investors.

For scholarship plan dealers, a model which includes the establishment of a governance framework (including a strong, independent Board of Directors) will prove to be more effective in protecting the interests of investors than the model outlined by the Proposed Instrument.

Recruitment of Qualified Individuals for an IRC

One of the most difficult tasks that investment funds will face in addressing the requirements of the Proposed Instrument, will be finding suitable prospective members for an IRC. The individuals must have relevant experience and be totally independent within the meaning of the Proposed Instrument.

However, many in the industry have pointed out that there is a very limited pool of people who are both suitably qualified and willing to take on the role of an IRC member, particularly in view of the potential legal liabilities that might attach to such a role. In fact, because of this personal liability potential, it is likely that many otherwise qualified candidates will refuse to serve on an IRC.

In addition, we anticipate the individuals who will be potential IRC members will likely be either retired or semi-retired. As such they will have little interest or ability to assume the risks inherent in this role. Even though lawsuits by investors may have little chance of success, the mere prospect of dealing with these lawsuits will prove to be an unacceptable reality.

While IRC members will be able to negotiate an indemnity with the fund manager, or require commercial insurance coverage be put into place, this will also serve to limit the pool of qualified individuals.

Given the unique nature of scholarship plans, the limited pool of candidates and the potential for liability, we are very concerned that we will be unable to attract the necessary "independent" individuals to serve on an IRC.

The Establishment and Administration of an IRC

We are also concerned about the amount of time that the senior management will have to spend in setting up and running an IRC, as well as the cost to the funds of doing so.

Our review of the Proposed Instrument suggests that senior management will need to review the fund's constating document to ensure that it already contains sufficient flexibility to allow the fund to set up an IRC and to comply with the new regulations.

We must then identify, approach and recruit at least three suitable candidates to form the IRC.

Once the initial members have been identified and have agreed to serve, we will need to assist the committee to prepare the written charter for the committee and seek legal advice to ensure that the committee and the charter meet all the requirements of the national instrument.

We will then need to provide each member with an orientation course, including educational and informational programs, that enable the members to understand the nature and operation of the scholarship plan business.

We will then have to prepare our own detailed written policies and procedures to be followed in specific conflict of interest matters. To do so, we will need to identify and detail those matters that potentially raise conflicts of interest for our Foundation and which are required to be referred to the IRC for its consideration.

The committee must then be formally established and hold its first meeting to adopt the written charter. In addition, the IRC must establish nominating criteria for the appointment of new members.

To the extent that our Foundation will need to rely on standing instructions, those must be prepared, presented to and finalized with the IRC.

Finally, we will need to choose to either operate the IRC using our internal administrative resources or seek to outsource that function.

We expect the cost of operating an IRC will include the following:

- Legal costs for set up and review of the IRC and written charter;
- IRC member fees;
- “Search” fees where external selection of candidates is required;
- Costs of setting up and running orientation and continuing education programs for IRC members;
- Insurance premiums;
- Fees for Outside Counsel where requested by the IRC; and
- Administration time and costs (which could be an internal and thus hidden cost if we choose to support the IRC in that fashion).

The OSC’s cost benefit analysis, originally released in 2004, suggests that the total cost of setting up and running an IRC is expected to be within the following range:

	Set-up Costs: Low end	Set-up Costs: High end	Ongoing Costs: Low end	Ongoing Costs: High end
	\$	\$	\$	\$
Small Fund (AUM < \$2B)	75,000	225,000	202,753	686,112
Large Fund (AUM > \$2B)	142,134	298,780	348,696	2,167,388

While our costs cannot at this time be known for certain, it is likely that they will be extremely high, particularly when one considers the potential workload of our Foundation IRC members. We are not aware of any potential “structural” conflicts of interest that our Foundation would be subject to, since it has no “related entities”. Furthermore, we believe that we have very few, if any “business” or “operational” conflicts since virtually all of our functions are contracted out to external third-party fund managers. Furthermore, since our Foundation is a not-for-profit corporation and its revenue, in excess of its operating, capital and regulatory requirements is available for the benefit of the student beneficiaries of the USC Plans, we believe that in almost all cases any conflicts of interest that may arise will not be material.

Assuming an annual cost of supporting the IRC of \$2 Million for a fund of \$2 Billion, this would serve to reduce investors’ net rate of return by 10 bp annually – which should present a concern for investors when other compensating governance controls already exist in our Foundation.

Summary and Recommendations

We appreciate that for larger fund complexes, with more inherent conflicts of interest, the Proposed National Instrument may provide welcome relief from the more rigid application of the current conflict of interest rules in securities legislation. However such is not the case for our Foundation.

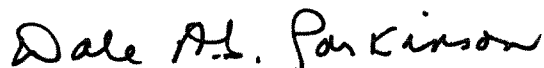
As a not-for-profit Canadian corporation, The International Scholarship Foundation simply does not encounter the conflicts that arise in 'for profits' organizations. Our Directors steward the affairs of the USC Plans in the sole interests of our investors, Canadian families who are saving for the cost of their children's post-secondary education.

Accordingly, we would suggest that the Proposed National Instrument be amended to provide:

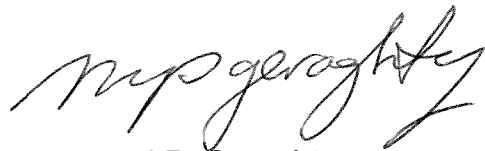
- Exemptions for scholarship plans on the basis that any conflicts we may face can be adequately dealt with at the Foundation Board; and
- A model which requires the establishment of a governance framework including a strong, independent Board of Directors which will prove to be more effective in protecting the interests of investors; and
- For full disclosure of the fact that the Foundation does not have an IRC in the annual prospectus but, instead, describes its governance structure – including the independence and operation of its Board of Directors and related committees.

Thank you for the opportunity to comment on the Proposed Instrument. We look forward to the opportunity to discuss our comments further, as required.

Yours truly,



Dale A. G. Parkinson
Chairman of the Board
The International Scholarship Foundation



Michael P. Geraghty
Chief Executive Officer
The International Scholarship Foundation