

Via Email

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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,
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**RE: Proposed National Instrument 31-103 Registration Requirements, Companion Policy
and Related Forms Published for Comment on February 27, 2007**

The members of the RESP Dealers Association of Canada (RESPDAC) are pleased to provide the members of the Canadian securities administrators (CSA) with comments on the above-noted proposed instruments (the Proposed Rule, the Proposed Policy and collectively, the Proposals). RESPDAC fully supports the overall aim of harmonizing, streamlining and modernizing the registration regime across Canada.

RESPDAC has focused its comments on those aspects of the Proposals that will specifically affect scholarship plans and their associated dealers, representatives and administrators.

Background - RESPDAC

The members of RESPDAC are the four leading providers of group (or pooled) RESPs in Canada, each of which offer various types of scholarship plans, all of which are offered by prospectuses filed in each province and territory of Canada:

- C.S.T. Consultants Inc.
- Children's Education Funds Inc.
- Heritage Education Funds Inc.
- USC Education Savings Plans Inc.

Together, these four companies represent over \$5.6 billion in assets under management. In total, our members paid out over \$160 million in Education Assistance Payments to more than 58,000 Canadian post-secondary students in 2006. More than 4,000 Canadians work with or for our member companies, in various sales and administration capacities. Subscribers in the scholarship plans operated by our members live in each province and territory of Canada. We are very proud of the work we do, and, more importantly, of the beneficial services that we provide to thousands of Canadian families and to the overall Canadian economy.

RESPDAC was formed in 2000, to represent its members in dealings with provincial securities regulators and federal agencies that oversee the RESP and CESG legislation. We have established rules and procedures for self-regulation, standards and testing for sales and management functions, and we strive to increase the understanding of scholarship plans among regulators, the media and the public.

We have been pleased to have worked on several initiatives of interest to provincial securities regulators during the last several years, including:

- providing our association's comment on NI 41-101 *General Prospectus Requirements* in which we expressed the view that a simplified prospectus regime along the lines of that available to mutual funds would provide more clear and understandable disclosure for prospective investors in scholarship plans;
- discussions on the reformulation of National Policy No 15 aimed at providing a broader scope of investment products to prospective investors in scholarship plans;
- development of an industry Code of Ethics; and
- the development of proficiency courses and examinations for RESP sales representatives and branch managers and we are pleased that the Canadian Securities Administrators have recognized our Exam as the industry standard. Our Board of Directors has recently made the decision that *all* Sales, Branch *and* senior officers (including Board members, and regardless of years of service or experience) must have taken and passed the Exam by December 31, 2008.

We look forward to continuing to work with the CSA on these and other improvements to the regulation and management of financial services in Canada. To that end, we hope that the CSA will carefully consider our comments, taking into account the unique characteristics of

scholarship plans and industry participants and the long-term desirability of ensuring that our industry can continue to thrive so as to ensure that Canadians will continue to have access to an affordable and tax-effective method of saving for post-secondary education.

Scholarship Plan Industry Participants

Before turning to RESPDAC's comments, we want to remind the CSA of the unique structures of participants in the scholarship plan industry. These unique structures are behind many of our comments.

The securities issuers commonly referred to as "scholarship plans", are more accurately, group registered education savings plans, which are specific vehicles recognized, registered and regulated under the *Income Tax Act* (Canada). Scholarship plans can be "group" plans, where contributions of all subscribers are pooled together, or they can be "self-directed", where individual subscribers set up separate RESPs.

In all cases, the scholarship plans are established as trusts, with a registered trust company as bare trustee. A not-for-profit foundation is responsible for the administration and management of the scholarship plans. The foundations delegate all administration and management to the scholarship plan administrators, most of whom are also the registered scholarship plan dealers who distribute the scholarship plans. The foundations contract out the portfolio management of the assets of the scholarship plans to third-party investment fund managers, who work within the investment mandates provided to them by the Foundation.

The registered scholarship plan dealers are registered as scholarship plan dealers under current provincial securities legislation and their sales agents are registered representatives.

RESPDAC Support for the CSA's General Direction

RESPDAC and its members support the goal of the CSA with the overall Registration Reform Project: *to harmonize, streamline and modernize the registration regime across Canada and to create a flexible and administratively efficient regime with reduced regulatory burden*. We reviewed the Proposals with a central aim of ensuring that the CSA's regulation of scholarship plan industry participants met those goals.

To the extent that the Proposals create a nationally-uniform set of rules that would govern the "fit and proper" requirements, the conduct rules and any applicable exemptions for scholarship plan industry participants, we believe that the Proposals are a very positive regulatory development. Today RESPDAC members, as with other securities industry participants, must understand not only individual (and differing) rules in the various provinces, but even more troubling, different interpretations and methods of administering rules that may even be the same in each province. Today's regulatory regime creates inefficiencies and regulatory burdens that are unjustified in the context of the scholarship plan industry. We urge the CSA to move forward with the Proposals with a view to ensuring uniform rules and, even more importantly, uniform interpretation of the rules.

RESPDAC also supports the CSA's efforts to regulate the participants in the scholarship plan industry in ways that reflect the industry's unique, and long-standing, characteristics, as well as scholarship plans' importance to the future post-secondary educational needs of young Canadians. Many of our comments illustrate where additional tailoring of the registration regime is necessary, given those unique characteristics.

In that regard, we repeat the offer that our members have made over the years to work with the CSA to develop, an appropriate principled-based regime that will apply to scholarship plans (as issuers of securities), in complete replacement of the out-dated National Policy Statement No. 15. NP 15 no longer reflects the nature of today's scholarship plans and, in our view, is impairing the ability of the scholarship plan industry to better enable Canadians to achieve their education goals.

Specific Comments on the Proposals

Dealer Registration

1. We fully support the CSA's decision to require all sales representatives of scholarship plan dealers to pass RESPDAC's Sales Representative Proficiency Exam. As noted above, on May 17, 2007, the Board of RESPDAC passed a resolution that all CEO's, RESPDAC Board Members, Compliance Officers, Branch Managers and Sales Representatives, regardless of years of service and experience must have taken and passed the Exam by December 31, 2008. We recommend that the transition periods to be established by the Proposed Instrument (assuming it comes into force before year-end 2008) mirror this decision and give all sales representatives at least until that date to have passed the Exam.
2. We fully support the CSA's decision to permit dealer firms, and representatives of those firms, to seek to be registered in more than one category. Our members may also wish to become registered in other dealer registration categories, in addition to being registered as scholarship plan dealers, in order to properly service subscribers who wish alternative methods of saving for education savings. Our members understand that any representative who is dealing in other types of securities pursuant to additional dealer categories would need to have the additional proficiency proposed for representatives of those registration categories.
3. We urge the CSA to allow firms and their representatives that are registered as mutual fund dealers to be authorized to also distribute scholarship plans, without necessarily having to become also registered as scholarship plan dealers, although we believe that representatives wishing to distribute scholarship plans should be required to take RESPDAC's Exam. In our view, the mutual fund dealer registration category should permit registered firms to distribute scholarship plans, since they are pooled investment products with some of the characteristics of mutual funds and are regulated as "investment funds", in many ways similar to mutual funds. Our members may wish to expand their distribution network and partner with selected mutual fund dealer firms so as to allow the broadest possible access to Canadians to the benefits of scholarship plans.
4. Our members may also wish to partner with individual sales representatives who are registered as mutual fund dealer sales representatives. Ideally, our members may wish to enter into sales arrangements with those sales representatives, so that they become, in effect, dually licensed, to sell mutual funds with their dealer firm, and also to distribute scholarship plans, as licensed sales representatives with our members' firms. Our members see this potential form of partnership as being akin to the dual registration permitted for licensed insurance agents who also are licensed to sell mutual funds. We recognize that our proposal might require an amendment to the MFDA Rule 1.1.1, but we would like to explore with the CSA the potential for moving forward with this at the very least.

5. In light of our comments noted above, we urge the CSA to remove the various terms and conditions that some CSA members have imposed on scholarship plan dealers and permit those firms to distribute the securities for which they are properly registered without further restriction other than as set out in the Proposed Instrument. For example, in British Columbia, the BCSC has restricted scholarship plan dealers from trading in securities pursuant to registration exemptions (that are otherwise available to any entity, including an unregistered entity, in British Columbia). Our members strongly feel that restrictions of this nature are not in the best interests of subscribers and clients of scholarship plan dealers, provided, as noted above, that the firm and their representatives meet the additional regulatory expectations for the applicable registration categories set out in the Proposed Rule.
6. We note that the CSA has chosen to require sales representatives to register in a category designated as “dealing representative”. Our members believe that this term may be negatively perceived by the Canadian public and, as such, confuse the marketplace. Our members therefore recommend that individual registrants continue to be permitted to allow their representatives to hold themselves out as “sales representatives” or “branch managers”, as applicable, which are more descriptive terms applicable to these individuals’ services to subscribers.
7. RESPDAC urges the CSA to acknowledge the accepted principal-agent structure for registered scholarship plan dealers with a reference to this issue (which is a broader industry issue, not restricted to scholarship plan dealers). We believe that a consistent regulatory approach must be taken and we support the approach taken by the Mutual Fund Dealers Association in permitting, for many years, Approved Persons to be in a principal-agent relationship with their dealer-firms, and to be able to direct that commissions be paid to personal service corporations. Our members strongly believe that an ideal approach would be for the CSA to recognize the efficiencies for industry participants and continued investor protection that would be inherent in permitting sales representatives to provide their services to their dealer firm through corporations. We extend an offer to assist the CSA in this regard to better understand the business needs of the scholarship plan dealer community.
8. We understand that the CSA has chosen to drop the current “branch” manager /office registration categories, and instead, will require that registrants establish, maintain and enforce a “system of controls and supervision”. The CSA explain in the Proposed Policy that this means, for non-SRO members (like scholarship plan dealers), that the CSA “would normally expect that a manager will be designated at each branch location with responsibility to supervise account opening and trading activities”. We wish additional clarity on this issue, particularly on the CSA’s expectations about what constitutes the branch supervision requirements and Branch Manager registration. Given the “principles-based” rules applicable to compliance systems, we strongly recommend that scholarship plan dealers should be able to maintain their current systems of dealer-designated branches and supervision of sales representatives.

Portfolio Manager and Investment Fund Manager Registration

9. Given that our members delegate all portfolio management functions to registered portfolio managers, there is no entity within the operations of a scholarship plan that is “in the business of acting as an adviser” necessitating the registration of that entity as a

portfolio manager. Therefore we do not comment on the Proposals that relate to registration of advisers.

10. Our members are very concerned about the application of the concept of “being in the business of investment fund manager” to the scholarship plan industry. Although the Proposals do not define this concept (since we assume it will be part of securities legislation), we understand that an investment fund manager will be an entity that “has the power and exercises the responsibility to direct the affairs of an investment fund” – this quotation being from the Ontario Securities Act (section 1.1). In our view, although the various Foundations may “have the power”, they do not completely “exercise the responsibility” to direct the affairs of a scholarship plan, given that the administration and management of scholarship plans is delegated to an administrator. Requiring these entities to be registered as investment fund managers, since they are considered to be “in the business” of managing the scholarship plans may have serious adverse consequences to their not-for-profit status and in any event may not be appropriate for these entities, given the delegation to separate administrators.
11. At present, the administrators of scholarship plans are generally the same entity that is registered as a scholarship plan dealer. Therefore, we urge the CSA to provide for a substantial transition period of at least 3 years from the coming into force of the Proposed Rule and the investment fund manager registration requirements to permit scholarship plan industry participants to arrange their corporate affairs sufficiently to ensure that an appropriate entity is available to act as the “investment fund manager” of the various scholarship plans and so seek to become so registered. We would also like to work with the CSA to determine which of the proposed conditions to registration requires to be modified to fit the unique structures and operations of scholarship plan administrators. For example, we would like to explain why different capital and insurance requirements would be warranted for managers of scholarship plans given the fact that scholarship plans do not calculate net asset value and that all portfolio management is contracted out.
12. We also recommend that the CSA confirm that an investment fund manager need only be registered in the province in which it actually administers and manages the investment funds. In the case of RESPDAC members, this would mean that their fund administrators would be registered as investment fund managers only in Ontario. This is consistent with the current approach taken to registration of portfolio managers.

Compliance Systems

13. In our view, section 5.26, while positive in the sense that it sets out broad principles for registrants, has a fundamental flaw. It goes beyond the scope of the CSA’s regulatory powers in that it attempts to require registrants to set up a compliance system that “manages the risk associated with its business in conformity with prudent business practices”. Our members understand the concept of setting up a compliance system (and the CSA’s authority to so regulate) so as to achieve compliance with securities regulations, but submit that the second leg of the compliance test is over-broad and fraught with uncertainty, in addition to being in excess of the CSA’s regulatory powers.
14. The description of the UDP and the CCO contained in sections 2.8 and 2.9 of the Proposed Rule appear to be reversed from the actual status, in fact, of these individuals. In our view, it is the UDP that should be “responsible for discharging the registered firm’s obligations under securities laws” and the CCO that should be responsible for

ensuring that the registered firm develops and implements policies and procedures for the discharge of those obligations.

15. The CCO of an investment fund manager must be (via section 4.13 of the Proposed Rule, which refers back to section 4.11) an individual that either:
- (a) was previously registered as an advising representative of a portfolio manager (this will likely not apply to any CCO of a scholarship plan manager);
 - (b) is a lawyer or a chartered accountant with the requisite Exams and experience, including employed by a registered dealer or registered adviser; or
 - (c) has passed the requisite Exams and been employed for the requisite period by a registered dealer or adviser in the applicable capacity.

We believe that these tests will not necessarily permit all existing CCOs of scholarship plan dealers (assuming they will also be the CCO of the scholarship plan's registered investment fund manager) to become registered and we urge the CSA to permit either grandfathering of incumbent scholarship dealers' CCO's, transition periods or alternative experience requirements tailored to recognize experience gained in the scholarship plan administrators to allow these highly qualified individuals to continue in their CCO capacity.

We also urge the CSA to clarify that the same individual can act as the CCO for the registered scholarship plan dealer and the registered scholarship plan manager if the functions are separated out into separate corporations.

Scholarship Plan Dealer and Investment Fund Manager– Insurance – sections 4.16 and 4.18

16. We acknowledge the need and importance of insurance for registered dealers, but recommend that a principles-based approach replace the proposed prescriptive approach. Insurance is a commercial product, the available products that meet the prescribed requirements today, may not be available in the future, and as such, cannot be controlled by dealers.
17. We also wish to comment on the proposals that investment fund managers carry a financial institution bond. We caution the CSA to be mindful of the fact that insurance creates costs to investors, which in the case of scholarship plans administrators would, either directly or indirectly, be passed onto subscribers. The cost of doing business in the scholarship plan industry cannot be made to be so substantial as to be prohibitive. In any event, given that other entities in a group scholarship plan organization are adequately insured for the risks involved in the responsibilities delegated to them, we view this additional insurance coverage to be superfluous and would not increase investor protection.

Scholarship Plan Dealer and Investment Fund Manager – Reporting – sections 4.22 and 4.24

18. We urge the CSA to provide for longer delivery times for the financial statements and quarterly reporting required under the above-noted sections. In place of the proposed 30-

day time frame, we recommend 60-day time frames so as to be consistent with the time frames set out in National Instrument 81-106.

19. We point out that for scholarship plans, administrators do not calculate net asset value, therefore subsections 4.24(1)(c), 4.24(2)(c) and 4.24(3) will never apply. Given that the CSA indicate that inaccurate calculations of NAV is a principal risk for investment fund managers, and scholarship plan administrators do not face this risk, we believe this is appropriate justification for requiring less frequent reporting for scholarship plan administrators and/or less onerous capital and insurance requirements.

Know-Your-Client – Scholarship Plan Dealers – section 5.3

20. Given the nature of the investments made by scholarship plans (fixed income securities and other debt instruments, with very limited corporate equity investments), subsection 5.3(1) (b) has no application for scholarship plan dealers and accordingly should be not required for these dealers.
21. It is very unclear to us, exactly what the CSA expects a registered scholarship plan dealer to do to keep K-Y-C information current – and exactly why this rule (subsection 5.3(2) of the Proposed Rule) is important, particularly in the context of subscribers in scholarship plans who do not carry out trades on a regular basis. In our view, the requirement to update K-Y-C information should be done at the time of any subsequent trade or other positive action taken by the client, which is our understanding of the historical position taken by the CSA on this issue. At the very least, in our view, the rules should be clear – perhaps MFDA Rule 2.24(b) could be used a guide (annual notification to clients).

Relationship Disclosure Document – Scholarship Plan Dealers – section 5.12

22. We support effective and efficient disclosure of relevant information to subscribers. However, we feel that disclosure at the point of sale must be viewed in the context of the entire account opening package that investors receive, which is particularly voluminous in the context of scholarship plans, given applicable securities laws, securities regulators administrative action, and applicable provincial and federal taxation rules. Currently a new subscriber will receive the following when entering into a contract to subscribe for a scholarship plan:
 - (a) Prospectus;
 - (b) Federal and provincial grant information and applications;
 - (c) Education Savings Plan Contract;
 - (d) Confirmation of trade; and where applicable
 - (e) Plain language brochures describing the features of the scholarship plan – given the nature of a prospectus and the mandated disclosure contained in that document and also in the tax-related forms, it is very important that subscribers receive a short, plain language document describing the features of their applicable scholarship plan.

Any new disclosure form, such as the proposed RDD must be flexible enough to not overlap with existing requirements, not overwhelm the subscriber, and provide important information that is not duplicated elsewhere. We are concerned that the proposed RDD will not meet this objective and recommend additional flexibility to permit our members to develop their own document that is tailored to the particular characteristics of scholarship plans.

Confirmations of Trades – sections 5.21, 5.22 and 5.23

23. Sections 5.21, 5.22 and 5.23 do not accurately reflect the nature of investing in scholarship plans. A “trade” in a security of a scholarship plan (either a unit or an investment contract) occurs when the subscriber signs a contract for investment in the scholarship plan through an RESP. Even though the subscriber continually deposits money, over time, in the scholarship plan, he or she is not making new investments, and hence the dealer is not carrying out new “trades”.

The above analysis means that section 5.23 will generally not apply to scholarship plans, notwithstanding the reference to scholarship plans in subsection 5.23(a).

Given the relationships between each registered scholarship plan dealer and the scholarship plans distributed by their representatives (each have names that we believe make it clear that they are associated with the dealer), it would be appropriate to include a reference to scholarship plans in subsections 5.21(4) and 5.22(2).

Statement of Accounts and portfolio – section 5.25

24. We believe that quarterly statement of accounts for scholarship plan investments are not necessary and provide no additional investor protection that will justify the increased costs. Our members mail out annual statements of account, which we expect are retained by subscribers together with their contract, their confirmation of the trade and their account documentation. Subscribers are also provided with the ability to ask for more frequent reporting and may be given password protected access to electronic account information. This approach is currently under consideration by the CSA in the exemptive relief application made by C.S.T. Consultants Inc. and being handled by the OSC, as principal regulator.

We point out that with investments in scholarship plans, subscribers understand (i) their contributions and (ii) future contributions, both of which are fixed at the time of the initial trade and entry into the contract.

Conflicts – Part 6

25. Given the existence of National Instrument 81-107, it is confusing and inappropriate for the Proposals to regulate the same areas, for example, conflicts management by investment fund managers. Much of Part 6 should be deleted as it applies to scholarship plan administrators if they are registered as investment fund managers, since NI 81-107 has already mandated a regulatory scheme to address conflicts of interest experienced by investment fund managers, including scholarship plan administrators, in managing their funds, including scholarship plans.

Complaints – sections 5.29 and 5.30

26. RESPDAC expects that questions will arise as to what exactly a complaint is, when a complaint arises and when it can be said to be resolved. For example, if a dealer concludes that there is no wrongdoing on its part and informs a client of its conclusion, is this complaint resolved? Absent a client taking a positive action to indicate agreement with the conclusion - something that we see as unlikely - how will a dealer know if there is resolution? We believe that once a dealer has come to some conclusion which does not entail the acceptance of a client's position and has informed the client of that conclusion, that should be seen as "resolution" unless the client advises in writing within a specific time period of his or her intention to take further action or steps with regard to the complaint.

We wish to point out an additional unique feature of scholarship plan distributions. Our members all provide for a 60-day cancellation at the option of the subscriber, which may be exercised for any reason. We assume that the exercise of this option by a subscriber does not need to be included by RESPDAC members as a "complaint" and its resolution by the dealers.

We recommend further consultation on this issue, as well as additional clarity.

27. Our members are concerned about the lack of clarity around the CSA's expectations set out in section 5.30 of the Proposed Rule. The members of RESPDAC are currently in the process of negotiating with the Ombudsman for Banking Services and Investments (OBSI) to provide dispute resolution services involving member company subscribers. We would recommend that this service be recognized by the CSA as adequate for the purposes of section 5.30.

Research Recommendations – section 6.5

28. For reasons that also apply to mutual funds sponsored and affiliated with registered dealers, scholarship plans should also be referenced in subsection 6.5(c). We note that, strictly speaking, as with mutual funds, scholarship plans cannot be said to be "affiliated" with the dealer, perhaps "promoted" or "sponsored by" would be a better choice of words for both mutual funds and scholarship plans.

Information Sharing – section 8.1

29. Our members have serious concerns about this section, as it increases the regulatory burden on registered firms and significantly increases the risk of being found liable under privacy, employment and/or defamation laws otherwise applicable to the relationships. In our view, if the CSA proceed with this section, we strongly recommend that the CSA provide protection to registered firms who make disclosure as required by this section.

We thank you for providing our Members with the opportunity to comment on the Proposals. Should you have any questions or wish to discuss our comments, please contact Bruce Elliott,

RESPDAC – ADREEEC

Vice-Chair, Securities Regulatory Committee directly at 416-758-5815 or bruce.elliott@heritagefunds.ca. Please also feel free to contact James Deeks, the Executive Director of RESPDAC at 416-689-8421 or jdeeks@respdac.com.

We would be pleased to convene a group of our Members to discuss any aspect of the Proposals with you as they relate to scholarship plans and industry participants.

Again, we commend the CSA on the work done to date and urge the CSA to complete the registration reform initiative in ways that achieve complete national uniformity of applicable rules; and that recognize the unique characteristics of scholarship plans, their administrators and dealers and the essential role that scholarship plans play in allowing Canadians to meet their post-secondary education financing needs.

Yours very truly,

THE RESP DEALERS ASSOCIATION OF CANADA



Peter A. Lewis
Chair
RESPDAC



D. Bruce Elliott
Vice-Chair
Securities Regulatory Committee

cc. RESPDAC Board Members