RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REÉÉ DU CANADA

Via Email

May 29, 2008

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

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Dear Sirs/Mesdames:

RE: Proposed National Instrument 31-103 *Registration Requirements*, Companion Policy and Related Forms - Published for Comment February 29, 2008

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.

RESPDAC has also provided the Ontario government with its comments on the draft amendments to the Ontario Securities Act that were published for comment on April 25, 2008 where RESPDAC considered that the draft legislation affects the scholarship plan industry. We enclose our comments to the Ontario government for your further reference.

RESPDAC was pleased to comment on the first version of the Proposals that was published for comment in February 2007 and note that the CSA favourably responded to certain of those comments in this second version of the Proposals. RESPDAC appreciates the CSA's careful consideration of its earlier comment letter. To the extent that RESPDAC repeats its earlier comments, we have provided additional explanation as to the importance and significance of the comment, so that the CSA can fully appreciate the reasons for raising the comment a second time. In some cases, we are not sure that the CSA completely addressed our comment, given the lack of discussion about it in the Summary of Comments.

We would be pleased to meet with the staff of the CSA charged with finalizing the Proposals to further explain our comments and their importance to the scholarship plan industry. We plan to initiate contact between our industry and staff during June.

Background - RESPDAC

We described the mandate and membership of RESPDAC in our last comment letter, however for ease of reference we have repeated that description in this letter, but with updated information.

The members of RESPDAC are the four leading providers of group (or pooled) registered education savings plans (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 $6.7 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 2007. More than 4,000 Canadians work with or for our member companies in various executive, sales, support and administration capacities. Subscribers in the scholarship plans operated by our members live in each province and territory of Canada. A large proportion of our subscriber base is made up of low- and middle-income families—a segment of the Canadian population that we believe is underserved by mainstream financial institutions. 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 and territorial securities regulators and federal agencies that oversee the RESP and CESG legislation. Among other things, we have established rules and procedures for our members and we strive to increase the understanding of scholarship plans among regulators, governments, the media and the public.

In addition to providing comments on the first version of the Proposals, we are pleased to have worked on several initiatives of interest to provincial securities regulators during the last several years, including:

- providing our association's comments on National Instrument 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 subscribers to scholarship plans;

- suggesting revisions to National Policy No 15 aimed at providing a broader scope of investment products to prospective subscribers to scholarship plans;

- developing an industry Code of Business Conduct and Code of Sales Practices, which has been adopted by RESPDAC members;

- assisting the CSA to understand the continuous disclosure needs of scholarship plan holders in the context of the CSA's work to develop National Instrument 81-106 and

- developing proficiency courses and examinations for RESP sales representatives and branch managers, which we note have been recognized by the CSA as the industry standard.

We look forward to continuing to work with the CSA on improvements to the regulation and management of financial services in Canada. To that end, we hope that the CSA will carefully consider our comments and take into account the unique characteristics of scholarship plans and industry participants. We urge the CSA to also consider the long-term desirability of ensuring that our industry can continue to thrive so as to ensure that all Canadians will 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 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 tax-deferred savings vehicles defined and registered under the *Income Tax Act* (Canada). Scholarship plans can be "group" plans, where subscribers are associated with specific cohorts within the group plan, or they can be "individual plans". In both cases, the moneys so invested are pooled for investment purposes.

In all cases, the scholarship plans are established as trusts, with a registered trust company as bare trustee. A not-for-profit foundation generally sponsors the scholarship plans and, for most of our members, receives the fees payable by the subscribers. These fees are used to pay the costs of operating the scholarship plans. Any excess may be used to further help students pay for the cost of post-secondary education. The not-for-profit status of the foundations is critical to the structure and benefits 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 foundation and the administrator of the scholarship plans contract with third party portfolio managers for the management of the assets of the scholarship plans.

The registered scholarship plan dealers and their representatives are registered under current securities legislation.

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 more challenging, 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 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 we believe additional tailoring of the registration regime is necessary, given those unique characteristics and the fundamental differences between the scholarship plan industry and other investment funds.

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

Overall Regulation of Scholarship Plan Dealers and Scholarship Plan Administrators

1. It is of vital importance for our members that they completely understand the regulatory regime that will apply to them after the coming into force of the Proposals. We are assuming, but we ask the CSA to confirm, that all of the varied, often specific local rules and administrative positions of the various members of the CSA that today apply to our members will fall away once the Proposals come into force. Often these rules and positions have arisen through discussions aimed at resolving matters raised during individual compliance reviews of our members by the various members of the CSA. In our view, it would be unfortunate for the capital markets (of which our members are an integral part) to go through the registration reform project and not to make uniform the regulation of our members. To do otherwise will require our members to sort through varied and sometimes inconsistent, administrative positions to determine which ones will be in addition to, inconsistent with or the cover the same ground as the Proposals. Please also see our comment 4 below.

Dealer Registration

2. We fully support the CSA's decision to permit our members to seek to become registered in more than one category of registration. Our members may 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 the cost of post-secondary education. We urge the CSA to clarify in the Proposed Policy, that if one of our members becomes registered also in the category of mutual fund dealer, that only those representatives of that member who wish to trade in mutual fund securities would be required to hold the additional proficiency required of mutual fund dealers. Those representatives who wish to trade only in scholarship plans would not have to meet the additional proficiency required of mutual fund dealer representatives.

   However, we strongly urge the CSA to allow registered mutual fund dealers and their representatives to be authorized to distribute scholarship plans, without having to become registered as scholarship plan dealers. We note that mutual fund dealers can distribute labour sponsored investment funds (funds with unique characteristics) and the British Columbia Securities Commission and the Autorité des marchés financiers both permit mutual fund dealers to distribute scholarship plans without additional registrations or requirements, including representatives' proficiency. We completely endorse this approach and urge the other members of the CSA to adopt the same approach as the BCSC and the AMF.

   In our view, the mutual fund dealer registration category should permit registered firms to distribute scholarship plans, since they are pooled investment products with many of the characteristics of mutual funds and are regulated as "investment 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.

   We acknowledge the response of the CSA to this comment which we made in our 2007 letter commenting on the first version of the Proposals (number 173 of the CSA's summary of comments), but we urge the CSA to consider our comment again, given the importance of this comment to RESPDAC members and the approach taken by the BCSC and the AMF. We do not understand the comment of the CSA that the "distribution of scholarship plans is different in substance to mutual funds" and would like the opportunity to discuss this issue with the CSA.

3. As we noted in our first comment letter, our members may also wish to partner with individual representatives who are registered as mutual fund dealer sales representatives. Ideally, our members may wish to enter into a sales arrangement with those sales representatives, so that they become, in effect, dually licenced, 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 licenced to sell mutual funds. We recognize that our proposal might involve an amendment to the MFDA Rule 1.1.1 or the need for the dealer firm to apply for an exemption from this Rule, but we would like to explore with the CSA the potential for moving forward. Prior to December 2006, the British Columbia Securities Commission permitted at least one of our members to arrange for this kind of dual registration. Our experience was that this dual registration did not compromise investor protection and fostered greater market

efficiency in that qualified registrants could offer investors a broader range of established, low risk RESP alternatives with a comprehensive understanding of each investor's needs, objectives and existing portfolio. We are not suggesting that the dual licencing we are referring to is the same as insurance/mutual fund dual licencing (which the CSA notes in their response to our comment is due to "constitutional reasons"), but we are interested in exploring the concept behind this dual licencing, as well as explaining the benefits to Canadian investors we see with this approach.

4. In our first comment letter, we urged 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. We are unclear from reviewing the Proposals and the responses of the CSA to our earlier comment, whether any of those restrictions would apply to scholarship plan dealers that seek to become registered in any additional category. We do not see anything in the Proposals that would prevent a scholarship plan dealer from also becoming registered as an exempt market dealer for example in order to trade in exempt securities in ways similar to any other registered EMD. We ask the CSA to confirm that our analysis of the Proposed Rule is correct and that no member of the CSA will impose additional restrictions on scholarship plan dealers pursuant to local rules or administrative practice. We note that you referred to our earlier comment in the Summary of Comments (number 173), but we believe you didn't respond to this comment.

5. RESPDAC appreciates the proposed change to the Ontario Securities Act that clarifies that a representative of a registered dealer, such as a scholarship plan dealer can be in a principal-agent (independent contractor) relationship with the dealer. We understand from the Summary of Comments released with the Proposals, that the CSA intend to continue to consider how best to allow for "incorporated salespersons". In the interim until a definitive position is taken, RESPDAC members strongly request that the CSA permit, via NI 31-103 or by some other mechanism, scholarship plan dealer sales representatives to direct commissions to be paid to their own corporations. We know that the approach taken to this is not uniform across Canada, but given the importance of this issue, we recommend that the CSA work to permit the most permissive scheme through amendments to NI 31-103 (or other instrument). In our view, the approach recently taken by the Manitoba Securities Commission to permit dealers, including scholarship plan dealers, to pay commissions to a salesperson's personal corporation on the salesperson's direction, is the most effective way to regulate this issue at this time.

   In our view, the same need for increased efficiencies for industry participants and continued investor protection that is inherent in the MFDA's approach of permitting commissions to be directed to other entities, so long as all business of the sales representative is placed through the dealer firm, applies equally to the scholarship plan industry. The need for clear permission for scholarship plan dealer representatives to "direct commissions" in the same way as mutual fund sales representatives is of vital importance to the ability of scholarship plan dealers to recruit and retain qualified sales representatives. As you can appreciate, this is very important to the business carried on by sales representatives, given the inherent benefit in maximizing tax efficiencies. We see no difference, in principle, behind allowing mutual fund dealer sales representatives to "direct commissions" and allowing scholarship plan dealer representatives to do the same.

In a perfect world, the securities regulation would permit sales representatives of any registered dealer to provide those services through their personal holding corporations so as to maximize tax efficiency, but without compromising investor protection.

We would be pleased to discuss this comment further with the CSA and to assist the CSA in understanding the nature of the importance of this issue, including the issues around the need for permission to engage "incorporated salespersons".

Investment Fund Manager Registration

6. Our members noted in our first comment letter that currently there are at least two entities that could conceivably be considered as "being in the business of investment fund manager" – the Foundations and the administrators (which are generally the same entity as the scholarship plan dealers). Our members understand that they must determine which of these entities is the one that must seek registration as an "investment fund manager" or whether it would be beneficial to incorporate a new entity that would carry out this function. Because of the need for the scholarship plan industry to determine how to best structure their corporate affairs, with a view to their unique corporate relationships, tax status and corporate histories, we submit that it would be in order for the CSA to grant the scholarship plan industry a longer transition for compliance with the requirement to register an entity as an investment fund manager of the scholarship plans. We believe that the managers of scholarship plans should be given an extra six months from other investment fund managers (many of which are established in more conventional corporate fashion) to apply for registration as investment fund managers. This would give the scholarship plan industry a year from the coming into force of the Rule to determine the best structure to meet regulatory requirements and to make all the legal (including tax) arrangements necessary in the event a restructuring is deemed beneficial. We note in addition that the Proposals represent significant increases in both capital and insurance requirements for both scholarship plan dealers and the administrators of scholarship plans. We point out that, in all likelihood, the scholarship plan industry will be required to separate out the functions of their dealers and their administrators, which means the scholarship plan industry will be required to double up on the insurance requirements, as well as working capital. The scholarship plan industry will be uniquely effected by the Proposals and accordingly should be afforded additional time in order to adapt to the changes.

7. As we did in our first comment letter, we strongly urge the CSA to consider the unique structures for scholarship plan administrators and dealers – all portfolio management is delegated out and scholarship plan administrators do not calculate Net Asset Value, as well as the unique characteristics of scholarship plans. In our view, the risks associated with the distribution and administration of a scholarship plan are considerably different from the risks associated with managing a mutual fund or other investment fund. These differences warrant a lesser capital infusion, as well as lower insurance requirements for both scholarship plan dealers and for their administrators (managers).

We urge the CSA to recognize that scholarship plans are tax deferred savings vehicles which are not traded on any exchange and are required to be invested in fixed income instruments, thus the investments are very low risk. In addition, the contributions are capped for each subscriber by law, which further reduces risk and exposure for any one subscriber. In our view we do not understand how the proposed increase in insurance coverage will result in improved investor protection for scholarship plan subscribers. The

increased cost to scholarship plan dealers and administrators (and ultimately the subscribers) is not consistent with the low risk to these subscribers.

Currently under National Policy 15, scholarship plans are restricted in their investment options (fixed income investments), which restriction is meant to reduce risk to subscribers. With the introduction of the Proposals, while the restrictions of NP 15 remain, scholarship plan dealers and administrators will be required to meet the same higher capital and insurance requirements of dealers and managers of investment funds that have a variety of investment options and approaches. At a minimum we urge the CSA to exempt scholarship plan dealers and administrators from the higher insurance and capital requirements until the CSA completes its examination of NP 15. Once NP 15 is revised and replaced, then we recommend that the CSA should re-consider the capital and insurance requirements for scholarship plan dealers and administrators. At this time, we strongly suggest that our members should not be "lumped in" with other dealers and administrators of funds with much different risk profile than scholarship plans.

In your response to our first comment letter (comment 575), we believe you may have misunderstood our earlier comments. We are not suggesting with our comments 6 and 7 that no entity should be registered as an "investment fund manager", simply that

(a) our unique circumstances are such that a longer transition period is warranted and

(b) different, and lesser, fit and proper requirements are warranted.

We repeat our offer to work with the CSA to determine which of the proposed "fit and proper" requirements for investment fund managers needs modification to fit the unique structures and operations of scholarship plan administrators.

8. We completely support the CSA's proposed response to our comment about where an investment fund manager must be registered. We believe that the discussion in section 2.8 in the Companion Policy is very helpful, but we note that the draft Ontario legislation (for example) is not written in this fashion. Is this something that the CSA considers needs further clarification via rule or can industry participants rely on the Companion Policy to structure their affairs?

Compliance Systems

9. We believe that the reference to "registered" in section 4.15(b)(iii) of the Proposed Rule is incorrect, given that no investment fund manager is today "registered" in that capacity. We note this reference is not found in section 4.15(a)(iii), which we believe is correctly drafted.

10. We 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. Given the nature of the scholarship plan industry and each individual group's close affiliation, we believe this is vital. We see nothing in the Proposed Rules that would prevent this, but given our understanding of staff's administration of the current CCO rules and the reference in section 2.9.2 of the Proposed Policy to "case-by-case" applications for relief, we believe that we would benefit from a clear statement of regulatory intention that this will be permitted. In

considering this comment, we point out that section 6.3 would appear to permit one individual to be the CCO of affiliated registrants.

Scholarship Plan Dealer and Investment Fund Manager– Insurance – sections 4.21 and 4.23

11. Please see our comment 7 above concerning our submissions that different insurance requirements should apply for scholarship plan dealers than for other dealers, given the nature of the scholarship plan product.

12. In view of the matters we outline in our comment 7 above, given the nature of the business of a scholarship plan manager-administrator, we believe that the insurance requirements set out in section 4.23 are excessive relative to the potential risk being insured against and will impose undue financial strain on scholarship plan administrators. These costs will either need to be absorbed or passed along to the consumer (or a combination thereof). For example, currently the average cost for $2 million coverage is about $36K per annum. A rough ball-park figure for $25 million coverage would be in excess of $150 - 200K per year. The proposed reinstatement feature required in the policy wording would result in a premium of likely 1.5 to 2.0 times the latter amount. We know that the double aggregate option is generally the most costly option to a reinstatement feature.

Given this drastic increase, we request that the CSA reconsider the insurance required for investment fund managers of scholarship plans. We find it difficult to imagine a scenario that would require this level of coverage and do not understand why the CSA believe that there has been such a loss history or claims experience that justifies this requirement. We believe that the CSA should review other options to AUM – such as looking at average deposit sizes, average account sizes, large transactions/average transactions, ranges of sizes and types of business. We are also concerned whether insurance and reinsurance companies are ready to write such coverage limits, particularly for all investment fund managers in Canada. We believe that the CSA must move more cautiously in this area and only seek to impose additional and onerous requirements where there has been a demonstrated regulatory problem.

Scholarship Plan Dealer and Investment Fund Manager – Reporting – sections 4.28 and 4.30

13. We point out that for scholarship plans, administrators do not calculate net asset value, therefore the references to net asset value adjustments and reporting by investment fund managers in the Proposed Rule 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 less onerous capital and insurance requirements. Please see our comment 7 above.

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

14. 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) of the Proposed Rule has no application for scholarship plan dealers and accordingly should not be required for these dealers. We raised this comment in our first comment letter, but do not see where the CSA addressed it in the responses to comments,

although comment response 346 purports to deal with a similar comment related to mutual fund dealers.

15. We explained in our first comment letter subscribers in scholarship plans do not carry out trades on a regular basis; they generally establish a regular contribution plan for a trade that occurs at the opening of the account, which is when the suitability analysis is generally undertaken by the scholarship plan dealer. 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 consistent with the additional discussion of this point in section 5.2 of the Proposed Policy. Our members fully support this additional guidance and will rely on it in seeking to comply with section 5.3 of the Proposed Rule.

C*onfirmations of Trades – sections 5.18, 5.19 and 5.20*

16. Sections 5.18, 5.19 and 5.20 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 5.18 of the Proposed Rule generally will not apply to scholarship plans, notwithstanding the reference to scholarship plans in subsection 5.18(3). We made this comment in our first comment letter, but cannot find a reference to the CSA's response to it in the Summary of Comments.

17. Given the relationships between each registered scholarship plan dealer and the scholarship plans distributed by their representatives (each have substantially the same name as the dealer), it would be appropriate to include a reference to scholarship plans in subsections 5.18(4) and 5.19(2). We made this comment in our first comment letter, but cannot find a reference to the CSA's response to it in the Summary of Comments.

Statement of Accounts and portfolio – section 5.22

18. We believe that quarterly statements of accounts for scholarship plan investments are not necessary and provide no additional investor protection that will justify the increased costs to our members and ultimately the subscribers in scholarship plans. 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, pursuant to which they can have constant and ready access to account information.

We point out that with investments in scholarship plans, subscribers understand the contribution schedule they agreed to at the time of the initial trade and entry into the contract. Furthermore, subscribers generally make regular contributions either by cheque or by way of direct debit from their bank accounts. These contributions are not "trades" within the meaning of securities regulation and therefore any quarterly statements of account will not show continual changes in the value of the investors' accounts as with mutual fund or investment dealers.

Scholarship plan contributions are fixed, the investments are largely fixed and static and subscribers have no need to continually receive updates on their holdings. Unlike for mutual fund dealers' clients, scholarship plan subscribers have no issue about scholarship plan holdings losing their value, nor do they need to continually consider whether a particular investment continues to be an appropriate investment for their purposes. There are no issues about affordability or suitability of scholarship plan investments once the subscription is made and the deposit schedule fixed. We also urge the CSA to consider that most scholarship plan investors have smaller holdings and accordingly the cost of this rule will hit scholarship plan industry participants and their investors disproportionately hard. All of this leads our members to strongly submit that this rule must be amended to fit with the nature of scholarship plan investing.

In response to this comment made in our first comment letter, the CSA explain that they "disagree" and that quarterly reporting "is a reasonable standard". We strongly urge the CSA to reconsider this point having regard to the regulatory burden and the lack of a demonstrated need for this increased reporting. Our members have calculated that mailing three additional statements of account to the thousands of scholarship plan accountholders will cost in the neighbourhood of $600,000 per annum (per member), which we believe the CSA would agree is not an insignificant amount. We ask the CSA to consider whether this increased cost and increased environmental impact (which will be borne either by industry participants or investors) is justified in the context of scholarship plans.

Notice to Clients – Section 5.33

19. Section 5.33 applies to "registrants", which will include investment fund managers. It is not clear to us what this provision is intended to achieve, particularly given that most managers of scholarship plans will only be registered in Ontario. Does the CSA expect scholarship plan managers to send to "each client" [each subscriber] a written notice? If this is considered important by the CSA, we recommend that this kind of notice be incorporated somehow into the RDI (although we recognize that investment fund managers are exempt from having to prepare an RDI). Without some modification, we believe section 5.33 will impose unnecessary and unjustified burdens on registrants, and particularly on investment fund managers.

Part 10 - Transition

20. Please see our comment 6 above concerning our submission for the need for a recognition of the unique circumstances of the scholarship plan industry with a longer transition provided for administrators of scholarship plans to apply for registration as investment fund managers.

21. We are not clear (notwithstanding section 10.3 of the Proposed Rule) when the capital and insurance requirements will apply to a new applicant for registration as an investment fund manager. In the scholarship plan industry it is very likely an entity will apply for registration that has never been registered before and will not be registered in any other capacity at the time of application. Subsection 10.3(2) of the Proposed Rule speaks of "registered" dealers or "registered" advisers and gives these entities six months from the coming in force of the Proposals to come up with the increased capital and insurance coverage. We believe it would be consistent with this concept to allow a previously unregistered entity to *apply* for registration (if the CSA adopts our comment 6 above,

within 1 year of the Proposed Rule coming into force) without the requisite capital or insurance. The firm would have to have the additional capital and insurance at the time the principal regulator is ready to grant the registration or on a date that is one year after that application, whichever is later. We note that sections 4.18 and 4.23 of the Proposed Rule only apply to "registered" investment fund managers in any event, which we believe is consistent with our interpretation.

22. We also note that the fit and proper requirements, as well as the conduct rules also only apply once the firm is "registered". This is consistent with current regulatory practice, which means that none of the "investment fund manager" rules will apply to an unregistered scholarship plan administrator until such time as it becomes registered. This is appropriate, given the fact that today all scholarship plan administrators are operating properly without registration without cause for regulatory concern.

23. We strongly encourage the CSA to consider a streamlined registration process for companies that are " in the business" of one of the regulated businesses at the time the Proposals come into force, but are not registered in that capacity. The proposed requirements for an application for registration have been substantially increased which will put additional regulatory burdens on capital markets participants at a time when they will be overburdened with the compliance issues associated with ensuring compliance with the new regime embodied in the Proposals. This has particular resonance to scholarship plan administrators. At least two of our members have been in business for close to 50 years, while our other two members have been in business in excess of 20 and 15 years, respectively. To pull together the new application filing package required of completely new, start-up entrants into the industry appears to us to be unduly burdensome to long-time compliant participants in Canada's capital markets.

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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, 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@gmail.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. We plan to initiate contact with you during June.

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

RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REÉÉ DU CANADA

COPY OF ORIGINAL EMAILED TO MOF ON MAY 29, 2008

May 29, 2008

Via Email

Ministry of Finance
95 Grosvenor Street, 4th Floor
Toronto, Ontario
M7A 1Z1

Attention: Colin Nickerson
Senior Manager, Industrial and Financial Policy Branch
osaconsultations.fin@ontario.ca

Dear Sirs/Mesdames:

Re: Proposed Amendments to the Securities Act – Consultation Draft and Invitation for Comments dated April 25, 2008

The members of the RESP Dealers Association of Canada (RESPDAC) are pleased to provide the Ministry of Finance with comments on the above-noted proposed legislative changes (the Proposed Legislation) that are proposed in conjunction with the proposed new rule of the Canadian Securities Administrators – National Instrument 31-103 *Registration Requirements.* Our comments incorporate comments that we have made to the CSA on proposed National Instrument 31-103. For ease of reference we have enclosed a copy of our comment letter to the CSA on proposed National Instrument 31-103.

RESPDAC has focused its comments on those aspects of the Proposed Legislation 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) registered education savings plans (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 $6.7 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 2007. More than 4,000 Canadians work with or for our member companies in various executive, sales, support and administration capacities. Subscribers in the scholarship plans operated by our members live in each province and territory of Canada. A large proportion of our subscriber base is made up of low and middle-income families — a segment of the Canadian population that we believe is underserved by mainstream financial institutions. 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 and territorial securities regulators and federal agencies that oversee the RESP and CESG legislation. Among other things, we have established rules and procedures for our members and we strive to increase the understanding of scholarship plans among regulators, governments, the media and the public.

In addition to providing comments on the first version of proposed National Instrument 31-103, 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 subscribers to scholarship plans;

- suggesting revisions to National Policy No 15 aimed at providing a broader scope of investment products to prospective subscribers to scholarship plans;

- developing an industry Code of Business Conduct and Code of Sales Practices, which has been adopted by RESPDAC members;

- assisting the CSA to understand the continuous disclosure needs of scholarship plan holders in the context of the CSA's work to develop National Instrument 81-106 and

- developing proficiency courses and examinations for RESP sales representatives and branch managers, which we note have been recognized by the CSA as the industry standard through proposed National Instrument 31-103.

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.

We hope that the Ontario government and the CSA will carefully consider our comments and take into account the unique characteristics of scholarship plans and industry participants. We urge the Ontario government to consider the long-term desirability of ensuring that our industry can continue to thrive so as to ensure that Canadians will have access to an affordable and tax-effective method of saving for post-secondary education.

We fully support the goal of the Ontario Securities Commission, and the other members 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.

To the extent that National Instrument 31-103 will 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 National Instrument 31-103 is 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 more challenging, different interpretations and methods of administering regulations, rules and legislation that may be substantively 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.

Legislative Approach

1. Our members are troubled by the approach taken by the Ontario government in building into legislation matters that the other provincial governments appear content to leave up to the securities regulatory authorities. We believe that this approach is a regressive step and will significantly detract from the above-noted goals of a nationally uniform regime. We believe that the potential for a shift, over time, away from a uniform or even harmonized approach is considerable, given the ease with which other provincial regulators will be able to amend the rules and the comparative difficulties that the OSC will experience in requesting the Ontario government to amend the legislation to ensure that Ontario stays in step with the other members of the CSA. We point out below several areas where this approach may lead to potential difficulties and we urge the Ontario government to ensure that the legislation adopted is consistent in approach with the other provincial legislatures. In our view, there is no justification for the Ontario legislation to duplicate securities rules or to rephrase the securities rules using slightly different language – we note several places where the Ontario government has chosen to entrench into legislation matters otherwise written into National Instrument 31-103, but using slightly different terminology. We do not view this as a positive step forward.

Definition of "representative"

2. We fully support the proposed change from the current definition of "salesperson" to the proposed definition of "representative". The proposed change clarifies that a representative of a registered dealer, including a scholarship plan dealer, can be in a principal-agent (independent contractor) relationship with the dealer, in addition to a more traditional employment relationship.

   In our comment letter on proposed National Instrument 31-103, we encourage the OSC and the other members of the CSA to continue to consider how best to allow for "incorporated salespersons", given the importance of this issue for scholarship plan dealers in their recruitment and retention of qualified advisors. This issue has become increasingly important to scholarship plan dealers and their representatives and we believe that an appropriate legal structure can be

developed that will ensure appropriate investor protection, while also allowing increased flexibility and tax efficiencies for advisors.

In the interim until a definitive position is taken, we have suggested that the CSA clearly permit, via National Instrument 31-103 or by some other mechanism, representatives of scholarship plan dealers to direct commissions to be paid to their personal holding corporations. We know that the approach taken to this matter is not uniform across Canada, but given the importance of this issue, we have recommended that the CSA work to permit the most permissive scheme through amendments to National Instrument 31-103 (or by some other instrument). We believe that the approach recently adopted by the Manitoba Securities Commission is one that will work in practice, at least in the interim.

Dealer Registration Categories – section 26

3. In the interests of allowing future flexibility, we recommend that the Proposed Legislation not contain the table presently part of section 26(2) of the Proposed Legislation. We believe that it is not useful to have entrenched in legislation, the different categories of dealers and the permitted activities of these dealers. We believe that something so subject to potential change should not be entrenched in legislation.

4. In our comment letter on National Instrument 31-103, we urge the CSA to allow mutual fund dealers and their representatives to be authorized to also trade in scholarship plan securities, without having to become registered as scholarship plan dealers. In our view, the mutual fund dealer registration category should permit registered firms to trade in scholarship plan securities since those products have many of the same characteristics of mutual funds and are regulated as "investment funds". We believe that the regulatory oversight of mutual fund dealers, when coupled with the proficiency required of mutual fund dealer representatives, is sufficient to cover such securities and no additional registration is necessary. We know that the British Columbia Securities Commission and the Autorite des marches financiers (Quebec) takes this approach. This comment is relevant to the Ministry of Finance given the restrictions on the ability of mutual fund dealers embodied in the table contained in subsection 26(2). Even if the table is deleted from the final amendments to the Securities Act (which we recommend), we want to bring this issue to the attention of the Ministry of Finance, given its importance to Ontario investors and the scholarship plan industry.

Duty to deal fairly, honestly and in good faith – section 32(3)

5. We are concerned about the proposal to impose a statutory duty of care on the Ultimate Designated Person and the CCO under Ontario laws. This concept is not part of National Instrument 31-103, nor to our knowledge, any other provincial legislation. We acknowledge that a CCO or UDP should consider that their firm has a fiduciary responsibility to clients (as well as the duty of care set out in National Instrument 31-103) in performing their duties, but we believe it is quite different in scale to say that these individuals must act in accordance with a statutory duty of care contained in legislation. In our view, if a statutory duty of

care were imposed personally on UDPs and CCOs, there is a danger that Canadians would not wish to take on these responsibilities without significant reassurances as to their liability, which will impact on compensation paid to these individuals by scholarship plan industry participants, as well as their insurance costs, among other things.

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We thank you for providing our members with the opportunity to comment on the Proposed Legislation. Should you have any questions or wish to discuss our comments, please contact Bruce Elliott, 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@gmail.com.

We would be pleased to convene a group of our members to discuss any aspect of the Proposed Legislation with you as it relates to the scholarship plan industry.

We urge the Ontario government to work with the OSC 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

COPY OF SIGNED ORIGINAL

Peter A. Lewis
Chair
RESPDAC

D. Bruce Elliott
Vice-Chair
Securities Regulatory Committee