

June 22, 2010

VIA EMAIL

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

Attention:

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Autorité des marchés financiers  
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comments – Modernization of Scholarship Plan Regulation – Phase 1 - a New Prospectus Form for Scholarship Plans - Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, Form 41-101F2 and Related Amendments**

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We submit the following comments in response to the Canadian Securities Administrator's Notice and Request for Comments on proposed amendments to National Instrument 41-101 ("NI 41-101") and Form 41-101F2 (the "Form") which were published for comment on March 24, 2010.

## **Children's Education Funds Inc. and The Children's Educational Foundation of Canada**

Children's Education Funds Inc. ("CEFI") is a scholarship plan dealer whose business is the sale and administration of The Children's Education Trust of Canada ("CETC") education savings plans. CEFI was incorporated in 1991 and its principal office is located in Burlington, Ontario.

The Children's Educational Foundation of Canada is a Burlington, Ontario based non-profit corporation incorporated by Letters Patent under the laws of Canada in 1990 for the purpose of providing financial assistance to beneficiaries in order to encourage and promote the advancement of higher education.

### **General Comments**

We support the efforts of the CSA to modernize and improve the quality and effectiveness of scholarship plan prospectus disclosure.

Notwithstanding our general support of this initiative, we do have concerns regarding some of the elements of the amendments to NI 41-101 and the Form.

### **Point of Sale Disclosure and Documents**

At this time, during a sales visit, prospective subscribers into a CETC education savings plan receive the following documents:

1. Prospectus (the commercial version dated September 25, 2009 is 74 pages in length);
2. Copy of Enrolment Application; and,
3. Marketing materials and Plan Illustration (a document that summarizes essential plan details including but not limited to fees, maturity date, year of eligibility for EAPs, deposit mode and amount).

If the proposed amendments to NI 41-101 and the Form come into effect, together with the requirements under National Instrument 31-103, at the point of sale, the prospective subscriber will receive the following documents:

1. Prospectus;
2. Plan Summary;
3. Relationship Disclosure Document;
4. Copy of Enrolment Application; and,
5. Marketing materials and Plan Illustration (a document that summarizes essential plan details including but not limited to fees, maturity date, year of eligibility for EAPs, deposit mode and amount).

The CSA has expressed concern with the level of accessibility, simplicity and clarity of the current disclosure regime for scholarship plans. In our view, the addition of new documents and their sheer volume could make the process of investing in a scholarship plan overwhelming and intimidating to prospective subscribers. For these reasons, CEFI supports the RESPDAC 2009 Proposals, which are described in full detail in RESPDAC's comment letter. The RESPDAC 2009 Proposals provide essential and enhanced disclosure to potential subscribers but in a streamlined and efficient manner.

## **Plan Summary**

### *General Comment – Tone and Neutral Language*

In our view, the Plan Summary and all disclosure documents, should be written in neutral, unbiased language. In some instances, the prescribed language is incomplete, in other cases we find the prescribed language to be provocative and unduly negative. We have identified the language with which we take issue and we have provided alternative language or suggestions in Appendix A.

### *Order of Topics*

The ordering of the topics covered by the Plan Summary should be reconsidered. It would be logical for the Plan Summary to provide an explanation on "What is a group scholarship plan?" as the first item. In its current form, the proposed Plan Summary document gives information about cancelling a plan before explaining what a group plan is. The prominence given to cancellation (larger font near the beginning of the document) implies that the most important information about group plans for a subscriber to consider is information on how to cancel their investment.

### *Incomplete Disclosure of the Benefits of Investing in a Group Plan*

The Plan Summary should be more balanced in presenting both the risks and benefits associated with a group plan investment. In its present form, the proposed Plan Summary document omits and does not provide adequate information on many of the benefits associated with group scholarship plans.

### *Insufficient Disclosure of Units and Sales Charges*

CEFI understands that the Plan Summary has been created in a standardized manner and that this format should provide an easy comparison for potential investors between group plans. However, the standardized and prescriptive nature of the Plan Summary omits important information about the plan that potential investors should understand before making an investment decision. In our view, the Plan Summary should allow the dealer more flexibility so that plan specific information can be included and described to potential investors.

The Plan Summary requires that the sales charge be disclosed on a per unit basis. There is no explanation that sales commissions are levied on the basis of the number of units held in the

plan. Although sales charges are more or less standard across the group plan industry, unit size is not<sup>1</sup>.

The Plan Summary provides no information on the purpose for units in the plan. In our view, investors should be provided with a more detailed explanation of the plan's units. The number of units in a plan will ultimately determine how much money is paid in EAPs, it determines the amount of sales charge applied to the plan and each unit acquired increases the amount of money that the subscriber must invest pursuant to the plan's deposit schedule.

Some plans will show a sales charge of \$100 per unit and others will show a sales charge of \$200 per unit. On the surface, it will appear that the \$200 per unit plans are double the cost but in fact, the \$100 per unit plan's units are half the value or half the size with the result that twice as many units are needed in a \$100 unit plan to achieve the same end result as a \$200 per unit plan. This has the effect of bringing the sales charges of a \$100 per unit plan in line with those of a \$200 per unit plan.

We suggest that the Plan Summary permit more information on the sales charge and unit size so that investors can meaningfully compare available plans and not be misled into thinking that some plans offer smaller sales charges when in fact, the sales charge is approximately the same across the industry.

## **Prospectus**

Please see Appendix A for our specific comments on provisions contained in the Form.

## **Response to CSA Questions**

The CSA pose three questions in the Notice and Request for Comment. Our answers to each of these questions are provided below:

1. *Should each Prospectus include a separate Part C for the various accounts operated by each Foundation for holding subscription proceeds until such time as the subscriber provides a SIN for each beneficiary?*

In our view, the prospectus should not include a separate Part C in respect of accounts opened in escrow in respect of beneficiaries who do not have a SIN for their beneficiary. We feel that this would add unnecessary complexity to the process. We offer the option of opening a plan in escrow as a service to subscribers who wish to open a plan but who do not yet have a SIN for the beneficiary.

In our current prospectus, investors are warned that if they do not expect to obtain a SIN for the beneficiary within a specified time, they should not open a plan. This disclosure has been carried over to and incorporated into the new prospectus form. In our experience, subscribers who open

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<sup>1</sup> Differences in unit size and enrolment fees or sales charges associated with group plans have been pointed out to Canadians by authors and commentators in Canada. For example, Gordon Pape and Frank Jones explained this point in detail and cautioned investors to "not be fooled or misled" by this sales tactic. See Pape, Gordon and Frank Jones. *Head Start: How to Save for Your Children's or Grandchildren's Education*. Toronto: Stoddart, 1998. Print.

plans in escrow generally intend to do so on a temporary basis and only until they have received the beneficiary's SIN so that they can benefit from a registered plan.

Accordingly, disclosure of escrow accounts should be similar to what is currently available to investors today and a separate Part C should not be required in respect of each escrow account.

**2.** *Should the Part D disclosure of the Prospectus be made available only on request?*

CEFI strongly recommends that the entire Prospectus be made available on demand and that the Plan Summary be the only document provided to investors at the point of sale. Investors would be clearly told about the Prospectus' availability in the Plan Summary (and potentially also in the relationship disclosure information) and sales representatives would be trained to explain what purpose the Prospectus serves, as well as the types of information that is provided in this document. Accordingly, CEFI agrees that the Part D disclosure should be made available only on request.

**3.** *Should the prospectus have additional disclosure about the trustee of the scholarship plans – including policies on business practices and conflicts of interest, proxy voting and particulars about conflicts of interest?*

Given the role of the trustee of a scholarship plan, additional disclosure as proposed in the question is not necessary. In our view, the prospectus provides adequate disclosure of the Foundation's and dealer's policies, conflicts of interest and proxy voting.

**Conclusion**

We thank you for the opportunity to comment on this initiative and look forward to continuing dialogue regarding the implementation of these changes in a way that best serves the interests of subscribers.

Yours very truly,

*"Allison Haid Caughey"*

Allison Haid Caughey  
Chief Compliance Officer  
Corporate Secretary and Vice President, Corporate and Legal Affairs

## Appendix A

June 22, 2010

### **Children's Education Funds Inc. Comment Letter on the CSA Notice and Request for Comments – Modernization of Scholarship Plan Regulation – Phase 1 - a New Prospectus Form for Scholarship Plans - Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, Form 41-101F2 and Related Amendments**

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#### **Plan Summary**

##### Part A

1. **1.3(2)** - “you could end up with much less than you put in” – We feel that this statement is provocative. It should be amended to “you could end up with less than you put in”.
2. **1.3(3)** – “One of many ways to save for a child’s education” - This statement is unnecessary and not helpful in describing key elements of investing in a group scholarship plan. It should be amended to read:

“A scholarship plan is a way to save for a child’s education”

3. **1.3(3)** – “Your share of the earnings plus your grants are paid to your child as education assistance payments”. This information is incomplete because it contains no reference to discretionary payments that are available to qualifying beneficiaries. In the case of our Group Option Plan, qualifying beneficiaries have received and will continue to receive enhancements of their EAPs. This practice is established and is currently disclosed in detail in our prospectus.

These enhancements (also known as discretionary top-ups) are a fundamental benefit of scholarship plans and it is essential that subscribers understand this aspect of their plan. Omission of this fundamental element of a group plan’s EAP will result in a lack of understanding on the part of subscribers and misinformation of the elements of their EAPs. While this information is addressed in the prospectus itself, the Plan Summary is intended to highlight key information that is important to investors. Accordingly, we suggest that this disclosure be revised so that all elements that make up EAPs are included with the result that prospective subscribers have complete information available to them as they make investment decisions.

4. **No mention of SIN requirement for registration in the Plan Summary** - It is important that investors receive disclosure about the SIN requirement for registration. In our view, this is fundamental information about any RESP.
5. **1.3(3)** - “you may benefit from the earnings of those who left the group early” - This statement should be amended as follows, “you will benefit from the earnings of those who left the group early” so that it is consistent with the second paragraph of 1.3(3) and to eliminate an unnecessarily negative tone.

6. **1.3 (3) and 1.3(7)** - Taxation of payments from the plan: “that means your money can grow without being taxed until it is withdrawn from the plan, “This money is not taxed” and “EAPs are taxable to your child. Since most students usually have little or no other income, they will likely pay little or no tax on this money”

The information provided about taxation is incomplete and it is not easy to reference because the Plan Summary does not have a section that is devoted to tax information. We suggest that the Plan Summary include a section titled “How is my plan taxed?” so that targeted information about the taxation of maturity payments, growth and EAPs is provided in one place. The unique tax treatment of RESPs is a fundamental principle and potential subscribers should receive clear and precise information on this benefit.

7. **1.3(8)** - “Your child’s education could be affected” - This statement is ambiguous and it is excessively negative. EAPs fund a beneficiary’s education either in part or in full depending on the amount invested. In the event that a beneficiary does not receive an EAP, tuition payments may be affected. We suggest that this statement be deleted.
8. **1.3(9)** – “Drop-out rate” – We do not understand why the term “drop-out” is used. We suggest that the term “cancellation rate” be used to disclose the average percentage of subscribers that have left the plan each year and to disclose the typical length of an investment. In our view, the term “drop-out rate” is unduly negative.

## **Prospectus**

### **Part B**

1. **1.3 (1)** – Options and warrants will not be distributed under a scholarship plan prospectus. This reference should be deleted.
2. **2.3 (1)** – We suggest alternate disclosure on payments from the plans: “If all Plan requirements are met, you will be eligible to receive the return of your principal. To qualify to receive payments from the Plan, your beneficiary must meet the requirements set out in this prospectus. The amount of such payment(s) is calculated as described on page X. We cannot predict or tell you in advance the exact dollar value of such payment(s) or whether such payment(s) will be enough to cover your beneficiary’s post secondary education.
3. **7.1** – Many of the prescribed risk factors are within the subscriber’s sole control i.e. failure to provide a SIN, failure to respect contribution limits, failing to submit an application, electing to cancel the plan, failure to meet deadlines, failing to deposit enough to meet the education costs of the beneficiary. We question whether these items are indeed risk factors since many of them are not product specific. In our view, rules which subscribers must follow should be disclosed in the prospectus but not as risk factors, consistent with other investment products.

## Part C

4. **13.2 - Missing a contribution** – the proposed disclosure states “Missing a contribution can be costly. If you want to stay in the plan, you’ll have to make up the contribution. You’ll also have to make up what your contribution would have earned if you had made it on time. If you miss contributions, we may cancel your plan.” This language is very austere and provides no explanation of why missing a contribution can be costly. Also, there is no discussion of the options that are available to subscribers once they have missed a deposit. The prescribed language does not explain the circumstances under which the scholarship plan dealer may cancel the plan in enough detail.

Subscribers should understand why deposits should be made on time, what options are available to them if they miss a deposit and the circumstances that may cause the scholarship plan dealer to cancel the plan. We suggest that this alternative disclosure be used:

“Deposits into your plan are set by the deposit schedule. You must deposit the full amount when required otherwise, you’ll have to make up the missed deposit plus what your deposit would have earned if you had made it on time and applicable fees. If you miss a deposit and if you do not make any further contributions to the plan within ● years from the date of your missed deposit, we may cancel your plan. If at any time you are having difficulty making deposits, there are options available to you and these are explained on page ●.”

5. **15.1 Instruction (g)** Disclosure about how other subscribers are affected by refund of sales charges is required. Other subscribers are not affected by refund of sales charges because the refunds are not paid out of the pool where unclaimed amounts will be shared by others. This instruction should be removed.
6. **16.1** It is unclear what a “purchase option” is and additional guidance is needed to provide full comments.
7. **Item 16 - Changes:** In several instances, disclosure of the circumstances that may prompt a subscriber to make a change is requested. This disclosure requires the scholarship plan dealer to speculate on circumstances where a subscriber may wish to make a change to their plan. It is impossible for dealers to foresee every instance that may prompt a subscriber to make a change to their plan, especially in respect of changes of subscriber and beneficiary. In our view, disclosure that the change in question is available and the steps, requirements and costs associated with the change is sufficient. Dealers should not be required to forecast or speculate on the circumstances that may prompt subscribers to make specific changes to their plans.

Also, disclosure is requested on the circumstances that may prompt a transfer to another RESP provider. In our view, this disclosure is unusual and is not included in the prospectuses of other products. It is inappropriate for a dealer to disclose in its own prospectus the circumstances which may prompt a subscriber to transfer their plan to another provider. In order to do this, we would have to assess and disclose the merits of other plans. This item should be removed.

8. **18.1(7)** – Disclosure as to whether the current level of discretionary payments are sustainable until the maturity date is required. This disclosure requires the dealer to forecast and comment about a future payment, which is totally discretionary. We are concerned that this disclosure may confuse investors and lead them to believe that there is some form of guarantee or promise in place with respect to these payments which are totally discretionary. In our view, there is sufficient disclosure of the discretionary nature of payments and disclosure about the sustainability of payments which are in fact discretionary is contradictory and is at odds with the discretionary nature of these payments. Accordingly, we ask that this disclosure be deleted.