RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REEÉ DU CANADA

VIA EMAIL

June 22, 2010

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: 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 – Published for Comment on March 24, 2010

The members of the RESP Dealers Association of Canada (RESPDAC)[1] are pleased to provide the Canadian Securities Administrators (CSA) with this letter confirming their overall support for the CSA's efforts to ensure that subscribers to group and self-directed RESPs (scholarship

[1] Members of RESPDAC are: C.S.T. Consultants Inc., Children's Education Funds Inc., Heritage Education Funds Inc. and USC Education Savings Plans Inc. Together the Foundations associated with these firms manage and administer over $7.5 billion in group and self-directed RESPS that are qualified for sale to the public under a prospectus.

plans[2]) have access to clear and concise information about their investment choice to allow them to make informed decisions.

Our past submissions to the CSA[3] have emphasized that the current disclosure regime that applies to scholarship plans does not, in our view, achieve the objectives of the CSA and could be described as counter-productive to the goal of ensuring that scholarship plan subscribers understand their investment decision. Accordingly, RESPDAC members were very pleased to see the CSA's proposals for scholarship plan disclosure, which incorporates some of the changes that RESPDAC has been advocating for some years. In particular, we recognize that publication of the CSA's disclosure proposals for scholarship plans marks the culmination of years of dedicated staff effort to both understand scholarship plans and to determine how information about those plans should be presented to the public. RESPDAC members would like to commend the CSA and the applicable staff for achieving this important milestone.

RESPDAC's Ideal Regulatory Regime

During 2008 and 2009, RESPDAC members were pleased to present our proposals for an "ideal" modernized regulatory regime for scholarship plans to the staff and, in some provinces, also the executive, of the securities regulators in British Columbia, Alberta, Manitoba, Quebec, Nova Scotia, New Brunswick and Ontario. We also sent our proposals to the staff of the regulators in Saskatchewan for their information. More recently, in April 2010, we met with representatives of the Ontario Ministry of Finance in order to introduce our members and our association to those government officials and to explain our objectives in seeking to achieve modernized securities regulation.

The central principle of RESPDAC's ideal regulatory model is **clear, concise and relevant disclosure** to investors about the plans at the point of sale. We all concur that it is in *everybody's* best interests that subscribers know as much as possible about their investments before making any commitment. We support the system set out in the proposed amendments to National Instrument 81-101 (for mutual funds) and believe it would achieve our objectives of providing clear, concise and relevant disclosure to investors in our plans.

Other elements of RESPDAC's ideal regulatory model include:

- Clear, concise and relevant disclosure about the plans to investors and the marketplace <u>on an on-going basis</u> through financial statements, continuous disclosure and management reports of fund performance;

- Appropriate licencing of industry participants through fitness for registration requirements and conduct rules;

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[2] We provide the CSA with a comment on terminology in this letter – as noted, we generally use the CSA's terminology "scholarship plans" in this letter, although the more accurate terminology is group or self-directed RESP.

[3] Among other formal and informal submissions, RESPDAC provided support for the CSA's initiatives for improving mutual fund disclosure via the proposed Fund Facts, by submitting letters of support for the Point of Sale Concept Paper, as well as for the more recent proposals to amend NI 81-101 to provide for a Fund Facts for each series of a mutual fund.

- Appropriate guidance on sales and business practices for industry participants, including disclosure about client relationships and expectations; and

- Broad principle-based rules to govern the structure of each scholarship plan (as the issuers of the securities), but only where such rules can be justified as appropriate responses to securities regulatory concerns. These rules would recognize the independent oversight by independent review committees, as well as the oversight and governance of the scholarship plans provided by the related Foundation (sponsor).

RESPDAC's Disclosure Proposals for Point of Sale

In our earlier submissions, we provided the staff of the above-noted securities commissions with our proposal for a summary document that is tailored to the unique characteristics and needs of scholarship plans and their investors. The central principle of our proposal was that a subscriber for a scholarship plan must be given the tools to allow for reasonable comprehension of the important facts concerning their potential investment, as well as their relationship with the sales representative of the applicable dealer. These tools must:

(a) Provide subscribers with key information about a scholarship plan

(b) Provide the information in a simple, accessible and comparable format

(c) Provide the information before the subscriber makes his or her decision to enter into a scholarship plan contract.

Subscribers need disclosure that can give them a basic and correct understanding of the potential benefits, risks and costs of entering into a scholarship plan contract and to be able to meaningfully compare one scholarship plan to another.

We provided the staff of the various CSA members with a sample of our vision for a point of sale document. We have also prepared a sample of the relationship disclosure information that will be mandatory under National Instrument 31-103 as of September 28, 2010 and we would be pleased to provide interested CSA staff with a copy of this document[4]. Both of these documents state the facts about scholarship plan investing simply, concisely and focus on the important information for a new subscriber.

RESPDAC continues to believe that the following elements of a disclosure regime are of vital importance. We recognize that the CSA's proposals for scholarship plans accommodate certain of our recommendations and, where applicable, we note how the CSA's proposals would address each element. We elaborate on many of these points later in this letter.

[4] We note that dealers may chose to provide the required relationship disclosure in different ways, given that NI 31-103 does not mandate "a document" to be provided to investors with all of the required information. A significant portion of the required relationship disclosure items may already be provided to potential subscribers in our members' various account opening packages.

RESPDAC 2009 Proposals	CSA Proposals
1. Each scholarship plan would prepare a point of sale document, which would be given to a potential subscriber before he or she makes a decision to enter into a contract. The point of sale document would be concise and provide the information important to a new subscriber. See also item 7 below.	The proposals would have each scholarship plan prepare a Plan Summary, as well as a three-part Prospectus document. The Plan Summary would be bound separately from the three-part Prospectus document. Both the Plan Summary and the Prospectus document would be required to be delivered to subscribers by the applicable scholarship plan dealers in accordance with today's regulatory regime of "after the fact prospectus delivery". As the CSA acknowledge in the Notice and Request for Comment, in fact, all members of RESPDAC provide subscribers with the current prospectus of the various plans along with the other account opening documents *before* the subscriber agrees to invest in a Plan. RESPDAC members view prior delivery as essential for promoting a better investor experience and understanding and will continue this voluntary good industry practice.
2. Scholarship plan dealers would prepare relationship disclosure information (RDI) that would contain the information mandated by National Instrument 31-103. This requirement becomes effective as of September 28, 2010.	The CSA proposals do not discuss the RDI that will be required to be delivered to subscribers on account opening. Please see item 3 below.
3. The Facts document and the RDI would not overlap or duplicate information.	The CSA proposals do not discuss or acknowledge the RDI and we believe that the plan disclosure required by the proposed forms must be streamlined to take account of this disclosure. The plan prospectus documents should disclose the material facts about the *plans* and should not also provide information about the dealer relationships that are more properly disclosed in the RDI. To have duplicative information in several documents will defeat the purpose of providing subscribers with clear, concise, readily understandable and accessible relevant information.
4. Sales representatives would be trained by dealers to go over the points in the Facts document and the RDI with the subscriber before the subscriber enters into a scholarship plan contract	The CSA proposals do not discuss this point, given the focus of the proposals on the documents themselves, as opposed to industry practices. Nevertheless, RESPDAC members will provide this training to their sales representatives.
5. The account opening forms to be executed by the subscriber would contain an	The CSA proposals do not discuss this point, given the focus of the proposals on the documents themselves, as

RESPDAC 2009 Proposals	CSA Proposals
acknowledgement from the subscriber that he or she has received the Facts document and the RDI and that the sales representative has explained the points in both documents.	opposed to industry practices. Nevertheless, RESPDAC members expect to implement this industry practice once the proposals are finalized.
6. Each Facts document and the RDI, as applicable, would be formatted in the same way and provide information about standardized items in the same order as other Facts documents or RDIs, as the case may be. Both documents would be written in plain language and in accordance with appropriate reading level grades. They would not contain overly promotional language. Both documents would be written so as to be no longer than an appropriate page length (suitable for the complexities of scholarship plans and their distribution).	The Plan Summary and much of the Prospectus must be formatted in the prescribed way set out in the proposals. The requirements include formatting, page length, binding, mandatory language, plain language, reading levels, etc.
7. Each scholarship plan would prepare a prospectus in accordance with the requirements of National Instrument 41-101, but this instrument would be amended to permit scholarship plan prospectuses to incorporate by reference all financial statements and MRFPs required by National Instrument 81-106. The prospectus would be available on request and referenced in the Facts document and the RDI. The prospectus would be incorporated by reference into the Facts document and therefore each Scholarship Plan and its administrator would be responsible and accountable for the disclosure contained therein.	The proposals mandate a prospectus, in addition to a Plan Summary and permit incorporation by reference of NI 81-106 financial documents rather than having these documents attached to the prospectus. However the prospectus must still be delivered with the Plan Summary and the prospectus must also contain much financial information that is contained in the management's discussion of fund performance documents prepared in accordance with NI 81-106. The CSA's mandated prospectus form will require plans to prepare long, complex documents (of an estimated 100 pages in length).
8. Each scholarship plan and dealer would post the current Facts document, RDI, prospectus and NI 81-106 documents on its website and provide clear and prominent links to these documents.	The Proposals do not address this point. RESPDAC members will continue their practice of posting regulatory documents onto their websites, which they believe is good industry practice.
9. The Facts document and the prospectus for a scholarship plan would be updated and renewed annually in accordance with current procedures. Ideally, scholarship plan administrators would have the flexibility to update the Facts document periodically to reflect financial performance disclosed in	The Proposals do not change current regulatory requirements regarding renewals of prospectuses.

RESPDAC 2009 Proposals	CSA Proposals
financial statements.	
10. National Instrument 81-106 would continue to apply to scholarship plans.	The Proposals do not change the requirements under NI 81-106.

We outline in this letter and its attachments some fundamental concerns that we have with the CSA's recent proposals. Given those concerns, we would like to discuss with the CSA a disclosure alternative that would build on the CSA's proposals as well as RESPDAC's earlier submissions on disclosure.

Our alternative disclosure model would consist of the following documents that would be provided to investors as outlined below.

(a) **An expanded Plan Summary.** An expanded Plan Summary would serve as a "quick start" reference for potential subscribers. This document would be provided, along with the RDI, the application signed by the subscriber and the other account opening documents at point of sale. Again, we believe the essential elements about a Plan should be available to an investor in the Plan Summary with information about where they can find more information about a topic. This was our aim when we created the sample Plan facts document that we provided CSA staff during 2009. Our expanded Plan Summary would build on RESPDAC's 2009 model, as well as the CSA's proposed Plan Summary. The necessary contribution tables would form part of the Plan Summary (rather than being relegated to the end of the prospectus as proposed by the CSA).

(b) **A more streamlined prospectus** A streamlined prospectus would be available on request for any subscriber – and the most recent version of which would be clearly posted on member's websites for ease of reference, along with the NI 81-106 mandated documents. These documents would collectively provide a higher level of detail about the Plans as a form of "users'" manual for subscribers wishing to ensure understanding of their Plan at any time along the potentially 26 year life of the Plan. The prospectus would not be divided into different parts (i.e. Parts B, C and D), but rather would follow a logical flow through the life cycle of a subscriber's experience with the particular plan. Background information about the plan sponsor (similar to the CSA's proposed Part D) would also be provided.

We point out that our members have each worked very hard in recent years to ensure that their current prospectus has the appropriate level of detail and flow to assist an investor's understanding. All of our members have completely rewritten their prospectuses in recent years.

In our view, the complexities of a scholarship plan are not insurmountable and it is definitely possible to prepare a simple disclosure document outlining their principal features and the material facts for an investor.

(c) **Financial statements, MRFPs** The documents required by National Instrument 81-106 would continue to be available on request (and delivered as mandated by NI 81-106), with the most recent of which being posted on our members' websites for ease of reference.

Our members are more than willing to assist in developing the sample documents referred to above, so that the CSA can more meaningfully assess our proposed approach.

CSA Modernization Project

We have some observations concerning the CSA's overall scholarship plan modernization project. Our comments are intended to respond to some of the statements made by the CSA in the Notice and Request for Comment.

1. ***Reliance on the Informetrica Report***

The CSA has widely referred to, and quoted from the report provided to the HRSDC and prepared by Informetrica Limited in 2008. Findings outlined in the Federal Report (using your appellation) are used to support the CSA's positions and to emphasize the need for the modernization project. As part of our in-person and follow-up submissions during 2008 and 2009, we provided the applicable CSA staff with RESPDAC's lengthy response to the Federal Report, which we provided to HRSDC and have had several meetings with government staff to clarify and correct the Report's many errors, omissions and flawed suppositions. We were disappointed to see some of these repeated in the CSA Notice. In our view, the CSA gives the Federal Report credibility that we do not believe it deserves. A more balanced approach would be to refer also to RESPDAC's position on the points that we have taken issue with. For your information, RESPDAC's response to the Federal Report is available to the public at www.respdac.com.

In our view, the CSA's modernization project is completely justified quite apart from anything stated in the Federal Report owing to the importance of the scholarship plan industry to Canadian investors wishing to save for their beneficiaries' post-secondary education and the outdated, often counter-productive regulation that currently exists.

In conjunction with this comment, we wish to point out that the CSA makes assertions in the Notice and Request for Comment that our members do not believe are completely supportable in fact, judging from their own experiences. For example, statements about investor complaints regarding group plans are often made by CSA staff and investor advocates, but our members' experience simply does not support those assertions. Indeed, as members of the OBSI network, scholarship plan dealers saw a significant decline in complaints in 2009 (a total of 12 complaint files opened, down from 25 the year prior) in stark contrast to the dramatic increase in complaints OBSI reported arising from other investment funds. Furthermore, the statement by the CSA that scholarship plans may be the only security that some investors will ever acquire, and that many of those investors may not be financially literate or conversant with English, could equally be made of virtually every other security available in the marketplace. Our members' experience is quite different from that suggested by the CSA and we believe that scholarship plans do not necessarily attract the least experienced types of investor. Many are very

sophisticated investing consumers and most, if not all, understand the significant value of saving for post secondary education for the next generation.

2. ***Next Steps in the Modernization Project***

As we noted above, we would be pleased to continue our discussions with the CSA on the next stage of its project to update and revise National Policy No. 15. We hope that you will take into account our detailed recommendations concerning the investment restrictions and practices that should apply to scholarship plans provided to the applicable CSA staff at various times in 2009. Our members would be more than willing to provide the CSA with any assistance it may require.

We also wish to comment on the CSA's suggestion that it will, as a third and final stage, "consider the issue of SRO membership for scholarship plan dealers and salespersons". We would like to begin a discussion with CSA staff about this topic so that we can better understand the CSA's goals and regulatory concerns and CSA staff can better understand our position. Our members would fit very imperfectly into the worlds of the MFDA or IIROC and indeed, our members feel that the business of their dealers and sales persons would be misunderstood by these SROs who, to date, have no experience with scholarship plans, their dealers and sales persons. As you know, very few firms are registered as scholarship plan dealers. RESPDAC's goals remain to enhance and support best industry practices for the scholarship plan industry to ensure that the best interests of investors are at the forefront of our respective businesses.

3. ***Terminology***

We ask the CSA to reconsider the continued use of the term "scholarship plan" to describe the securities that are being acquired by subscribers. This was a term that was commonly used when some of our members first commenced their business (in the 1960s), but it is not widely used by our members in their current promotional materials. Given that the plans do not pay "scholarships" (which has a different meaning and tax result from payment of "educational assistance payments") and the federal authorities prohibit our members from advertising that the plans pay "scholarships", we feel that to continue to be required to use this term to describe the plans may be misleading to some consumers. Our members believe that the more straightforward term "group RESPs" for group plans and "individual" or "family" RESPs for the self-directed plans is more understandable for investors and is accurate. This is the terminology that is used by the federal government to describe our investment products. We recognize that this comment has implications for other CSA regulation – such as the terminology used for registrants, but we feel that it is time to update terminology, as well as regulation[5].

Responses to CSA Questions

The CSA ask three questions in the Notice and Request for Comment. RESPDAC's answers to those questions are provided below:

[5] Although we believe the terminology should be changed, we have retained the same terminology used by the CSA to provide our responses in this comment letter.

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?*

As is disclosed in the current prospectuses for each scholarship plan organization, each Foundation maintains a separate savings account to hold subscription money deposited by subscribers who wish to create an RESP for their beneficiary, but who have not provided the Foundation with a SIN for that beneficiary as required by applicable tax laws. This is a *service* provided to subscribers in recognition that not all subscribers may understand the requirement to have a SIN before creating an RESP and subscribing to one of the Plans. Our members are of the view that the subscriber still subscribes to invest in the chosen Plan (and therefore enters into an investment contract, which is a security), but the members provide that subscriber with an additional service and accommodation in the event that he or she has not yet obtained a SIN for his or her beneficiary. This service is transitional and time-limited in nature. In our view, it would be overly complex and potentially quite confusing to an investor to create a separate Part C for these accounts. The accounts quite simply are not separate "issuers" of securities. A separate Part C would mean that each scholarship plan organization would have another reporting issuer for whom audited financial statements and other requirements would apply.

The prospectuses should continue to disclose this service in largely the same way as today.

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

As we elaborate on further below, we strongly recommend that the entire Prospectus be made available on demand and that the Plan Summary (expanded in ways we recommend) 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, we agree 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?*

Although we are not entirely certain of the reasons why the CSA are asking this question, in our view, the CSA's question displays a misunderstanding of the role of the trustee of a scholarship plan. For the purposes of disclosure, there really is no difference between a trustee of a scholarship plan and a trustee of a mutual fund. Both trustees are third party trust companies (although mutual fund trustees may be the manager of the mutual fund) whose business is acting as a trustee as required under Ontario loan and trust legislation. The key participants in a scholarship plan organization are the Foundation, which provides the overall oversight and governance of the plan operations, and the administrator of the scholarship plans, which, for RESPDAC members is the same entity as the scholarship plan dealer. These two industry participants provide all of the operational administration and governance of the scholarship plans (supplemented to a limited extent, as to governance, by the independent review committee of the scholarship plans). As to specific disclosure on proxy voting and conflicts of interest, both these

topics are adequately and extensively addressed in other disclosure regulatory instruments, as well as the prospectus disclosure form. We would be pleased to provide the CSA with any further explanation you require, particularly if we misunderstood the regulatory concerns perceived by the CSA about the role of the trustee.

Overall Comments on the Disclosure Proposals

We have carefully reviewed the disclosure proposals and attach as Appendix A to this letter a detailed, section-by-section commentary with our more material comments on many of the applicable provisions. We also have the following overall comments on the CSA's disclosure proposals.

We would be very pleased to meet with CSA staff to go over our comments. Given the formal nature of the written comment process required by provincial rule-making legislation, we wanted to provide you with our written comments. However, it may be much easier for the CSA to understand our perspectives on the proposals if we were to meet in person. As you know, our members are committed to working with the CSA to develop best-in-class disclosure documents for subscribers – our objectives are completely aligned with those of CSA as it relates to disclosure to subscribers. We also believe that the very knowledgeable and experienced representatives of our members can provide valuable assistance and help the CSA achieve its objectives in the best interests of the tens of thousands of investors who benefit every year from participating in scholarship plans. We would be prepared to meet with the OSC staff that are identified as the leaders of this project, but we also believe it would be beneficial for our members to meet collectively with the CSA working group once they have had an opportunity to review our comments, as well as the other comments provided on the proposals.

1. *Fairness of the CSA's Focus on Scholarship Plans*

Our detailed comments in this letter and Appendix A emphasize our overall viewpoint that the CSA appears to have gone to extraordinary lengths to prescribe and dictate not only disclosure, but also operations and administration of scholarship plans. The degree of prescription and accompanying CSA detail are simply unparalleled in the CSA's regulation of competing financial services products to scholarship plans. In our view, the CSA is moving away from their respective mandates to ensure a fair and competitive marketplace, by creating undue competitive barriers that apply only to scholarship plans and not to any other issuer. These barriers will mean that (i) our industry will be less able to attract new entrants into the marketplace in order to serve Canadian investors in their best interests and (ii) our existing industry participants will experience greater costs and administrative burdens, which may impact their ability to increase the range of options for investors.

2. *Length of the Plan Summary and the Prospectus*

To ensure that we were reviewing the CSA disclosure proposals in their proper context, we took the liberty to extract and compile the proposed mandatory wording, including the tables, into two complete documents – a sample Plan Summary document and a sample Prospectus document. We assumed three separate issuers (a group plan, an individual plan and a family plan).

The Plan Summary was difficult to maintain at the mandatory 3-page per plan length using the words required by the Form. We managed to do this by using 9-point font, except where the form requires larger font. We are concerned that the mandatory page length will be even more difficult to achieve once we create "live" documents based on the particular facts of our members' plans. We are also very concerned that the nature of the mandatory disclosure will not give a subscriber a clear and understandable picture of the plans, given the prescriptive nature of the required information and the mandated page length.

Using 11-point font, our sample prospectus document (Parts B, C and D) covering three scholarship plans, extends to 106 pages. We note that this is simply using the mandated language and the required tables, including the 16 contribution tables mandated for group plans, and required formatting – we have not taken actual scholarship plans and prepared a "live" document. If we did this, we note that the Prospectus document would be considerably longer due to the disclosure that would be provided in response to the items.

Preparing these documents and viewing them as a whole has informed our overall and detailed comments. In addition to the comments set out below, we feel that the prospectus document is far too detailed, complex, duplicative and long, and will not achieve the objectives of CSA, which we share, to provide investors with meaningful accessible information upon which to base an investment decision. We would be pleased to provide the CSA with a copy of our sample mock-up if you wish to see it.

3. *Organization of the Prospectus document*

We do not agree with the concept of a three-part Prospectus document. We know that the CSA took its experience for mutual fund prospectuses (NI 81-101) and applied it to our investment products. However, given that most of our members distribute only three plans (a group, an individual and a family plan) and some offer each plan under separate prospectuses – a Part B, three Part Cs and a Part D simply is not justified. This is in direct contrast to mutual fund simplified prospectus which cover upwards of 100+ funds and therefore some mandatory structural organization is necessary to ensure investor ease of reference. In our case, our mock-up illustrates that the Part B will be duplicative of Part C and vice versa and Part D will simply sit on its own without being integrated into the body of the Prospectus. As we note above, we believe the Prospectus document must be viewed as a resource document – for those investors who want additional information – either at point of sale or at any time in the future. We believe a more logical flow of the document is warranted, along with additional streamlining.

4. *Overall Tone*

RESPDAC members are unanimous in their view that the overall tone of the CSA disclosure documents, particularly the Plan Summary, provides a very negative perspective of group plans and RESPs as a whole. We completely agree that subscribers need to know what they're investing in, and the potential downsides; however, in our view, a reader of the Plan Summary and the Prospectus document might well come away with the impression that scholarship plans are not a worthy investment.

In our view, a Plan Summary should simply state the relevant facts using neutral (neither positive nor negative) language. The Plan Summaries should avoid superfluous judgmental or overly subjective language. Plan sponsors should have the flexibility to provide disclosure that describes the different features of the Plans – that is, not all Plans are alike (which is what seems to be suggested by the CSA's proposed Plan Summary).

Out of the ten main topic headings mandated for the Plan Summary, six of them contain warnings, negative or subjective statements. Our members are provided no opportunity given the mandated wording required for the Plan Summary, to provide information about the *benefits* of participating in a group RESP, or the purpose of a group RESP to save to allow a beneficiary to pursue post-secondary education, or provide any meaningful information about the overall scholarship plan organization. Our members are also very concerned about being required to make some of the subjective statements contained in the proposed Plan Summary. We point out our specific concerns in Appendix A.

Given the lack of flexibility inherent in the CSA's proposals, in our view, each Plan Summary of our members will look very much alike and it will be very difficult for subscribers to meaningfully differentiate between the Plans and their sponsors.

5. ***Undue Emphasis on Risk***

Related to the above comment, much of the Plan Summary is devoted to the *risks* of group plans, and explaining to investors how they can get out of their plan once they're in it. Naturally, that is not something RESPDAC members encourage – for the investors' sake, not our members. We agree that this is important information, but we believe there should be some reinforcement of the wisdom of staying in their plan. One of the very important essential benefits of group plans is that they offer a steady, consistent and very safe form of saving, with little downside risk in the assurance of asset growth. That balance is missing in the overall message, in our view.

We point out other related issues with the Plan Summary in our detailed Appendix – for example, the fact that the Plan Summary starts off with telling a subscriber how to get out of a Plan before they even know what the Plan is all about. This is not useful disclosure in our view. Our members also may disagree with including some of the mandatory language and we point this out in our detailed Appendix. We point out where we believe some statements suggest only a negative outcome, while in reality the plan rules may provide for many options leading to a positive outcome.

The discussion of risk required in the prospectus for scholarship plans is far more extensive than that required for mutual funds, despite the fact that investment risk for scholarship plans is considerably less given their investment objectives and strategies. Scholarship plans should not be held to a greater standard than mutual funds and we believe that it is inappropriate to suggest that somehow scholarship plans are more risky than mutual funds, many of which have very complex and inherently risky investment objectives and strategies. The performance of many mutual funds over the past two years has clearly indicated the greater risk of capital depletion compared to the group RESP experience.

6. ***Overall Complexity***

A quick review of our sample prospectus illustrates for our members that a "live" prospectus for their plans will be singularly complex and difficult to comprehend. Even for those of us who work in this industry, the prospectus will be difficult to read and indeed, as we outline several times in Appendix A, our members are unsure of even how to calculate some of the proposed mandatory numerical and financial disclosure. We know this was not the intention of the CSA. We highlight many of the overly complicated disclosure items in Appendix A.

Scholarship plans have some complexity to be sure, but we believe that disclosure about these plans does not need to be as complicated as what is proposed by the CSA. In our view, we would continue to do a disservice to our subscribers if we were to continue with dense, overly complex documents that require a higher level of education, including a sophisticated financial literacy that we know some of our current clients may not have.

7. ***Information vs. Disclosure***

Overall we wish to comment that the CSA's proposed required disclosure often lacks a context, such that our members (and their subscribers) will be at a loss to know what to do with the information. Oftentimes, the reaction will be one of "so what?" – subscribers will have difficulty trying to decipher some of the complex financial information the CSA has asked for, and will have no information that will describe to them how they should interpret that information. Overall we believe that many of the requirements are simply to provide "information", which is not the same as providing "full true and plain *disclosure* of all material facts". We feel that the CSA should reconsider every mandatory item and disclosure with this comment in mind. Again, overall, we believe that, notwithstanding the extensive information that the CSA propose be given to investors, our subscribers will not have a proper understanding of the plans from reading the Plan Summary and Prospectus – they will not have the tools to properly comprehend their investment.

8. ***Level of Language***

We know that the CSA's objectives is to simplify the language used in the disclosure documents so that, ideally, all prospective planholders can fully understand the concepts behind a scholarship plan, including all of its terms and conditions. As with many other investment products distributed in Canada, it is likely that some investors in scholarship plans will have not learned English as their first language and that some will have limited financial literacy. As we note above, particularly for the prospectus document, if our members were required to provide the mandated disclosure, we would not be serving those investors well, if at all.

9. ***Format, Flow and Duplication***

We recognize that the CSA developed the proposed forms leveraging off their experience with National Instrument 81-101 for publicly offered mutual funds. However, we do not think the concept of a "Part B", with several individual "Part Cs" [for each scholarship plan] and a Part D (substituting for the mutual fund's AIF) fits well for scholarship plans. There is not sufficient difference between a family plan and an individual plan, for instance, to justify separate Part Cs. Even though the form permits some common elements to be combined – we believe investors

will be very confused by the new prospectus and will not review it, given its complexities, repetition and lack of logical "flow". As we highlight in the Appendix A, the prospectus document is full of repetitive statements and will continue to be so, even if our members took advantage of the ability permitted to combine certain disclosures.

10. ***Prohibited Information***

We understand the aim of the CSA to shorten the length of the prospectus for scholarship plans by mandating that the prospectuses contain no information about the insurance services offered by some of our members, or about the various government grants. We believe that this prohibition will not serve investors well. Both of these matters are important services (the insurance) and benefits (the grants) associated with subscriptions for the scholarship plans and should be properly disclosed.

We point out that the Plan Summary and prospectus makes numerous references to government grants. Without explaining the general purpose and eligibility for grants and what they are, it will be confusing to investors to see references to grants throughout the document, but not be given any information about them. We note that the CSA say in the Notice and Request for Comments that "the Instrument precludes from the new prospectus form much of the general information about government grant and incentive programs currently found in the prospectus". We have been unable to find this actual prohibition, other than Instruction 3 to section 13.1. As we detail in Appendix A, instruction 3 assumes that the various governmental bodies have appropriate "government produced" documents that our members could provide subscribers. We do not believe this is the case and this Instruction will cause our members to give subscribers less than optimal disclosure.

We also take issue with the CSA's direction that scholarship plan sponsors use only government produced documents, particularly in light of the fact that this prohibition does not exist for any other financial services entity that is offering RESPs to the public. Why should scholarship plans be put at such a competitive disadvantage?

We disagree strongly with the suggestion in the instruction to section 11.1 of Part B that insurance "is not a material fact". This is an issue that should be left up to the scholarship plan organizations to decide, given the overall objectives of securities legislation to provide full, true and plain disclosure of all material facts. We also point out that the federal government requires the plan sponsors to ensure that the prospectus discloses the costs of the insurance separately from the contributions made into the various plans.

11. ***Documents Incorporated by Reference***

We were very pleased to see that the CSA propose to permit scholarship plans to incorporate financial disclosure documents and other regulatory documents by reference into the prospectus as has been the case for virtually every other issuer of securities, including mutual funds, for many years. However, as we outline in Appendix A, the CSA have, in our view, pulled back from this position by requiring much of the MRFP to be included in Part D of the prospectus. We do not understand this position, which we view as completely contradictory to the objectives of the CSA in proposing the new prospectus disclosure.

12. ***Transition***

The current proposals do not provide for any form of transition. Given the extensive rewrites that we know will be required (even if the CSA adopt many of our recommendations), our members will need at least six months lead time before their pro forma renewal date to prepare the new documents.

In conclusion, while the comments above indicate many differences of opinion, the members of RESPDAC remain committed to assisting in developing an improved disclosure regime for scholarship plans. We are eager to work with the CSA in getting this job done, and hope that you will not hesitate to consult with us as this process progresses. We hope that by our members working together with the CSA, you will gain a better understanding and appreciation of the value of group RESPs, and the satisfaction that hundreds of thousands of Canadian families have enjoyed from building their children's higher education through participation in these savings products.

We look forward to hearing back from you at your earliest convenience. Please contact James Deeks, RESPDAC's Executive Director, at 416-689-8421 or jdeeks@primarycounsel.com if you would like to meet with us.

Yours very truly,

Paul Renaud
Chair

James Deeks
Executive Director

Appendix A
RESPDAC Comment Letter on Proposed Scholarship Plan Disclosure Rule
June 22, 2010

This Appendix A to RESPDAC's comment letter on the proposed scholarship plan disclosure rule provides RESPDAC's more detailed submissions on the material concerns that our members have with the various provisions of the proposed rule and Form. Our comments are ordered to follow the ordering of the March 24 publication. We have not repeated comments on the various instruments and forms, where we made a comment in our comment letter. We note also that often a comment made on one item applies to another item, owing to the degree of repetition found in the Form. In the interests of being concise we haven't repeated our comments every time the same disclosure item is repeated. We hope the CSA will change each item if they agree with our comments.

COMMENTS ON THE AMENDMENT INSTRUMENT

1. **Section 3A.1 (3)(f)** We have researched the proposed Flesch-Kincaid readability tests. We have found that the different tests available for public usage provide for quite different results depending on the system being used. Further, we understand that various versions of Microsoft Word will produce different results. In addition, the Flesch-Kincaid tests generally only work on English text. There is no version of the Flesch-Kincaid test that we are aware of that works on French language documents.

We also question if these tests and the suggested less than grade 6.0 writing level, are appropriate for scholarship plan subscribers. Based on our research, writing to this level would mean that the words and concepts would be extremely simplistic, with complex information provided in a form that could not allow for an adequate level of information or discussion. This would allow only for very generalized statements to be made, without even a reasonable level of explanation. Misunderstandings will no doubt arise. We are not certain that the CSA's mandated language would even allow the Plan Summary to be written overall at this reading level.

Given the issues we note with using the tests, we recommend that the CSA preserve the general requirements for the use of plain language and provide guidance to indicate that our members will be expected to comply with these requirements. The Flesch-Kincaid test could be used as one example for fund managers to consider, among others.

2. We note, as a general comment, that the CSA's proposed Forms and instructions are unduly complicated due to the CSA's drafting to accommodate concepts of multi-class scholarship plans. None of our members have a multi-class scholarship plan and do not believe this kind of plan would ever be utilized. Accordingly, we recommend that the CSA proposals be simplified by dropping this concept.

COMMENTS ON THE GENERAL INSTRUCTIONS – FORM 41-101F3

3. **Instruction (2)** The reference to National Instrument 81-105 should be deleted. This instrument is not applicable to scholarship plans and we do not understand why definitions used in this Instrument should be used in the scholarship plan prospectus rule.

4. **Instruction (4)** We provide further comments on the list of suggested terms to be included in a prospectus below, but we wish to point out that the disclosure throughout the forms (in the CSA's mandated language) uses the term "child" and "your child", whereas the defined term uses "beneficiary". Not all subscribers set up scholarship plans for their "children" – they often set up RESPs for the benefit of their nieces/nephews, grandchildren, family friends, themselves etc. Given the CSA's suggested term "beneficiary", we suggest the mandatory language use this term.

5. We urge the CSA to provide an additional instruction acknowledging explicitly that the mandated language and other disclosure does not have to be included where the plan sponsor is of the view that it does not apply or is not relevant to the specific plan. Further we recommend that the instruction clearly state that plans may modify the disclosure to accommodate unique features of the plans. We know this would be permitted by law, but to ensure future clarity, we recommend that this be stated in the general instructions.

COMMENTS ON PART A – PLAN SUMMARY

6. **Item 1.1** Please see comment 1 above. We understand that there is no "equivalent" reading level test for a French language plan summary.

7. **Item 1.2** Instruction 1 is unnecessary, as well as unnecessarily complex. Investment fund manager is a defined term and after September 28, 2010 (the deadline for filing applications for registration of investment fund managers associated with scholarship plans), it will be very clear which entity a scholarship plan organization considers to be the investment fund manager of each scholarship plan.

8. **Item 1.3 (2)** The mandated language uses the phrase "your contributions, less sales charges and fees". As we note below, we recommend that the disclosure documents use the word "principal" as a clearly understandable term. Some of our members have received comments in the recent past on prospectus reviews that the prospectus should use the word "principal", rather than the phrase "contributions minus membership/enrollment fees (or sales charges) and fees".

9. **Item 1.3 (2)** The sentence **" …. you could end up with *much* less than what you put in" [**emphasis added to the word "much"] may be correct in some circumstances, but is unduly negative when standing alone without any explanation. The word "much" should be removed as being unnecessary colour and negativity, particularly given the inability to add any other explanation.

10. **Item 1.3(3)** The phrase "one of many ways to save" should be amended to read "a way to save". The Plan Summary, although providing educational information (see our earlier comment on this point), is at its heart a document that describes the Plans offered by our

members. It is unreasonable to expect our members to essentially advertise competing products.

11. **Item 1.3(3)** Canada Revenue Agency has told our members not to promote the plans as a "registered" education savings plan, without explaining that a subscriber enters into a contract for an education savings plan, which is then registered once the paperwork is completed. We recommend the wording be revised to read "When you enter into a contract to invest in the [name of Plan], we take the necessary steps to set up your contract as a registered education savings plan.".

12. **Item 1.3(3)** The sentence "However, if you stay in the plan until it matures, you *may* benefit …. " should be rephrased to the more accurate "However if you stay in the plan until it matures, you *will* benefit …"

13. **Item 1.3(4)** Our members believe that the proposed mandatory language does not give them the flexibility required to properly describe the suitability of the plans to Canadian investors and will give investors an inadequate picture of the suitability of scholarship plans and an inadequate basis for comparison between the various plans. The plans need flexibility to describe suitability in ways that make sense to them. We point out some issues with the disclosure below:

(a) Our members' plans have different unit sizes and correspondingly, different sales charges. When a potential investor compares the Plan Summaries of different group RESPs, there will be no explanation about a plan's unit, other than to provide the mandatory "per unit" disclosure. Potential investors may mistakenly believe that a plan has a less expensive sales charge than another group plan, when this is not the case because the actual difference in fees is attributable to a smaller unit size. In fact, twice as many smaller units would be required to achieve the same end result of the value of a larger unit plan and in this case, sales charges in respect of either plan would be approximately the same. The Plan Summary would not allow for disclosure of this information. Some additional disclosure about unit size and value for the specific plan is necessary so that potential investors can perform an informed and effective comparison of group plans and their fees. Please see also our comment 44.

(b) The sentence "this is a long term investment plan" does not necessarily describe all circumstances. Some plans set up by subscribers can have a term of as little as 4 or 5 years which may not be reasonably considered to be "long term".

(c) Adding the words "on time" to the sentence, "It is for investors who can make all the scheduled contributions "*on time*", is redundant, since the word "scheduled" is already in the sentence disclosing the fact that there is a schedule for contributions.

(d) The bullet point about the subscribers' children attending a qualifying school and program will be unhelpful for a subscriber. It would be more accurate for the Plans to say that the Plans will be suitable for an investor who wishes to save for

post-secondary education for a designated beneficiary in a tax effective manner. No subscriber will know whether or not their beneficiary will attend a qualifying school, particularly in the early years of that beneficiary's life, but the subscriber can certainly begin to save money for post-secondary education.

14. **Item 1.3 (5)** The sentence "Like other investments, the plan's investments have some risk" may be somewhat accurate, but we believe it is misleading and should be deleted, particularly since we are not permitted to provide any additional explanation. Scholarship plans have far less inherent investment risk than equity based mutual funds, for example, and to suggest that scholarship plans are like "other investments" and have risk is misleading without further explanation.

15. **Item 1.3 (6)** The sentence "You can *pay* for them all at once, or you can make annual or monthly contributions." should be revised to make clear that deposits made by the subscriber are not *payments* that he or she makes monthly, annually or all at once, but rather are *contributions* to an investment savings plan. The continual references to "payments" should be changed throughout the documents wherever the term "payment" or "the amount you pay" is used to describe deposits or contributions to the plan.

16. **Item 1.3(8)**

(a) The sentence "Your child's education could be affected" should be deleted, as unduly negative and unnecessarily inflammatory. This is absolutely not a statement that any of our members feel comfortable saying (keeping in mind they have statutory liability for this document).

(b) The sentence "Most often, it's because their financial situation changes due to job loss, divorce or other life events." should be deleted as subjective assumed information. Our members have no qualitative data to support this claim and cannot make this as a statement of fact in a prospectus document.

(c) The sentence in (1) "….., you'll lose *all or part* of your contributions due to …." is unnecessary negative and inflammatory, particularly since our members cannot provide any additional explanation. This portion we have italized should be simply stated as "a part".

(d) The sentence in (2) "this can be costly" is unnecessarily negative and inflammatory and should be deleted. This statement makes subjective assumptions that may not be justified.

(e) The references in (4) to the ability to transfer to another RESP are unclear. Our members are not in the business of promoting other investment opportunities. These references should be changed to read "transfer to another type of plan offered by us".

(f) The sentence in (6) "Your child may lose some or all of their EAPs if they take time off from their studies" is not accurate as all scholarship plans include a

provision to accommodate time off from studies. This line should be deleted, or augmented to be more specific about what is meant by "time off".

(g) The sentence in (6) "Deferrals are at our discretion" will be inaccurate for some of our members' plans. Our members must be able to accurately describe the features of the rights of subscribers under the scholarship plans.

17. **Item 1.3 (9)** Our members consider the mandatory disclosure about the 10-year "drop-out rates" will provide skewed and misleading information, since the group plans that have been operating for more than 10 years had more restrictive rules than presently. Further explanation will be necessary in order for a subscriber to properly understand this disclosure. We recommend using the statistics for the past year. We have the following additional specific comments on this requirement:

(a) The term "drop-out rate" is unnecessarily negative and subjective. A more plain and neutral term is "cancellations".

(b) Given that the CSA provide no guidance on how to calculate "drop-out" rate, members will be free to determine the most appropriate method of calculating cancellations. This will not promote comparability between plans and may lead to misleading information, particularly given that there will be no ability to explain how these calculations have been made or what they include.

(c) The "drop-out" rate should not include those subscribers who took advantage of the 60-day cooling off right.

(d) The requirement to fill in the sentence that starts "at this rate…" will require our members to provide forward looking information, that we understand is generally discouraged in legal prospectus documents. Our members do not feel comfortable in providing this information without any ability to provide an explanation or the assumptions that went into making that statement, given that the Plan Summary will have "legal liability" associated with it.

18. **Item 1.3 (11)**

(a) The reference to "processing fee" is inaccurate. This should be changed to allow the plan sponsors to use their particular wording, so long as they accurately describe what the fee is for. We recommend the following explanation about this fee - "This is to cover administrator's expenses incurred for the various contributions".

(b) Our members do not understand how they would calculate the dollar figure proposed to represent a single subscriber's cost of the fees expected from the mandatory sentence "if you invested …". We would welcome the opportunity to discuss this concept with the CSA.

19. **Item 1.3 (12)** The first sentence of the mandatory disclosure is unduly negative and inflammatory and, hence, deserves further explanation. We recommend the following:

"We describe the requirements that must be met before your beneficiary will receive EAPs in the prospectus. The amount of the EAPs will depend on many factors described in detail on page X. We do not guarantee the amount of any payment or that the amount will cover the full cost of your beneficiary's post-secondary education". This comment applies equally to other portions of the Form where this warning language is to be used.

20. **Item 1.3(13)** The references to who to call if the subscriber needs more information should be simply to "insert name of applicable firm" – each scholarship plan organization will have a different administrator and firm contact name – it will not necessarily be the Foundation or the dealer.

COMMENTS ON PART B

21. **A general comment -** Many items in Part B are also explained in Part C, therefore there is a lot of overlap and repetition. Since the intention of Part B is to provide information that is common to all plans (in case of multiple plans disclosed in the same prospectus), we suggest keeping only the following items as part of Part B (in the order we suggest)

(a) Item 5 – Overview of RESPs

(b) Item 6 – Common features of the Plan(s)

(c) Item 7 – General Plan risks

(d) Item 8 – Investment Risks

(e) Item 9.1 – Overview of how a plan or plans work(s) – to maintain a cohesive flow for a reader, this section is more suitable after Item 6 "Common features of the Plans".

(f) Item 10 – Unregistered education savings account

(g) Item 11 – Optional Services

(h) Item 12 – Statement of Rights

(i) Item 13 (3), (4) and (5) – rework it into a small "Government grants" section and place it after Item 6 "Common features of the Plans" and "Overview of how a plan or plans work(s)" .

(j) Item 19 – Income tax considerations

(k) Item 20 – Other material information (if any)

(l) Item 21 – back cover page

22. **Maturity disclosure** – Disclosure about maturity of the group plans is missing completely from Parts B and C. This is a very important stage in the group plan's lifecycle and should be included in the prospectus.

23. **Item 1.3(1)** Scholarship plans do not issue "options or warrants" – the reference to these types of securities should be deleted.

24. **Item 2.2** The first sentence following the two bullets should include references specific to the beneficiary, ie: "If you don't provide the social insurance number *for the beneficiary* when you enrol…" The social insurance number for the subscriber(s) is required at the time of enrolment.

25. **Item 2.3**

(a) The required disclosure set out in (1) is unduly negative and omits important information. We suggest the following subheading and disclosure: "Payments from the Plan(s)". If all Plan(s) requirements are met, you will be eligible for return of your principal. To qualify to receive payment(s) from the Plan(s), 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 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".

(b) The required disclosure set out in (4) is also unduly negative and omits important information. We suggest the following disclosure (modified as necessary for the various plans): "If you cancel your plan and withdraw your contributions early, you will be eligible for a refund of principal only. You will lose earnings on your principal and the government grants will be returned back to the government. You may be eligible to receive earnings on grants provided certain criteria are met. If your beneficiary does not meet the terms of the plan, the beneficiary may not be eligible to receive some or all of the payments from the plan."

26. **Item 2.4** It is important to include information about what will happen to the earnings on grant money. We recommend the following statement "You may be eligible to receive earnings on principal and grants provided certain criteria are met. Income earned in the group plan will be transferred to the income pool for the applicable beneficiary group".

27. **Item 4.1** The mandatory disclosure about documents incorporated by reference should be part of the inside cover disclosure.

28. **Item 4.2** We do not disagree with the concept of a list of defined terms, but we feel that the Form is too prescriptive in mandating that all scholarship plan organizations use exactly the same term and define it using the same words. We are concerned that, by so specifically mandating terms, we will lose the flexibility to change our terminology as circumstances or government regulation changes. A definition of "principal" is necessary given that this word is currently commonly used and understood by subscribers. Further the prescribed definitions for certain terms are not accurate, or include extraneous information that is superfluous and/or subjective and not necessary for an accurate definition of the term

29. **Item 6.1** The requirement to incorporate a table with key features of the plan(s) will add to the size of the prospectus and we recommend it be deleted.. For many points the key

information is not possible to shorten; as a result, the same language will appear in several places. Also, if the table is included and a subscriber reads only the table (as it is shorter), he/she may miss some of specifics (since the information will be shortened where possible) or miss entire sections all together because not everything will be part of the table.

30. **Item 7.1** The emphasis on risk disclosure is unparalleled in the disclosure documents of other investment products and is completely unwarranted in the case of an investment product such as a scholarship plan. We would like to discuss with the CSA how this disclosure can be presented without requiring disclosure "under separate sub-headings" and to the degree proposed in subsections (5), (6), (7) and (8). We would also like to discuss the instructions, since these instructions appear to suggest that a member must provide disclosure of a specific risk even if it believes the risk is very small. We also point out that many of the "risks" suggested by the CSA for disclosure purposes are not "risks" in a classical sense – they are simply features of the investment in the same way as other investment products have specific features – or they are as a result of government legislation. We note that many of the "risks" enumerated by the CSA for scholarship plans would apply to other investment products, yet are not disclosed in the prospectus documents for those investment products. For example:

(a) The "subscriber-specific" risks – why are plans required to disclose these "risks" – including the failure of a subscriber to make payments or to apply for EAPs? The prospectus discloses the rules associated with the plans – and the implications of failing to follow those rules, why is this disclosure compounded by "risk-factor" disclosure? These risks are not product-specific risks.

(b) The "plan risks" enumerated are not, in our view, classic "risks" – for example, the risk of changes in government policy and the risk that the Plan may not pay for the entire amount of post-secondary education for a beneficiary. None of the plans make this promise, so why should it be identified as a "risk" factor?

31. **Item 8.1** Given the types of investments made by scholarship plans, our members believe, as above, that the extensive emphasis on investment risk for scholarship plans is completely unwarranted, particularly given that the requirements are more extensive for scholarship plans than for mutual funds.

32. **Item 9.2 (3)** Our members consider that the mandatory table about "decisions" is more akin to "marketing" than prospectus disclosure. All material information that is expected to be entered into this table will be described elsewhere in the prospectus. All decisions that need to be made are made at the time of filling out the enrollment application: naming a beneficiary, selecting a payment method, amount and frequency, choosing maturity date, etc. It is very unclear what our members would include in this table.

33. **Item 12.1** The first paragraph is confusing to our members. Where does securities legislation, other than National Policy No. 15 (which is not a rule), mandate the 60-day cooling off period? It would be more accurate to simply state that this is a right provided by the Plans for all subscribers who live in any province or territory of residence.

34. **Item 13.1 (2)** This requirement appears to be similar to that required for mutual funds where an investor needs to know the pros and cons of various purchase options (front load, back load, no load, DSC, etc.). However, group plans offer only different frequency of contributions (monthly, annual etc.). These are simply different convenience options for contributions – they are definitely not "purchase options" in the same way as DSC and no load are "purchase options" for mutual funds. We are not clear about what "consequences", particularly "negative" ones would be described in response to this item. We find particularly odd instruction 1, which appears to be a direction from the CSA on how a scholarship plan organization should operate its business and what options it must give consumers. The prospectus requirements should be limited to ensuring full disclosure of material facts.

35. **Item 13.2 (2) (3)(4)** Under applicable tax legislation, a subscriber cannot make over contributions. If an over contribution occurs, a subscriber is penalized according to the ITA provisions. Therefore, items (2), (3) and (4) are moot points and should be excluded.

36. **Items 16, 17 and 18** All of the disclosure under these items essentially amount to the same thing. How can a subscriber cancel or change his or her plan? We recommend consolidation of the disclosure required under these items.

COMMENTS ON PART C: PLAN SPECIFIC INFORMATION

37. **Format and sequence of sections**

(a) For the sake of cohesive flow and readability to prospective investors or existing subscribers, it is preferable to keep all sections in Part C in a more chronological order, i.e. from enrollment, making contributions, changes to the plan, to maturity (payments to subscribers) and EAPs (payments to beneficiaries). We note that a discussion of the maturity stage of the group plan is missing completely. This is a crucial point in the lifecycle of the group plan and should be properly disclosed, i.e. what is maturity, when it happens, what to expect, what the scholarship plan provider does, what subscribers should do, etc.

(b) Items 9, 10 and 11 (investments) should be part of Part B.

(c) Item 12 (risks) is already part of Part B and should be excluded from Part C.

(d) Item 20 (cancellation of the plan) seems out of place

38. **Item 4.1**

(a) (**b)** It is unclear what our members would include as "the legal nature of the securities". Scholarship plans are considered to be issuers of securities because a subscriber enters into an investment contract.

(b) **(d)** The requirement to state whether a scholarship plan is "eligible for investment for RESPs" is incorrect. The whole essence of a scholarship plan is that a

subscriber's plan will be registered as an RESP. This will be clearly stated in many places in the prospectus and Plan Summary.

(c) Whatever disclosure remains after you consider our comments would not be required to be in a form of table.

39. Item 5.1

(a) In our opinion the suggested table is irrelevant. The age/year can be calculated easily without referring to a table that will be just two columns of corresponding years from 0 to 15, which will take up space. This table will be very confusing to a potential subscriber, given that they cannot (at enrolment) chose a beneficiary group or opt in to a specific grouping. They will not understand why this table is being provided.

(b) The requirements are drafted to suggest that a scholarship plan "offers" or "makes available" beneficiary groups under the prospectus. We don't understand the requirement to describe "the connection" between the group plan and the beneficiary group. This is inaccurate and overly complicated. It would be more beneficial to simply describe the concepts behind beneficiary groups and how a subscriber will be allocated a group.

(c) We also point out that subscribers are permitted to change their beneficiary groups. This should be discussed.

40. Item 6.1

(a) The requested disclosure will be very repetitive of other portions of the prospectus.

(b) The concept of "investor risk tolerance" is inappropriate for a scholarship plan, having regard to the nature of a scholarship plan and the plan's investments. Again, we believe that this is another example of an undue emphasis on risk on the part of the prospectus form. Disclosing whether a plan would be unsuitable for particular investors is also an odd concept for a scholarship plan. What should be disclosed here? It will be unsuitable generally to an investor who finds it difficult to make regular payments or who knows that they will never have a beneficiary who will attend post secondary education. Some additional clarity would be beneficial here. <u>Generally our members believe the plans are completely suitable for all Canadians who wish to save for a beneficiary's education.</u>

41. Item 7.1 (2) Our members believe the suggested table could possibly be an interesting presentational tool, but it will take up a lot of space and will not add much value to an investor's understanding. The 2nd column requires a relatively short answer, however the 4th column "what else to consider" will either be blank or must contain detailed explanation. We would appreciate further guidance on the expectations for the disclosure

in the 4th column. We note that the current prospectuses provide clear and concise disclosure about program limitations that apply to the various plans.

42. **Item 8.1** The Key Dates table seems out of place. It could serve as a summary and might possibly belong along with the risk factors disclosure. However, the prospectus form already requires disclosure about all risks concerning missing deadlines, so the information will be repetitive and in the interests of streamlining the prospectus we suggest removing it.

43. **Item 9.1(4)** The requirement to "state clearly" whether a plan or an "issuer" (in our view this is the same thing) "guarantees" or not or "ensures protection of all or some of the principal" amount is confusing and suggests the two concepts are similar. A guarantee should be considered as a full and unconditional guarantee provided by a third party to the Plan – i.e. another entity has executed a guarantee whereby it will guarantee principal. The term "guarantee" should not be used in the same sense as "ensuring protection" or "promising". The term guarantee should be reserved to situations where a legal guarantee has been provided. "Ensuring protection" is a much more nebulous concept and, in our member's opinion, each of the plan sponsors absolutely "ensure protection of principal" through the investment restrictions and practices of the plans. This disclosure item should be re-considered.

44. **Item 13.1**

(a) **(3)** We are at a loss to understand what we would disclose in response to this item and why. The particular reference to comparability of units of one plan to other scholarship issuers is very difficult to understand. Our members would not be able to provide this disclosure with any degree of accuracy required by a prospectus "liability" document. Our members do not have access to proprietary, confidential and competitive information of other members. We question the relevance of this information, in addition to asking what is expected here. Again, the focus of the prospectus for the specific plans should be on the plan itself and not on the plans of other providers. As we note above, each plan should describe how its own units are calculated.

(b) **(5)** The information required for this table is available in the Contribution Schedule. The table will get very complicated if the plans were to attempt to determine the contribution (not "price") per unit minus applicable fees and sales charges as per item 6 (a). Why do the plans have to present only Lump Sum and Monthly? What about Annual? Overall, the table seems complicated and repetitive since the information is available in the Contribution Schedule. We recommend removing it. The lead-in paragraph is also inaccurate. A subscriber does not pay a "price" to "buy a unit" – he or she agrees to a contribution schedule of specified deposits.

45. **Item 13.2 (1)** The statement "Missing a contribution can be costly" makes a very negative assumption, and in, our view, is misleading. A subscriber can miss a $25 monthly deposit and make it up within a week – this is not costly, nor is the subscriber

out of pocket – he or she is simply fulfilling his or her side of the contract. Similarly in the same paragraph: "If you miss contributions, we may cancel your plan" – this statement is reaching too far and is very negative and inflammatory. We recommend a cross reference to the disclosure in item 13.2(5) which speaks of about options available if contributions are missed.

46. Item 14.1

(a) **(2)**The discussion of how the sales charge is applied is very simplistic (which was fine for the Plan Summary), but deserves more explanation in the prospectus. The disclosure form should allow for a more complete description.

(b) (**3)** The requirement to disclose in a footnote how the sales charge is allocated between the dealer, the sales rep and "any other party" will be duplicative of information contained in the RDI and, in fact, is not required by National Instrument 31-103 to be disclosed in the RDI, which we submit is where disclosure about the dealers and their distribution of the Plans should be provided. The plan prospectus is to qualify the distribution of the securities – this information is not within the control of the plan – it is internal to the dealer and its sales reps. In addition, we don't understand the reference to "any other party" – who would this be? We note that this disclosure is NOT required of any mutual fund, where the dealer of the funds is affiliated (integrated) with the fund manager. For instance, the Investors Group prospectuses do not disclose this information, notwithstanding a similar business structure with our members.

(c) **(4)** This disclosure requirement is unclear to us. What will be expected? Can our members provide this disclosure in a 4th column to the table required by 14.1(2)?

47. Item 14.2 (2)

(a) It will not be possible to calculate the number that would be inserted in the sentence "It takes approximately X years to pay off the sales charge". It is difficult to predict an average number of years because it will depend on the number of units purchased, the term of the investment and the contribution schedule selected. If this sentence is retained our members must be able to disclose the assumptions they used to calculate the specific required disclosure to ensure that the disclosure is not misleading. We recommend that standard assumptions be mandated and disclosed to ensure that the projected length of time before sales charges will be paid off is not misleading and subscribers are able to make a meaningful comparison amongst plans.

(b) We point out that some of the fees are not paid out of contributions, but are paid directly by the subscriber.

(c) The title "higher fees in the early years" is misleading and should be changed. There are no "higher" fees in the early years. The fees simply have a different impact on the subscriber's contributions.

48. **Item 15.1 Instruction (g)** The CSA ask for disclosure about how other subscribers are affected by a refund of sales charges. Other subscribers are not generally affected by refunds of sales charges because the refunds are not generally paid out of the pool where unclaimed amounts will be shared by others. This instruction should be removed.

49. **Item 16.1** It is unclear what disclosure is required here. Our members do not know what the CSA means when they refer to a "purchase option".

50. **Item 16.8 and Item 16.9** This disclosure about "what would prompt a transfer to another provider" should not be required. Our members would not know how to respond to this item. As noted above, it is unreasonable to ask one scholarship plan provider to speak of (and encourage) a subscriber to move to another provider's plans.

51. **Item 17.2**

(a) **(3)** This disclosure should not be required – there is no requirement for a plan to have the same rules as the government. A subscriber will not understand the disclosure and it will be perceived very negatively. The prospectus will disclose the government rules, and the additional plan specific rules.

(b) **(4)** The first sentence should be removed as unduly negative and potentially misleading. There are no requirements for plans to have the same rules as the government rules. We suggest: "In addition to the current Income Tax provisions, the plan has specific requirements for beneficiaries to qualify for EAPs".

(c) **(5)** There are other options available in addition to the ones mentioned in this item. Plans must be able to disclose all options. The negative and skewed connotations surrounding the disclosure to be included in the last paragraph of this item are discussed above. This will not be useful or relevant disclosure for current subscribers

(d) **(7)** Our members do not understand how (or why) this disclosure would be calculated and provided.

52. **Item 18.2 (2)** The information in the required table should be provided on a per unit basis, similar to the table in item 18.1.

53. **Item 20.1** An RESP that has been de-registered cannot be re-registered. This term should be replaced with "reinstated" for additional clarity.

54. **Item 22.1 (2)** The mandatory disclosure is misleading as attrition does not affect contributions. Attrition affects the education assistance payments to the beneficiaries. The sentence: "You will not get back any earnings" is also misleading. Our members must be able to explain how the earnings could have been partially already paid to the beneficiary as a part of an EAP, as well as the eligibility for earnings on grants as an AIP.

55. Item 22.2

(a) **(2)** The mandated table is already disclosed in the financial statements and should not be repeated in the prospectus. It is far too complex and dense to assist a subscriber's understanding and will be available to those who would like this information. We recommend a simple cross reference to the financial statements for this information, as well as an explanation about why this information is relevant to a subscriber.

(b) **(3)** Plans should be permitted to explain that the 60 day refund is a full refund of contributions (or contributions and income for some providers). The last sentence of the mandatory disclosure is completely inflammatory and should be deleted.

(c) **(4)** The disclosure under this section would be completely repetitive of earlier discussions about the plan in the specific Part C.

56. Item 22.3 Our members feel that these charts are simply far too complex and dense for any subscriber to adequately comprehend them. We recommend consideration of moving these charts, if they are considered important to the end of the prospectus document. The prospectus should explain why an investor would want to know this information and how to interpret the charts. In any event, we feel the CSA would benefit from our views on what information should be provided in these charts – in our members' view, the only solid information about attrition levels is for those beneficiary groups that are closed (i.e. where no further EAPs are being paid out).

57. Item 23.1 Our members are concerned about how they would calculate "performance returns", "management expense ratios" or "trading expense ratios" in any meaningful way. These are simply not items that our members believe have any relevance to an investor who is looking to subscribe to a scholarship plan. It is not sufficient to cross refer to NI 81-106 – in this context, scholarship plans are quite different from mutual funds. We would like to discuss these issues with the CSA and put forward some ideas for relevant disclosure.

58. Item 24.1 The requirement to repeat the MRFP disclosure in the prospectus is completely at odds with the CSA's objectives in providing non-repetitive and concise information to investors. This information is completely available to investors and should not be repeated.

COMMENTS ON PART D: INFORMATION ABOUT THE ORGANIZATION

59. Item 1.1 (1) The CSA uses the phrase "scholarship plan issuer". The scholarship plan issuer legally speaking is the individual plan that is the reporting issuer. These issuers are organized as trusts and therefore do not have "directors, officers, partners". We don't understand the reference to "shareholders". This item should be revised to reflect the true nature of the required disclosure.

60. **Item 2.1 (3)(h)** The disclosure form should recognize that all of our members have Foundations, with boards of directors (most with independent members). The oversight and governance of the plans resides with the Foundation. This information is important for planholders. It is incorrect to speak of the IRC having "oversight" over the manager, when the real oversight is by the Foundation's board. The IRC only oversees specific conflicts of interest that have been referred to it.

61. **Item 5.1 (2)** The above-noted comment applies equally to this section.

62. **Item 6.1 (1)** This item implies that plans must disclose compensation paid to the five highest-paid officers of the administrator of the plans who perform management functions. These are the disclosure requirements of Form 51-102F6. This is completely different from, and exceeds, the disclosure requirements for other investment funds, in particular mutual funds. Scholarship plans, like mutual funds, pay fees to the administrator/manager, who then is responsible for the operation of the plan, including paying salaries to its staff. The plans do not pay separately for the employees of the administrator. This item should be deleted or revised substantially.

63. **Item 8.2** This item has been taken from the mutual fund requirements and they do not fit within the context of scholarship plans that are distributed through ONE affiliated dealer. We would like to discuss the concept behind this disclosure with the CSA to ensure appropriate understanding. It is not possible to simply transpose mutual fund requirements on the different structures of scholarship plans.

64. **Item 16.1** Given NI 31-103, to what extent does the CSA expect this disclosure and to what level of detail? Mutual fund managers do not provide this level of disclosure to our knowledge. Why are scholarship plan industry participants expected to provide more disclosure than mutual funds?

65. **Item 16.2** Given the investments made by and the nature of scholarship plans, much of this is irrelevant information. The "value" of investments at any time do not have any bearing on a subscriber's day-to-day experience with a scholarship plan.

66. **Item 18.3** The disclosure requested under this item is similar to requirements of item 12.1(6). Why?

67. **Item 19.1 (3)** The contribution schedules provided as part of our members' existing prospectuses already provide information about each beneficiary group, but do not break it up into the 15 or 16 tables that this item appears to require. This will add close to 15 - 16 additional pages to the prospectus for no additional clarity. The contribution tables are important information for subscribers and our members will provide them to subscribers as part of the Plan Summary. They should not be relegated to the Part D of the prospectus where they will only be available on request.