RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REÉÉ DU CANADA

VIA EMAIL

January 13, 2011

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

Delivered to:

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8
jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse, 800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

RE: CSA Notice and Request for Comments – Notice of Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* – Registration of International and Certain Domestic Investment Fund Managers

The members of the RESP Dealers Association of Canada (RESPDAC) are pleased to provide the Canadian Securities Administrators (CSA) with this letter commenting on the proposed amendments to National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) published for comment on October 15, 2010.

Members of RESPDAC are C.S.T. Consultants Inc., Heritage Education Funds Inc. and USC Education Savings Plans Inc. Together these entities manage and administer over $7.5 billion in group and self-directed RESPs that are qualified for sale to the public under a prospectus. Each of the members is registered as a scholarship plan dealer in each province and territory of Canada and also is registered with the Ontario Securities Commission as an investment fund manager

with respect to its activities as an investment fund manager (as defined) of its various RESPs so offered to the public. The various RESPs offered to the public under applicable prospectuses are offered in each province and territory of Canada and hence are reporting issuers in each applicable province and territory.

As we outline in more detail below, RESPDAC members are strongly opposed to the proposition outlined in the draft amendments that an investment fund manager must be registered in multiple jurisdictions in Canada simply because the securities of the applicable funds managed by that fund manager are distributed in those jurisdictions.

Under the draft amendments, an investment fund manager that has a head office in Canada would be required to register in another province or territory "if the domestic fund has security holders that are local residents and the domestic fund manager, or the fund it manages, has actively solicited local residents to purchase the securities of the funds." This registration would be in addition to the presently required registration in the province where the fund manager's head office is located. For RESPDAC members, this would mean they would need to be registered as investment fund managers in each province and territory of Canada.

We believe that the CSA's proposed approach does not recognize that an investment fund manager only acts as an investment fund manager in the province(s) where the funds are located and where the funds are actually managed. For RESPDAC members, the various RESPs are all subject to and established under the laws of Ontario and each RESPDAC member only manages the RESPs in Ontario, where its head office is located.

The legislation at issue in most provinces and territories requires an investment fund manager to be registered in the province if it is "acting as an investment fund manager" in that province or territory. For example, section 25(4) of the Securities Act (Ontario) states that unless a person or company is exempt, "the person or company shall not act as an investment fund manager unless the person or company is registered in accordance with Ontario securities laws as an investment fund manager". Using any reasonable plain language legislative interpretation, an investment fund manager must carry out the functions of an investment fund manager in order to be construed as "acting as an investment fund manager" in the particular province or territory. The CSA's proposed approach expands the common sense meaning of "acting as an investment fund manager" by mixing in concepts related to distribution of and trading in securities, which we consider inappropriate and contrary to the approach the CSA took for portfolio managers in finalizing NI 31-103.

The CSA's approach for investment fund managers, in our view, reverts back to the so-called "look-through" or "flow-though" approach to registration for advisers in the context of advising investment funds. Before NI 31-103 was finalized, some members of the CSA took the position that advice to an investment fund flowed through to the investors of the fund, which effectively required advisers to be registered in any jurisdiction where securities of the investment fund were sold. With the final publication of NI 31-103 in July 2009, the CSA acknowledged that the investment fund, rather than the individual security holders of the fund, is the client of the adviser. As a result, adviser registration in this context is only required in the province or territory where the adviser and the investment fund are located. We believe the same principles must apply to investment fund manager registration, particularly to investment fund managers

like RESPDAC members. It seems particularly incongruous to our members that the various portfolio managers of the RESPs they manage would not have to be registered in each province or territory where the RESPs are distributed, but the investment fund managers (the RESPDAC members) would. Merely distributing and trading in securities of an RESP does not mean that the investment fund manager is "acting as an investment fund manager" in those provinces and territories.

In short, we believe that the requirement to register in the local jurisdiction should not be based on whether the RESPs managed by our members have security holders that are local residents or the fact that the RESPs or our members have actively solicited local residents to subscribe for the RESPs. Rather, we believe that a fund manager should only be required to register in its principal jurisdiction and any other jurisdiction in which it carries out some material element of investment fund manager activity or in which the investment fund under management is located.

In our view, the reasons given by the CSA for requiring registration in multiple provinces and territories are not sufficient, given that we do not believe that regulatory oversight and investor protection would be enhanced by requiring a fund manager to register in additional jurisdictions in which it does not actually carry out fund manager activities.

In the case of RESPDAC members, each provincial/territorial securities regulator already has significant jurisdiction and control over the relevant entities which are most relevant and important for local residents:

1. **The dealer who interacts with local residents is registered across Canada** – the local securities regulator can take action if there is perceived to be a problem in how the securities are being distributed in the province and

2. **The Plans are reporting issuers in each province and territory –** the local securities regulators can take action if there is perceived to be a problem with the disclosure given to local residents in a province.

In addition, we submit that if a securities regulator in a province or territory perceives there to be a problem with the management and administration of the Plans, then it has remedies available to it – namely, cease trading the securities of the Plans and/or refusing to issue a receipt for the prospectus for the Plans. This is a very powerful regulatory tool in our view and is more appropriate than requiring the Plan IFM to be registered in the local jurisdiction.

The redundant nature of the proposed registration is particularly acute in the case of RESPDAC members, given that the regulators already have jurisdiction over the firms that act as fund managers, over the Plans offered to the public via prospectus and the Plans are managed, administered and distributed by only the one entity – that is, there is no other party that is responsible for the distribution or management/administration of the Plans.

We also point out that RESPDAC members pay significant regulatory filing fees in each province and territory – as we point out below – these fees can be expected to increase if the CSA's proposals are adopted:

(a) The dealers pay regulatory annual fees for the firm and each sales person operating in each province and territory.

(b) The Plans pay regulatory filing fees to renew their prospectus every year.

We recognize that the CSA has explained that most investment fund managers can rely on the passport system to register in multiple jurisdictions with a single filing with the principal regulator. We also recognize that RESPDAC members, as noted below, are registered in every province and territory under their dealer registration. However, we point out that registration as an investment fund manager in multiple jurisdictions is not without additional cost and administrative burdens, given that fees would be associated with this additional registration in each province and territory of Canada, and in some cases, individual jurisdictions will have their own rules for our members to understand and comply with. As currently drafted, the proposed amendments would simply add to the fee burden borne by RESPDAC members, which ultimately flows through the RESP planholders, without, in our view, adding to the regulatory oversight of registrants or the issuers of the applicable securities.

We believe that the correct approach is the current one. An investment fund manager must register in the jurisdiction where it is carrying out the activities as an investment fund manager, which for our members will be the jurisdiction where their head office is located and the RESPs are actually managed.

We are also strongly opposed to the proposed new notice requirement that would require all domestic investment fund managers to provide a notice to investors informing them of their non-resident status, as well as the risk that investors "may not be able to enforce legal rights" in the local jurisdiction. As we outlined in our letter of September 29, 2010, we believe this kind of disclosure is completely inappropriate for firms that operate in all provinces and territories of Canada (that is, scholarship plan dealers). We also believe that this requirement is meaningless for domestic non-resident investment fund managers and will raise questions and uncertainty in the minds of investors, where in fact there is little risk that legal actions initiated in one Canadian jurisdiction will not be enforceable in another. Requirements for this kind of disclosure simply reinforce the need for a national system of securities regulation.

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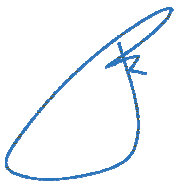
Thank you for considering our comments. Please contact James Deeks, RESPDAC's Executive Director, at 416-689-8421 or jdeeks@primarycounsel.com if you have any questions about our comments or you would like to meet with our members to discuss them.

Yours very truly,



Paul Renaud
Chair

James Deeks
Executive Director