



**VIA EMAIL**

July 25, 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  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

**Delivered to:**

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Dear Sirs/Mesdames:

**RE: CSA Staff Notice 81-322 *Status Report on the Implementation of the Modernization of Investment Fund Product Regulation Project* and Request for Comment on Phase 2 Proposals**

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The members of the RESP Dealers Association of Canada (RESPDAC) are pleased to provide the Canadian Securities Administrators (CSA) with input into the CSA's proposals to modernize the product regulation of publicly offered investment funds in phases as set out in CSA Staff Notice 81-322 published for comment on May 26, 2011. The focus of RESPDAC members' comments is with respect to the product regulation of the group registered education savings

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plans offered by the members under prospectuses filed in the various provinces and territories of Canada. These group RESPs are commonly referred by the CSA as “scholarship plans”<sup>1</sup>.

Members of RESPDAC are C.S.T. Consultants Inc., Gestion Universitas inc., Heritage Education Funds Inc. and USC Education Savings Plans Inc. Together these entities manage and administer over \$8.5 billion in group and self-directed RESPs that are qualified for sale to the public in each province and territory of Canada - for Universitas in Québec and New Brunswick - under prospectuses. Each of the members is registered as a scholarship plan dealer in each province and territory of Canada – for Universitas in Québec and New Brunswick - and also is registered with the Ontario Securities Commission - for Universitas with the AMF - 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.

For the past several years, RESPDAC members have presented RESPDAC’s proposals for an “ideal” modernized regulatory regime for scholarship plans to the staff and, in some provinces, also the executive, of various members of the CSA, including the securities regulators in British Columbia, Alberta, Manitoba, Saskatchewan, Québec, Nova Scotia, New Brunswick and Ontario.

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. This portion of RESPDAC’s ideal model is being addressed primarily through the CSA’s proposals for a new scholarship plan prospectus form published for comment in March 2010. RESPDAC provided extensive commentary on those proposals and has remained engaged with staff to the extent required in order to explain various aspects of those comments. RESPDAC looks forward to reviewing the next version of those proposals once they are published for additional comment.

Other elements of RESPDAC’s ideal regulatory model fit well with the CSA’s modernization project described in Staff Notice 81-322, given that they include:

- Broad principle-based rules to govern the structure of each scholarship plan (as the issuers of the securities), 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).
- These rules would recognize that the industry participants, being the distributors and managers of those plans are regulated and registered with the applicable regulators pursuant to National Instrument 31-103 *Registration Requirements, Exemptions and On-going Requirements*.

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<sup>1</sup> We have provided the CSA with comments on the CSA’s terminology “scholarship plans” in past submissions. RESPDAC considers that the more accurate, non-misleading terminology is “group or self-directed RESPs”. Please see RESPDAC’s comment letter of June 22, 2010.

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At various times during 2009, RESPDAC supplied the various CSA staff with detailed recommendations concerning the investment restrictions and practices that RESPDAC considers should apply to scholarship plans. These submissions also fit well with the CSA's proposals set out in Staff Notice 81-322.

We were pleased to see a reference to a second stage in the CSA's project to modernize the regulation of scholarship plans in the March 2010 request for comment relating to prospectus disclosure.

Staff Notice 81-322 did not mention scholarship plans specifically, although the Notice speaks more generally to non-redeemable investment funds, of which scholarship plans is one sub-set. Accordingly, RESPDAC members urge the CSA to:

1. Consider the implications to scholarship plans of the proposals to update regulation of non-redeemable investment funds, and
2. Consider rolling the project to reconsider NP 15, as referred to in the March 2010 prospectus publication, into the overall project to modernize investment fund regulation. The specific rules that would apply to scholarship plans, if they are different from other non-redeemable investment funds, could be a separate division of the CSA's proposed stand-alone rule governing non-redeemable investment funds.
3. Ensure that any rules that will apply to scholarship plans recognize the other CSA regulation, including disclosure, of industry participants (NI 31-103) and of independent review committees (NI 81-107).

The general principles listed by the CSA in Staff Notice 81-322 are completely applicable to scholarship plans. In respect of all scholarship plans managed by RESPDAC members:

- Assets are held with a qualified custodian, as mandated under NI 41-101
- Conflicts of interest are regulated through a combination of the plan managers' fiduciary responsibilities to the plans, the regulation of National Instrument 31-103 and National Instrument 81-107, and
- Scholarship plans provide rights to planholders (by contract) in the event of fundamental changes.

RESPDAC's 2009 submissions to the CSA regarding investment restrictions and practices emphasized RESPDAC's agreement with the necessity for some regulation in this area. However RESPDAC's central submission is that the current regulation of investments that can be made by scholarship plans (a combination of NP 15 and administrative practice) is far too restrictive and is not in the best interests of planholders, given that these restrictions generally work to their detriment.

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We hope that the CSA will consider the comments made in this letter, as well as in RESPDAC's past submissions in moving forward with its modernization project.

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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](mailto: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,

A handwritten signature in blue ink, appearing to read "Peter Lewis".

Peter Lewis  
Chair

A handwritten signature in blue ink, appearing to read "James Deeks".

James Deeks  
Executive Director