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VIA EMAIL

January 24, 2012

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 Notice and Request for Comments –Scholarship Plan Prospectus Form – Changes to Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, Form 41-101F2 and Related Amendments – Second Publication Published for Comment on November 25, 2011

We are lawyers in the Investment Management practice group of Borden Ladner Gervais LLP. As such we work with various group RESP providers and are quite familiar with their operations, including the disclosure provided to subscribers under the applicable prospectuses used by the plans. We wish to provide the Canadian Securities Administrators with our comments on the above-noted proposed rule publication, given that we consider certain of the proposals to be

unprecedented in securities regulation and because we are concerned that plans, their managers, administrators and dealers may find it very difficult to comply with the proposed requirements.

We are writing this letter in our capacity as lawyers with experience with the group RESP industry, but our comments should not be taken as the views of BLG, other lawyers at BLG or our clients.

We emphasize that we are in complete agreement with the objectives of the CSA in mandating that group RESPs[1] provide disclosure to their subscribers in a clear, concise and relevant manner to investors about the plans. Subscribers to group RESPs must be given disclosure in a manner 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. This disclosure must:

(a) Provide subscribers with key information about the plan, *using neutral non-promotional language*

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

(c) Ideally provide the information before the subscriber makes his or her decision to enter into a contract.

We are also in agreement with many of the *concepts* behind the various proposed disclosure items – but as will be outlined below, we are primarily concerned about the degree of prescription that is proposed by the CSA.

Our central comments, from a legal perspective, are as outlined below.

1. Excessive Degree of Mandated Language and Other Prescriptive Elements

The proposed disclosure regime would require group RESPs to make disclosure in a prescribed format and, in many instances, using mandated language.

In our view, the mandatory Plan Summary disclosure is written as if the Plan Summary were a 'consumer education' warning piece put out by the regulators or by a consumer advocacy group. We point out that the Plan Summary is part of the "prospectus" for a group RESP, which is a disclosure document mandated by securities regulation, with applicable disclosure standards long enforced by regulators. It is critical that group RESPs, like other issuers of securities, be permitted to include "full true and plain disclosure of all material facts" that adequately describes their securities, given the statutory liability that attaches to such disclosure under applicable securities regulation. We consider that additional flexibility is essential, as is more neutral language in the Plan Summary and elsewhere in the mandated language.

In our view, the high degree of prescription, particularly in the Plan Summary, where virtually every disclosure item contains an element of mandatory wording, is both unprecedented in the

[1] Throughout this letter, we use the term "group RESP" to describe the plans, rather than the CSA's term "scholarship plan", since we know that our clients consider the latter term to be outdated and potentially misleading due to its use of terminology that is not permitted under applicable Canadian tax legislation.

financial services industry and unwarranted for group RESPs. The degree of prescription will lead, in our view, to awkwardness of fit of the mandatory language to the actual operations of the different group RESPs in that they are not all the same, and may lead to difficulties for the senior executives and directors of the entities that must certify the prospectus, in that they may consider that the disclosure is misleading and needs to be modified or further expanded upon, but the form requirements do not permit this. We note, in particular, that the form requirements specifically state that a group RESP may only provide the disclosure required and cannot supplement it or change the ordering. We expect that this will lead to an increased regulatory burden for our clients in (i) trying to fit the specifics of their group RESPs into the mandatory requirements, (ii) advising senior executive and directors of their regulatory obligations and accountability and explaining how those obligations and accountability can be met in the context of the Plan Summary and prospectus document and (iii) receiving regulatory clearance for language that fits with the specific group RESP, but is different from or an expansion upon the mandatory language.

2. Lack of Coordination with Other Regulatory Documents

We note that investors in group RESPs are required to be provided with a copy of certain "relationship disclosure" in advance of entering into a contract. In the vast majority of cases, this relationship disclosure will be provided by the related dealers distributing the group RESPs, which are also required, by law, to deliver the "prospectus" for the group RESP within the timing established by securities regulation. In our view, much of the disclosure, particularly in the Plan Summary, will be duplicative of the disclosure required to be provided under National Instrument 31-103 (and vice versa) and, with the CSA's proposed cost and performance disclosure proposals, this duplication can be expected to increase.

We urge the CSA to permit a group RESP dealer to comply with NI 31-103, through providing the information required by section 14.2 of NI 31-103 in the Plan Summary, along with the other Plan Summary information. All of the required disclosure set out in section 14.2 of NI 31-103 is **already** required to be provided in the revised Plan Summary, except for the following items, each of which could easily be included, with minimal additional space requirements, in the Plan Summary [the alphabetized paragraphs below relate to the sub-paragraphs of section 14.2 of NI 31-103]:

- (d) *risks of borrowing money to invest*
- *(i) account reporting*
- *(j) disclosure of dispute resolution resources*
- *(k) statement about suitability obligations of the dealer*
- *(l) description of the KYC information the dealer collects.*

The Plan Summary would then be provided to the subscriber by the group RESP dealer before account opening. This will allow the dealer to comply with NI 31-103 – and will also achieve the CSA's overall objective in ensuring that investors receive information about their investments in advance of entering into the contract to so invest. In this way, duplicative information will be

reduced and minimized, which can be expected to allow an investor a better opportunity to read the information.

3. Organization and Flow of the Prospectus Document

We are opposed to the concept of a four-part prospectus document, including the separate Plan Summary for a group RESP– with both the Plan Summary and the three-part prospectus being required to be delivered to an investor within the timing established by provincial securities legislation. We consider this 4-part concept to be unnecessary and excessive for group RESPs and may indeed hinder subscriber understanding. The CSA appears to have taken its experience with mutual fund prospectuses (NI 81-101) and applied it to group RESPs. However, given that most group RESP providers distribute only a maximum of three or four plans and some offer each plan under separate prospectuses – separate Part As, a Part B, separate Part Cs and a Part D simply is not justified. This is in direct contrast to mutual fund simplified prospectuses which cover upwards of 100+ very distinct mutual funds, each with different investment objectives and strategies and risks, and therefore some mandatory structural organization is necessary to ensure investor ease of reference. 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".

We note that the Plan Summary (and the Part Cs) will likely contain virtually identical information for each of the Plans (whether group or self-directed RESPs), which will, in our view, tend to obscure the differences between the Plans. We consider it would be much better disclosure to describe the Plans collectively and point out the significant differences between the different plans, than to leave this exercise up to the investor, who will need to read multiple Plan Summaries and Part Cs (much of which will be identical, particularly in the Plan Summary) in order to sort out what is different between the Plans.

4. *Lack of Clarity on the "Prospectus" Required by Law*

Assuming the CSA proceed with its proposals, we urge the CSA to clarify what documents are collectively the "prospectus" for a group RESP as required by, and referred to under, applicable securities legislation. It is not clear from the rule amendments that all four parts - namely the various Plan Summaries and the three-part prospectus document -- must be considered together as the "prospectus". We also are unclear whether or not the CSA expects both documents to be delivered to subscribers pursuant to the timing established by securities regulation, although we have assumed this to be the case. We believe that subscribers will be similarly confused as to which documents give them statutory rights of action, particularly given the lack of specific reference in the mandatory language describing both documents and investors' rights.

5. *Lack of Flexibility to Meet Disclosure Standards*

We consider that the extensive mandated language (even though flexibility is granted to make the required disclosure using "substantially similar wording") about the various features and attributes of group RESPs, particularly in the Plan Summary, but also in the prospectus, potentially leaves group RESP providers in the awkward situation of having to ask the senior executives and directors of their organizations who are responsible and liable for the prospectuses, to sign off on documents that those executive and directors may consider inaccurate

and potentially misleading, largely through omissions of material facts and unbalanced disclosure. We note that almost the entire Plan Summary has been written by the CSA, with only very minimal flexibility being provided to change language. Group RESP providers and their senior executive and directors have statutory liability for the contents of the prospectus documents and must have the flexibility to provide disclosure to subscribers that is accurate, not misleading and in conformity with applicable disclosure standards.

6. *Transition*

The current revised proposals do not provide for any form of transition. Given the extensive rewrites and additional technological systems changes that we know will be required by our clients, we expect that our clients will need at least eight months lead time before their pro forma renewal date to prepare the new documents, including making the systems changes to provide the new proposed calculations. Given the nature of the group RESP industry, we recommend that all group RESP providers be required to prepare a new prospectus for the same calendar year, which we suggest will be 2014, having regard to the applicable provincial rule-making procedures.

Thank you for considering our comments. Please contact either of us if you would like additional information or wish us to elaborate on our comments.

Yours very truly,

"Lynn McGrade" *"Rebecca Cowdery"*

Lynn M. McGrade Rebecca A. Cowdery