RESP DEALERS ASSOCIATION OF CANADA

ASSOCIATION DES DISTRIBUTEURS DE REÉÉ DU CANADA

VIA EMAIL

April 10, 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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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Dear Sirs/Mesdames:

RE: Notice and Request for Comment on Proposed Multilateral Policy 31-202 *Registration Requirements for Investment Fund Managers* (MP 31-202) and Request for Comment on Proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Proposed Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers* (MI 32-102)

The members of the RESP Dealers Association of Canada (RESPDAC)[1] are pleased to provide the applicable members of the Canadian Securities Administrators (CSA) with this letter commenting on the proposed new instruments noted above, being:

1. **Proposed MP 31-202** proposed by the securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, PEI, Nova Scotia, Northwest

[1] The members of RESPDAC are C.S.T. Consultants Inc., Global RESP Corporation, Knowledge First Financial Inc., Heritage Education Funds Inc. and Universitas Management Inc. All RESPDAC members are registered as investment fund managers with their principal regulator – an affiliate of Global RESP Corporation is so registered.

Territories, the Yukon Territory and Nunavut (we refer to these CSA members as the Nine CSA Members)

2. **Proposed MI 32-102** proposed by the securities regulatory authorities in Ontario, Quebec, New Brunswick and Newfoundland and Labrador (we refer to these CSA members as the Four CSA Members).

Both MP 31-202 and MI 32-102 were published for comment on the same day – February 10, 2012, but were published separately and posted on separate websites. The Nine CSA Members and the Four CSA Members set the same April 10, 2012 deadline for comment letters on the proposals[2].

Given RESPDAC's overriding concern with MP 31-202 and MI 32-102 – namely that the CSA has been unable to come to a uniform view on registration of investment fund managers in Canada – we have chosen to submit one comment letter that addresses both instruments and is provided to all CSA members.

As we outline in more detail below, RESPDAC members are:

- Strongly opposed to the proposition outlined in the draft proposals of the Four CSA Members 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.

- In support of the draft proposals of the Nine CSA Members, but have some comments on the provisions of proposed MP 31-202.

- Very disappointed with the prospect of a fractured regulatory system for Canadian registrants that can only be expected to increase compliance costs to registered firms for little to no benefit either to the firms as registrants, to investors in their funds or to the investing public.

If the draft proposals come into force in the ways suggested, RESPDAC members would be required to register with each of the Four CSA Members as investment fund managers, and likely not with the Nine CSA Members.

Comments on the Four CSA Members Proposals

We believe that the Four CSA Members' 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, other than Universitas, the various Group RESPs are all subject to and established under the laws of Ontario and each RESPDAC member only manages the Group RESPs in Ontario, where its head

[2] We note that Ontario securities legislation requires at least a 90-day comment period for new rules, which would include MI 32-102. We assume that the OSC considers that MI 32-102 is simply a reformulation of the previous proposals which were to amend NI 31-103 in ways similar to MI 32-102, therefore the shorter 60-day comment period is appropriate, although this issue is not discussed in the Notice.

office is located. Universitas is located in Quebec, and therefore manages its Group RESPs in Quebec.

The legislation at issue in the Four CSA Members' provinces requires an investment fund manager to be registered in the province if it is "acting as an investment fund manager" in that province. 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 Four CSA Members' 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 National Instrument 31-103.

Notwithstanding the statements to the contrary in the Notice accompanying the publication of MI 32-102, the Four CSA Members' 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 with operations similar to RESPDAC members. It seems particularly incongruous to our members that the various portfolio managers of the Group RESPs they manage would not have to be registered with the Four CSA Members where the Group RESPs are distributed, but the investment fund managers (the RESPDAC members) would. Merely distributing and trading in securities of a Group RESP in one of the provinces regulated by the Four CSA members does not mean that the investment fund manager is "acting as an investment fund manager" in those provinces.

In short, we believe that the requirement to register in the local jurisdiction should not be based on whether the Group RESPs managed by our members have security holders that are local residents or the fact that our members have actively solicited local residents to subscribe for the Group 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 <u>some material element</u> of *investment fund manager activity* or in which the investment fund under management is located.

It is important to note that our members do not carry out any of the distribution of the Group RESPs in their capacity as IFMs, but rather do this activity in their capacity as registered scholarship plan dealers. This solicitation is clearly *dealing* or *trading* activity and is not activity of an IFM of the Plans.

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

As we pointed out in our comment letter to the CSA (on the CSA's proposed amendments to NI 31-103 published in October 2010), 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:

- 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 or territory; and

- 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 or territory.

In addition, we submit that if one of the Four CSA Members 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 suggested by the Four CSA Members 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 (the management and administration of the Plans distributed by Global RESP Corporation is slightly different from the others).

We also point out that RESPDAC members pay significant regulatory filing fees in each province and territory and – as we point out below – these fees can be expected to increase if the Four CSA Members' 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 believe that the correct approach is the approach taken by the Nine CSA Members, subject to clarification of our comments on proposed MP 31-102. **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 Group RESPs are actually, in fact managed**. We consider that the Four CSA Members have not made a definitive case explaining the appropriateness of proposed MI 32-102.

Furthermore, we simply do not understand section 3 of proposed MI 32-102 and the proposal to require registration, but provide exemptions. How would this exemption work, having regard to the legislative requirement to register quoted above? If as a fact, the firm is *not* acting as an investment fund manager in one of the Four CSA Members' provinces, how is it relevant that it does not have securityholders or the firm hasn't actively solicited in the province? If a fund is *not* qualified for distribution in one of the Four CSA Members' provinces because it hasn't filed a prospectus in that province, how could the legislation be interpreted to require registration, such that the exemption would ever apply? For example, Universitas Management Inc. presently offers its Plans in two of the Four CSA Members' provinces. How could it ever be said that it was acting as an IFM in the other two provinces, such that it would be said to rely on the exemption in section 3? The Four CSA Members have not explained the regulatory purpose behind this exemption; accordingly, RESPDAC members do not understand its purpose and who would benefit from it.

Comments on the Proposals of the Nine CSA Members

We support the proposals of the Nine CSA Members for the reasons stated above. We consider that MP 31-202 is the correct interpretation of the applicable legislative requirement to register as an IFM.

However we are concerned about some of the indicia of "acting as an IFM" in one of the jurisdictions of the Nine CSA Members, since we are concerned that these indicia may cumulatively result in the same conclusions as are evident with the proposals of the Four CSA Members, namely that registration as an IFM will be necessary if enough of these indicia are present.

Our specific concerns include the concepts suggested as follows:

- "establishing a distribution channel for the funds" – all public investment funds have a distribution channel, which may have been arranged for by the IFM in the applicable provinces and territories. For our members, this "distribution channel" is conducted by the firms, in their capacity as registered scholarship plan dealers. How does dealing or trading activity become "IFM activity"?

- "marketing the funds" – all public investment funds are marketed in provinces and territories where a prospectus is filed. In the case of our members, "marketing" is carried out by the firms in their capacity as registered scholarship plan dealers. How does this dealing or trading activity become "IFM activity"?

- "Retaining and liaising with service providers and portfolio managers of the funds", which are located in a particular province. In the case of our members, the actual oversight is being conducted from the IFM's head office location and not in the province where the service provider or portfolio manager happens to be located, although meetings may take place in the service providers or portfolio managers' province, as part of the due diligence and oversight regime carried out by our members. We do not consider this to be indicia of IFM activity in the province or territory where the service provider is located.

- "Delivery of unitholder reports" – this should be clarified to not include "delivery" in the sense that the reports are mailed *from* one province (generally the head office location) *to* a unitholder resident in another province. We consider that the appropriate phrasing should recognize that the reports are compiled and delivered from the head office location. The mere fact that the reports are *received* in a particular province should not be determinative of the question of whether IFM activity is being carried out in that province.

In conclusion, we are very disappointed that the CSA have been unable to come to a uniform position on this question. As we have indicated, we consider that the approach taken by the Nine CSA Members is the only approach that can be supported by regulatory policy and legislation.

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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,

Peter Lewis
Chair

James Deeks
Executive Director