

VIA EMAIL

September 23, 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

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Dear Sirs/Mesdames:

RE: Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* – Cost Disclosure and Performance Reporting - Released for comment June 22, 2011

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 amend National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to provide for mandatory cost disclosure and performance reporting.

Members of RESPDAC are C.S.T. Consultants Inc., Universitas Management Inc., Heritage Education Funds Inc. and Knowledge First Financial Inc. (formerly, 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.

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RESPDAC members are committed to facilitating Canadians' ability to plan for their children's and beneficiaries' future, by providing them with the tools to save for future costs of post-secondary education.

Each RESPDAC member 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.

The group RESPs administered and distributed by RESPDAC members are commonly referred by the CSA as “scholarship plans”¹. We use the terms group RESP and scholarship plan interchangeably in this letter.

RESPDAC members use their scholarship plan dealer registration to trade in securities of the group RESPs that they manage and administer. For the purposes of the comments provided in this letter, it is important to note that a RESPDAC member does not distribute any other security using this registration, other than its own group RESPs.

For the past several years, RESPDAC members have presented RESPDAC's proposals for an “ideal” modernized regulatory regime for scholarship plans and industry participants 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. We believe that any additional regulation of scholarship plans and their administrators and distributors, including these most recent proposals of the CSA, must take into account the complete package of regulation that applies to both the products (the scholarship plans) and to the industry participants (the investment fund managers and the dealers). To do otherwise, would run the risk of confusing investors and/or inundating them with duplicative or irrelevant information and also increase costs to the industry participants and the plans themselves.

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, through:

- (a) Clear, concise information provided to clients about the various relationships involved with scholarship plan investing – this information is provided at account opening in response to the requirements of NI 31-103 relating to relationship disclosure (RDI) and focuses on the clients' relationships with the dealers, but also the relationship of the investors with the various RESPs and the administrators of those RESPs. We provided OSC staff with copies of the relationship disclosure in use by RESPDAC members (other than Universitas, which was not then a member of RESPDAC) earlier this year to allow OSC staff to better understand what information RESPDAC members give investors as part of the RDI and

¹ 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, for example, RESPDAC's comment letter of June 22, 2010.

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- (b) Clear, concise information about the scholarship plans, their management and administration, their fees, their investments and the various other key terms that are essential for an investor to understand before making an investment. Today this information is provided to investors through the prospectus, which is in the form required by National Instrument 41-101 *Prospectus Requirements*, with additional disclosure that has been required by CSA staff over the past several years.

We urge the CSA to keep in mind, when working through these most recent cost and performance reporting proposals, that RESPDAC members provide investors with a copy of the prospectus for the plans generally **before** investors decide to invest in the Plans or -- as required by securities regulation -- within 2 days of a trade. This prospectus contains full, true and plain disclosure of all fees and charges that are levied by both the dealer and the plans at either an account or a plan level. RESPDAC sales representatives are trained to use the prospectus as part of the sales process, including pointing out the clear summary disclosure of the fees and costs that are associated with group RESP investing. This prospectus disclosure is supplemented by the RDI disclosure which again refers clients to the prospectus and the various fees and expenses that they will incur through their investment in group RESPs.

As you will be aware, the prospectuses of RESPDAC members are closely reviewed on an annual basis by the staff of the applicable principal regulators (the OSC and the AMF) and particularly in the last few years, RESPDAC members have supplemented the information required by Form 41-101F2 with disclosure specifically requested by OSC staff.

Other elements of RESPDAC's ideal regulatory model that are relevant to the CSA's most recent proposals regarding cost disclosure and performance reporting include:

- Ongoing disclosure to investors about the financial condition and performance of the plans through the financial statements (annual audited and semi-annual unaudited) and the annual management's report of fund performance required by National Instrument 81-106 *Investment Fund Continuous Disclosure*. These statements are available on line to all account holders [on SEDAR and each member's website] and accountholders are given the option of physically receiving these statements in hard copy. Accountholders are reminded annually about these statements as required by NI 81-106. Through these documents, investors have ready access to information about the costs and performance of the plans on an annual and semi annual basis.
- Annual statements of account provided to investors as required by NI 31-103. We discuss the unique features of RESPDAC members' statements of account below when we provide comments to the CSA on the proposed amendments to section 14.14 of NI 31-103.

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RESPDAC members wish to provide detailed comments on the CSA's proposals regarding cost and performance disclosure, since, as was noted by the CSA in one of its issues for comment, scholarship plans have unique features and certain of the rules proposed by the CSA do not fit well with investments made in scholarship plans. In our comments, we provide the CSA with our proposals for reporting that will be in lieu of what is proposed by the CSA, but still in keeping with the principles and regulatory rationale behind the CSA proposals. We very much appreciate that the CSA recognized these differences and asked for this specific feedback.

We emphasize that RESPDAC members are completely in favour of providing clear and concise information to accountholders/investors about their investment in scholarship plans – both at point of sale and on an on-going basis - so as to facilitate a greater understanding and to permit accountholders to thoroughly comprehend the nature of their investments, but also to allow accountholders to better plan for the costs of post-secondary education for their children and other beneficiaries. Our comments are designed not only to tailor this disclosure for scholarship plans, but also to ensure that our members provide information to a client that is meaningful, material and not clearly duplicated elsewhere. Duplicative information will only serve to overwhelm investors with “information”, rather than allow them to better understand their investments and to plan for future educational costs.

Before we provide our specific comments on the CSA's proposals, we urge the CSA to disregard the inflammatory and totally unsupported statement [apparently based on feedback from 2 investors] about the client statements of scholarship plan dealers made in the Allen Research Corporation's report to the CSA on Performance Report Testing. In January 2011, we sent OSC staff for their information samples of the account statements prepared by the then RESPDAC members. As will be apparent from reviewing these sample statements, RESPDAC members provide full, clear and easily understandable information to investors about their investments in the applicable plans in full compliance with the requirements of NI 31-103. RESPDAC members wish to ensure that their customers fully understand their investments on an on-going basis, including the costs and potential future benefits to be derived from their investments. Any complexities in scholarship plan statements are a result of the necessity to provide the separate level of detail about principal deposits, the various government grant deposits and income on those respective deposits.

Our comments on the specific CSA proposals follow the ordering of the NI 31-103 publication for ease of reference.

1. *Comments on subsection 14.2 (1) Relationship Disclosure Information*

Other than as noted below regarding benchmark disclosure, we have no substantive comments on the proposed amendments to subsection 14.2 of NI 31-103, however, we wish to comment on the new additions to the discussion about the RDI contained in the Companion Policy.

- (a) The new sentence included as a new paragraph under the heading *Content of relationship disclosure information* conforms with the business practices of RESPDAC members. RESPDAC members train their sales representatives about the particular RESPs distributed by the applicable dealer. Sales representatives spend substantial one-on-one time with prospective clients, usually in the clients'

home. We recommend, however, that this sentence refer specifically to the prospectus that is available for prospectus-qualified investments, such as securities issued under an IPO, investment funds and group RESPs. Particularly given the focus of the CSA in recent years in ensuring clear and concise disclosure documents (through Fund Facts and other summary prospectus information), we believe the CSA should specifically encourage dealers and their sales representatives to refer to these documents as part of the sales process.

- (b) We note that the CSA have expanded on the ordinary meaning of the terms “operating charges” and “transaction charges” in the Companion Policy. Given the integrated nature of RESPDAC members’ businesses, we have no issue in providing additional explanatory educational information in the RDI about the costs and charges that a client will incur if he or she invests in a group RESP, but we point out that this information will be duplicative of the more complete and specific information provided in the prospectus of the applicable group RESP. We consider providing explanatory educational information about costs and charges as appropriate, but of equal importance is the need to encourage investors to read the prospectus and to explain to those investors what information is contained therein. RESPDAC members do not, however, consider it appropriate to duplicate in the RDI, specific detailed information that is clearly set out in the prospectus (and that changes from time to time), given the need to ensure that investors do not receive overwhelming and duplicative information.

We encourage the CSA to confirm that the benchmark disclosure proposed by the draft amendments to section 14.2(1) of NI 31-103 does not apply to RESPDAC members or other firms, whose funds are required to, or who voluntarily, show their performance compared to appropriate benchmarks in their prospectuses or other investor documentation, including sales communications. Disclosure provided in the fund prospectuses (pursuant to NI 41-101 or NI 81-101) and elsewhere (such as in sales communications), is provided at a fund, and not individual account-level. We assume that the CSA did not intend to capture this use of benchmarks by funds in the new proposed “benchmark” disclosure requirements and we recommend a clarifying statement be provided in the Companion Policy.

2. *Comments on subsection 14.2 (3.1) [the “pre-trade” information]*

We recommend that the CSA clarify their expectations on how the specified information is to be provided to clients on a pre-trade basis by all registered firms. We assume that the different drafting of this section -- “the firm must disclose” -- compared with subsection (1) “the firm must deliver to a client” -- was deliberate and means that oral disclosure of the information required to be disclosed by subsection 3.1 will be sufficient. We request that the CSA clarify their expectations in the Companion Policy in this regard.

It is not clear to us after reading the Companion Policy discussion about this subsection, what the CSA’s intention is in proposing that registrants disclose to clients “the charges the client will be required to pay in respect of the purchase or sale”. Does this mean that the only specific (presumably oral) disclosure (that will be in addition to the prospectus and the RDI, in the case of RESPDAC members) to the client on a pre-trade basis will be of commissions? Given the

focus of the CSA to ensure that investors understand the costs and charges that they will incur once they are investors, we do not consider that this narrow disclosure focus will achieve the CSA's purpose for investments in mutual funds or other forms of securities, for example.

We strongly recommend that this subsection be rewritten to require a registered firm (here we are not referring only to scholarship plan dealers) to inform the client about the costs and charges that would be incurred by an investor after he or she makes the investment in question, which are disclosed in the current prospectus that is available for any publicly offered security. At the very least, investors should be referred to the available prospectus for this information; in our view, registrants have an obligation to highlight the availability of this information in the prospectus in a way that will reinforce the use of the prospectus as the definitive source of this information.

3. *Comments on subsection 14.2 (4.1) [the annual "cost" disclosure].*

RESPDAC members consider that their account statements today provide the information about costs and charges that is proposed by new subsection 14.2 (4.1).

We recommend that the CSA provide further clarity about the statement in the Companion Policy that reads "*we do not expect registered firms to provide clients with information on product-related charges since the range of products offered by a registrant may be quite broad and the types of products in a client's account may change over time*". If this statement is intended to signal that the CSA do not expect the annual cost statement to include *any* references to fees paid by the investors in mutual funds or other investment funds (i.e. management and administration expenses and operating costs), then we believe investors will not be receiving the information we consider important.

We understand the inherent (and practically impossible to surmount) difficulties in mathematically calculating how much of a fund's overall costs that are paid at a fund level could be said to be paid by each investor during the past 12 months. These difficulties would be multiplied by the number of funds' invested in and it is inappropriate (and impossible) for registered dealers to undertake this mathematical exercise. It would not be possible for RESPDAC members to calculate with any degree of accuracy, for example, how much of the plan administration fees that are paid for at a plan level without regard to the number of accounts, are attributable to an individual client's investment. Providing this calculation would be misleading to investors, given that these payments are made at a plan level, and not at an individual client level. Even if this calculation were possible, we consider that there is a strong possibility for client confusion, given that the group RESP disclosure documents list payments out of the plans; a client may consider he or she is paying fees twice – that is, once out of the plans and a second time directly out of his or her account.

Notwithstanding this, we do not believe it appropriate for the annual costs statements to say *nothing* about fees and expenses charged at a fund level if the account has invested in an investment fund, including a group RESP. We recommend that the annual statement of cost refer investors specifically to the continuous disclosure information that is readily available regarding investment funds (including privately placed mutual funds) pursuant to NI 81-106 and explain what information is available for those investors in those documents and how they may

access this information, as well as *why* they might wish to review this information. In this way, we consider that investors will be better served in understanding the costs of their investments.

Due to the integrated nature of RESPDAC members' businesses, RESPDAC members can report on certain fees that are paid *directly* by each accountholder out of his or her account during the year and are or will be in a position to provide this information to the accountholder on an annual basis.

We also ask the CSA to clarify their expectations about disclosure of referral fees in the annual costs statement. Given that NI 31-103 contains a full regime concerning referral fees, including advance disclosure to investors about referral arrangements (and the fees), we do not consider it necessary or appropriate for the annual costs disclosure proposed by these amendments. In the case of RESPDAC members, any "account-level" disclosure of referral fees will be next to impossible to calculate, not to mention potentially very confusing, given the nature of referral fees (which are paid for generally to acquire bulk lists of potential contacts). Requiring this information to be provided twice will result in investor confusion and overload of information.

4. *Comments on Subsection 14.14 Account Statements*

The new proposed subsection 5.2 isn't easily translatable to the type of investment made by customers of RESPDAC members in group RESPs, however we do not consider that any amendments or accommodations need to be made to the *rule* to deal with investments in group RESPs.

In addition to other material information, RESPDAC members provide the following information to clients on account statements in compliance with the current requirements of section 14.14:

- The amount of total deposits that have been made by a client in the group RESP – both for the year to date, as well as since inception of the client's own plan. The fact that fees are deducted from these total deposits are referred to.
- The amount of total government grants (itemized by type of government grant, where a client may have received money from federal as well as provincial programs) - again for the year to date, as well as since inception of the plan.
- The amount of income that has been attributed to the client's principal invested in the Plan – broken out to show income on the deposits made by the client and income on the government grants.

Because investors in scholarship plans make regular deposits into a group RESP² – the concept of a "market value" of a "security" (the group RESP contract) does not apply. In essence, the above-noted information will provide investors with the "market value" of their investment in a group RESP. Although we do not consider this essential, it may be beneficial for the CSA to

² We note that these payments are not "trades" in a security nor are they necessarily "transactions" within the meaning of more traditional securities investments. They are payments according to a contract where such payments are agreed to between the subscriber and the Plan when the contract is first entered into (that is, when the "security" was first acquired).

clarify in the Companion Policy the type of information that is provided to investors in group RESPs and explain why this information is appropriate and meets the CSA's goals. We would be pleased to assist the CSA further in developing this Companion Policy reference.

5. *Comments on Proposed Section 14.15 and 14.16 – Performance Reporting*

RESPDAC considers that sections 14.15 and 14.16 need additional tailoring to reflect the unique nature of a scholarship plan and the form that a client's investment in a group RESP takes. RESPDAC members emphasize their agreement with the concept of registered firms, including registered scholarship plan dealers, providing clients with clear and easily understandable information about how their account has performed.

In the case of RESPDAC, members provide information to clients about how their investment has performed, through a combination of³:

- The annual account statement, which includes actual performance of the client's account to date since inception of the account, as well as an illustration of the future benefits that the client can expect at the maturity date and until full payout for their RESP, if the client continues to make the deposits according to his or her contract. We discuss this illustration of future benefits below.
- The information provided in the annual and semi-annual financial statements and the annual Management Report of Fund Performance that are prepared by each plan pursuant to NI 81-106. Investors receive annual notice of these documents and have ready access to them on line (through SEDAR, their own individual account portal and through general postings on RESPDAC member websites).
- It is also important to note that each plan prospectus is renewed annually and this document contains information about the performance of each plan over the past year. The current prospectus of each plan is accessible through SEDAR and website postings on member websites.

Over the past year, RESPDAC members developed a member Code that they each adhere to. We provided *The Members' Code Providing Prospective and Current Subscribers with Illustrations of Expected Future Benefits for Beneficiaries* to staff of the Investment Funds and the Compliance and Registrant Regulation Branches of the OSC for their information. RESPDAC worked closely with staff of the OSC's Investment Funds Branch to ensure that any concerns raised by those staff members were dealt with in the final version of the Code.

The Code is primarily designed to set out a consistent standard for providing both prospective and current subscribers with information about their investment in a way that allows the subscriber to easily understand their investment and the status of their savings for their children's post-secondary education.

Concerning information for prospective investors, the Code explains:

³ Various RESPDAC members are refining their annual account statements in order to ensure the information described herein is provided to accountholders.

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RESPDAC members may wish to provide potential subscribers with illustrations about what the proposed beneficiary or beneficiaries could potentially receive after maturity of the Plan – including principal repayment, government grants, education assistance payments and any enrolment fee refunds. These illustrations may be provided by a sales representative before the potential subscriber enters into an RESP agreement with the applicable Plan, as part of the information given to the potential subscriber about his or her options for the applicable beneficiary or beneficiaries. These illustrations are intended to be part of the information package for the potential subscriber and assist him or her in making a decision about whether or not to set up an RESP with a RESPDAC member.

With respect to information to current investors, the Code explains:

RESPDAC members may wish to provide current subscribers who have entered into an RESP agreement with the applicable Plan, with periodic information about what the beneficiary or beneficiaries could potentially receive after maturity of the Plan – including principal repayment, government grants, education assistance payments and any enrolment fee refunds. These illustrations may be provided to the subscriber with the subscriber’s annual or semi-annual statements about his or her RESP and are intended to assist the subscriber in understanding his or her RESP investment and allow better future planning for his or her beneficiaries’ post-secondary education. The illustrations provided after point of sale will be based on the actual performance of the subscriber’s RESP to date and will provide future projections based on this actual performance.

Through complying with the Code, when coupled with the other account statement information provided (as described above), RESPDAC members consider they provide investors with information that is comparable to the proposed performance reporting mandated for other types of investments. RESPDAC members consider the disclosure provided to accountholders pursuant to the RESPDAC Code is appropriate, given:

- The Code illustrations reflect the proper time horizon of a plan – generally 15 years and beyond from the initial investment.
- The Code illustrations emphasize the long-term nature of a plan – performance calculations that tie into past year or years for a relatively new plan will be confusing and misleading for an accountholder, given that enrolment fees are deducted from upfront deposits.
- The Code illustrations take into account attrition and enhancements of the plans, which would not be captured in a more traditional “past performance” calculation.

For these reasons, RESPDAC members respectfully request that sections 14.15 and 14.16 contain an exemption for scholarship plan dealers on the condition that they provide clients with information that is in a form consistent with the RESPDAC Code of Illustrations of Future Benefits. In light of the CSA’s proposals for performance reporting, and similar to our views expressed above, we consider it important for all registered dealers who have clients invested in investment funds subject to NI 81-106 to remind investors on the account statement that they can obtain information about the performance of the specific investment funds by reviewing the

annual (and semi-annual, where applicable) Management's Report of Fund Performance and explain where this information can be accessed. We recognize that dealers distributing more than one type of security should also supplement this information with account-level performance in the ways proposed by the CSA, but in the case of scholarship plan dealers that only distribute one type of security – we consider this additional disclosure will be sufficient to remind investors about how they may obtain additional important information about the performance of their investment.

6. *Comments on Transition Periods*

We note that different transition periods are proposed for the new proposed requirements, where some provisions will come into force immediately (section 14.2(3)); others have at least a two year transition period. We consider that a uniform transition period should be in place for **all** of these requirements, given the amount of preparation and overhauling of procedures and systems that will be necessary to put in place to comply with the Proposed Amendments. The uniform transition period should not be any shorter than the proposed two-year period suggested for much of the Proposed Amendments.

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 this important initiative. 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. Our members would be very amenable to meeting with staff to answer any questions or to provide any additional information necessary to understand group RESPs and the information that is most important and relevant to investors in these vehicles.

Yours very truly,



Peter Lewis
Chair



James Deeks
Executive Director