

VIA EMAIL

September 29, 2010

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:

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Dear Sirs/Mesdames:

RE: CSA Notice and Request for Comments – Notice of Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* and National Instrument 33-109 *Registration Information*

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) and National Instrument 33-109 *Registration Information* (NI 33-109) which were published for comment on June 25, 2010.

Members of RESPDAC are: C.S.T. Consultants Inc., Children's Education Funds 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 a scholarship plan dealer. All

members have also now applied for registration with the Ontario Securities Commission as investment fund managers with respect to their activities as investment fund managers (as defined) of the various RESPs so offered to the public.

We wish to commend the CSA for publishing a blacklined version of the various national instruments which has gone a long way in facilitating our members' review of the proposals.

Our comments are as follows:

1. Support for the Amendments to Section 13.2 of NI 31-103

We appreciate the CSA proposing to make the changes to section 13.2 to exempt scholarship plan dealers from having to ascertain whether or not their clients are insiders of reporting issuers. As we have submitted in past correspondence with the CSA, this information has no relevance to investments made by subscribers into RESPs of the nature distributed by our members.

2. CSA Future Proposals Regarding Reporting on Complaints

In the June Notice, the CSA explain that they are working on a proposal for registrants to report complaints to the regulator. Given that the Quebec regulation has required complaint reporting for some time, unless this regulation is amended to be consistent with the CSA's proposals, we strongly recommend that the CSA's proposals be identical with those of Quebec, so as to lessen the compliance burden on registrants. Different reporting regimes could add considerable costs to our members' cost of compliance and would add to the confusion surrounding the various rules that apply in different jurisdictions.

3. Amendments to Section 14.5 of NI 31-103

We appreciate that the amendments will clarify that our members will not have to provide the "non-resident" information provided that they have a "physical place of business" in a particular province. We are assuming that this latter term will include having sales representatives who are registered under our member's firm registration in a province or territory. It does not seem appropriate for our firms, which are all pan-national, Canadian firms, to have to give the sort of disclosure required by this section to clients in any part of Canada.

4. Amendments to Section 14.14 of NI 31-103

We recommend that NI 31-103 provide further clarity for our members with respect to account reporting, given our member's firms dual role as scholarship plan dealers and IFMs of scholarship plans. The relationships inherent in entering into a RESP are such that once an investment decision is made with the assistance of the scholarship plan dealer's sales representative; subscribers actually contract with the Foundation or the IFM and enter into a scholarship plan agreement (or RESP). Thereafter, the subscriber's relationship is with the firm in its capacity as IFM and is not with the scholarship plan dealer. It is the IFM that sends the annual client account statements, although currently, each member also affixes the name of the dealer to the account statements as required by subsection 14.14(6) of NI 31-103. We recommend that section 14.14 clarify that the annual account statement requirement be placed on

the IFM and not on the dealer so as to more properly align the regulatory requirements with the actual contractual relationships with respect to scholarship plans.

5. Comments on the revised NI 33-109 Forms

Form 33-109F4 – Schedule F – the new disclosure regarding “relevant securities experience” required by item 8.4 – the last instruction should read “Indicate the continuing education activities **and relevant experience** which you have participated in **or have, as the case may be**, and which are relevant to the category of registration you are applying for.” We believe the bolded words are necessary to make sense of the disclosure requirement.

6. Comments on the Implementation of NI 31-103

The primary observation made by our members concerning the implementation of NI 31-103 is that notwithstanding its coming into force, which our members view as largely positive, and the passport system for registration application filings, they still must understand individual administrative positions of the staff in the various provinces, which can be at odds with the rules and principles set out in NI 31-103. Oftentimes, these administrative positions are not in writing and accordingly members of RESPDAC only find out about these administrative positions on an ad hoc basis, which can add considerable time and burdens on the individual member firms in moving forward with registrations. The fact that individual securities commissions will continue with their particular unwritten administrative practices is not apparent from reading the material surrounding the various publications of the versions of NI 31-103.

The four issues raised by members of RESPDAC are set out below with respect of implementation issues.

1. Consistency on approach to registration of branches.

Notwithstanding that the CSA in NI 31-103 removed the concept of branch registration; several of the members of the CSA apparently still require scholarship plan dealers to register branches. RESPDAC members have obtained the following feedback from the provinces indicated:

- (a) Alberta: Sub-branch offices must be registered
- (b) Manitoba: Sales representatives that live more than one hour from any branch must be registered as a sub-branch and pay additional registration fees.
- (c) Newfoundland: Sales representatives that live or work more than 100 kilometres from a branch must be set up as a sub-branch.

RESPDAC members would benefit from a more thorough understanding about (i) why branches and sub-branches are still required for registration purposes, given the regulatory requirements of NI 31-103 and (ii) how these requirements fit with the concept under NI 31-103 that branch registration is not mandated. RESPDAC members are of the view that the general principles in NI 31-103 concerning supervision of sales representatives and compliance systems should suffice to ensure appropriate monitoring in the provinces.

2. *Other activities of sales representatives*

Members of RESPDAC are still being informed by applicable regulators (some of whom are noted below) that the regulators will categorically reject any application for registration of a sales representative who is also employed as a teacher in any capacity. Members of RESPDAC have this experience from attempting to register sales representatives who are so employed in:

- Alberta
- Saskatchewan
- Nova Scotia

We would appreciate understanding the regulatory rationale for this, assuming that the firm has in place strict and appropriate controls over conflicts of interest and supervision of its sales representatives. Related to this issue, at least in Alberta, is an apparent requirement that all sales representatives be employed on a full time basis with the applicable dealer firm. As has been put forward before, particularly for a commission-based sales force, such as those in place for the members of RESPDAC, it can be very difficult for a sales representative to make a living distributing only scholarship plans. This is especially a concern when the sales representative is just starting out. Many sales representatives need to have another job in which to earn some additional income.

3. *“Employment” v.s. “agency relationships of sales representatives*

It is common for sales representatives of members of RESPDAC to not consider themselves to be employees of the various dealer firms. These sales representatives are “independent contractors” and have an agency relationship with the dealer firms. This is similar, of course, to the relationships in place for many years for mutual fund dealers. We were pleased to note that with the advent of NI 31-103, securities regulation now explicitly recognizes that sales representatives may not be “employees” or “employed by” the dealer firms. We would like to ensure that the administrative practices of each of the CSA members reflect this position now recognized in NI 31-103. For example, in the past staff of the New Brunswick Securities Commission reportedly took the position that a dealer firm would have to issue tax reporting to all of its agents on the basis these agents were “employees”. This is generally not the case, and the members of RESPDAC would like to ensure that this administrative practice is not continuing in any jurisdiction under NI 31-103.

4. *AMF and E & O Insurance for Sales Representatives*

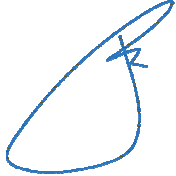
Members of RESPDAC have been informed that sales representatives registered in Quebec must maintain separate errors and omissions insurance, notwithstanding that the firms all have the required insurance under NI 31-103 and this insurance covers acts and omissions by the sales

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representatives. Members of RESPDAC would benefit from understanding the exact requirements of the AMF and the rationale for the different requirements.

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,

A handwritten signature in blue ink, appearing to be 'Paul Renaud', written in a cursive style.

Paul Renaud
Chair

A handwritten signature in blue ink, appearing to be 'James Deeks', written in a cursive style.

James Deeks
Executive Director