

c. V-1.1, r. 44

REGULATION NO. 15 RESPECTING CONDITIONS PRECEDENT TO ACCEPTANCE OF SCHOLARSHIP OR EDUCATIONAL PLAN PROSPECTUSES

Decision 2001-C-0567, Title; Decision 2001-C-0568, s. 1; M.O. 2005-19, s. 1.

Securities Act

(R.S.Q., c. V-1.1, s. 331.1)

1.1. The sale of contracts or plans commonly referred to as "**scholarship plans**" or "**scholarship agreements**" must be subject to the following conditions before the prospectus will be acceptable for filing:

(1) A very clear distinction must be drawn between the "**foundation**" (which is described as a body without any profit motive or desire for pecuniary gain) and the distributor (the registered distribution agency who sell the plan under a commission arrangement often described as an "**enrolment fee**") in order that the public will not be induced into the error of believing that there are no sales charges or other commissions.

(2) The scholarship plan distributors and salesmen, of course, must hold registration under the specific provincial acts. The use of such expressions as "**education counsellors**", "**scholarship counsellors or advisers**", "**enrolment counsellors**" is viewed as misleading and should not be used.

(3) The funds received from the subscribers must be deposited with a Canadian chartered bank or a provincially licensed trust company or other similar financial institution whose accounts are normally insured by the Canada Deposit Insurance Corporation or *La Régie de l'assurance-dépôts du Québec*. Where a subscriber's account is not afforded the protection of insurance by the Canada Deposit Insurance Corporation or *La Régie de l'assurance-dépôts du Québec*, the fund administrator must ensure that such subscriber's account is considered to be assets under administration in the hands of the depository.

(4) The fund administrator, which is usually the "**foundation**", will secure the best interest rate possible on the deposits, and the interest paid on the subscriber's capital shall be transferred to a trust fund held by the same depository which in turn will be administered for the benefit of the beneficiaries of the plans. In securing the best interest rate possible the fund administrator may, where not contrary to the scholarship agreement, cause the subscriber's deposits to be invested in mortgages provided that such mortgages are:

(a) first mortgages on residential properties of 8 units or less located in Canada and having a maturity not exceeding 5 years, provided that first mortgages may be on residential properties of more than 8 units when the following conditions are met:

(i) the scholarship plans under administration have total net assets of at least \$50,000,000;

(ii) the mortgages are insured under the National Housing Act (R.S.C. 1985, c. N-11) or any similar provincial statute or are insured by an insurance company registered or licensed under the Insurance Companies Act (S.C. 1991, c. 47) or any insurance acts, or any similar statute of a Canadian province or territory; and

(iii) not more than 20% of the funds from sources described in 4(h)(i) and 4(h)(ii) below are invested in such mortgages on residential properties of more than 8 units;

(b) an amount which is not more than 75% of the fair market value of the property securing the mortgage, except when:

(i) such a mortgage is insured under the National Housing Act or any similar act of a province; or

(ii) the excess over 75% is insured by an insurance company registered or licensed under the Insurance Companies Act or insurance acts or similar acts of a Canadian province or territory;

(c) acquired from a lending institution with which the fund, the administrator of the fund, the trustee(s) and the distributor of the fund are dealing at arm's length;

(d) purchased and sold at fair market value, i.e. that principal amount which produces at least the yield prevailing for the sale of comparable fully serviced mortgages as established by major mortgage lenders under similar conditions;

(e) fully funded, serviced and not in arrears at the date of acquisition;

(f) not on a property in which:

(i) the administrator, the trustee or the distributor of the fund or any senior officer or director thereof, or

(ii) any person or company who is a substantial security-holder of the administrator, a trustee or the distributor of the fund, or

(iii) any associate or affiliate of persons or institutions mentioned in subparagraphs (i) and (ii),

has an interest as mortgagor or as an associate of a mortgagor;

(g) limited in amount, in respect of any one mortgage, to \$75,000 for funds having less than \$5,000,000 in net assets; and to the lesser of \$500,000 or 2.5% of its net assets where they exceed \$5,000,000 but are less than \$50,000,000; and to the amount not exceeding 1.0% of its

net assets for funds having \$50,000,000 or more in net assets. For the purpose of this paragraph, a series of mortgages on one condominium development shall be considered as one mortgage;

(h) restricted in total to an amount not greater than 75% of

(i) funds arising from new contracts sold to subscribers pursuant to a prospectus which contains disclosure of the arrangements in respect of mortgage investment and which has been accepted for filing by the Administrator; and

(ii) funds held on behalf of subscribers who, after receipt of an information circular which has first been filed with and accepted by the Administrator, have agreed in writing to permit their plan contracts to be included in the mortgage investment arrangement;

(i) on properties appraised by a qualified appraiser such as a bank, trust company, loan company or insurance company, or other person or company which makes appraisals and whose opinions are relied upon in connection with lending or servicing activities, and who in the judgment of the management company or trustee of the specific fund is properly qualified to make such a determination;

(j) not on raw land or undeveloped land.

(5) The depository must maintain an accounting system which will permit it to determine the total amount of deposits made by each subscriber, all deductions from such deposits and the amount of interest produced by the deposits of each subscriber.

(6) The trust funds shall be administered pursuant to a trust indenture or deed in accordance with the terms detailed in the prospectus, and must contain a provision under which a licensed trust company agrees to act in the place of the foundation in the event that the foundation refuses to or is unable to act.

(7) The fees charged, including the commissions of the distributor and its salesmen, must not exceed \$200 per plan. The first \$100 paid under the plan may be applied against this fee and the balance may be deducted at a maximum rate of 50% of each of the further contributions.

(8) From these fees sufficient funds must be set aside in trust to pay the future costs of administering the trusts established under 6. These funds shall not be used directly or indirectly for any other purpose. The costs of distribution must be borne fully by the distribution company. Any additional sums rebated or otherwise paid by the depository to assist in the payment of the charges for administration of the funds shall be held in trust by the foundation solely for this purpose and shall not be paid directly or indirectly for any other purpose.

(9) The plan must grant the subscriber the right to withdraw from the plan without any cost to the subscriber within 60 days from the execution of the contract.

(10) Where the subscriber wishes to withdraw from a plan after 60 days from the date of the execution of the contract, the subscriber shall not be obliged to pay any fees in addition to those already paid, but may lose the total amount of fees paid to that point.

(11) It is considered contrary to the public interest to accept for filing a scholarship plan which calls for the complete forfeiture of the capital and accumulated interest in cases where the

plan is abandoned before its maturity. The same shall apply to so-called "special" plans which consist of the simple deposit by the subscriber of an amount equivalent to the interest, without any right to reimbursement.

(12) The schedule of instalment payments must be equitable for all children enrolled. In the setting of the schedules, accounts must be kept of the age of the children and the number of instalments foreseen so that there is an actuarial equivalent between the instalments foreseen for each age and each plan. Accordingly the so-called "family plans" are not acceptable.

(13) All beneficiaries must participate equally in the advantages of the plan. The foundation or trustee must make provision in the trust indenture for the payment of equivalent scholarships for each of the eligible participants.

(14) Scholarship plan agreements must be filed with the preliminary prospectus (or prospectus as the case may be) as part of the supporting material together with a copy of the trust agreement.

(15) The prospectus shall clearly indicate on its front page the speculative nature of the scholarship plans, the real cost of participation in the plan to the subscriber and the tax consequences on the subscriber.

Decision 2001-C-0567; Decision 2001-C-0568, s. 3, 4, 11 and 13; M.O. 2005-19, s. 2.

Decision 2001-C-0567, 2001-12-11
Bulletin hebdomadaire: 2001-12-14, Vol. XXXII n° 50

Amendments

Decision 2001-C-0568, 2001-12-11
Bulletin hebdomadaire: 2002-01-25, Vol. XXXIII n° 03

Decision 2005-PDG-0236, 2005-08-09
Bulletin de l'Autorité: 2005-08-26, Vol. 2 n° 34
M.O. 2005-19, 2005 G.O. 2, 3516
