

2007 BCSECCOM 399

June 19, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - AIF requirement - A fund wants relief from subsection 9.2 of NI 81-106 that requires a fund that does not have a current prospectus as at its financial year end to prepare an annual information form - The fund is a scholarship plan with multiple classes or series of shares; some of the classes or series are no longer in distribution; most of the information that NI 81-106 would require the fund to include in an AIF for a class or series that is no longer in distribution is included in the current prospectus for the classes or series that the fund is still distributing; the current prospectus will disclose the material differences between the classes or series currently distributed and the discontinued classes or series; the fund will provide a copy of the current prospectus to any holder of the discontinued class or series who requests a copy

Applicable British Columbia Provisions

National Instrument 81-106, ss. 9.2 and 17.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon,
Northwest Territories and Nunavut
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
USC Education Savings Plans Inc.
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under

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the securities legislation of the Jurisdictions (the Legislation) for an exemption from the annual information form (AIF) requirements in the Legislation (the AIF Requirement).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-401 *Definitions* have the same meaning in this decision unless they are defined in the decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*.
2. Each of the following scholarship plans (each, a Plan and collectively, the Plans) is administered by the Filer:
 - (a) USC Family Group Education Savings Plan (the “Family Group Plan”);
 - (b) USC Family Single Student Education Savings Plan (the “Family Single Student Plan”);
 - (c) USC Family Multiple Student Education Savings Plan (the “Family Multiple Student Plan”); and
 - (d) the Horizon Plan.

The Family Group Plan, the Family Single Student Plan and the Family Multiple Student Plan are hereinafter collectively referred to as the “Active Plans”.

3. Each of the trusts that has offered a Plan or is currently offering a Plan is a reporting issuer or the equivalent thereof as defined in the securities legislation of each Jurisdiction, where such status exists.

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4. The Horizon Plan is an investment fund in the Jurisdictions for the purposes of National Instrument 81-106 - *Investment Fund Continuous Disclosure* (NI 81-106).
5. Each of the Active Plans is an investment fund for the purposes of NI 81-106.
6. The current offering of the Active Plans is being made pursuant to a prospectus dated August 9, 2006, in respect of the continuous offering of education savings plan agreements.
7. The prospectus' lapse date is August 9, 2007 and USCI does not intend to renew the Horizon Plan. Accordingly, there will be no current prospectus for the Horizon Plan and therefore scholarship plan agreements evidencing interests in the Horizon Plan will no longer be offered for sale. Sales of interests in the Horizon Plan will cease on or before August 9, 2007.
8. The Horizon Plan is a scholarship plan. The Horizon Plan is structured as long term savings plan designed to help the contributors (each, a Subscriber) save amounts to assist the beneficiary designated by the Subscriber in paying for the expenses of the beneficiary's post-secondary education.
9. The principal contributed to the Horizon Plan by a Subscriber is returned to the Subscriber after the maturity date specified in the Subscriber's scholarship plan agreement. At the maturity date, income earned on contributions made in respect of the beneficiary is available to be issued as education assistance payments ("EAPs") to the beneficiary subsequent to such beneficiary's enrolment as a student in a qualifying educational program.
10. A beneficiary of a Subscriber to the Horizon Plan is eligible to receive EAPs from the income earned on such plan together with the corresponding amount of government grants (and income earned thereon) that have been contributed to the Plan for the beneficiary.
11. While a Subscriber is entitled to a repayment of principal in the event of the early termination of a scholarship plan agreement, the income earned on the amount of that principal is forfeited unless the Subscriber qualifies at that time for an accumulated income payment ("Accumulated Income Payment") as provided for under the *Income Tax Act* (Canada).
12. All of the Horizon Plan scholarship plan agreements will have reached their maturity dates as of 2023. The final EAPs will be paid to beneficiaries of the Horizon Plan in 2023, following which the Horizon Plan will be wound up.

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13. The Filer intends to continue to annually file a renewal prospectus to permit the continued offering of the Active Plans or another scholarship plan that operates on similar terms and conditions as the Active Plans.
14. The renewal prospectus for the Active Plans will contain all material information that would otherwise have been included in the AIF for the Horizon Plan.
15. The significant differences between the Horizon Plan and Active Plans occur in the following areas:
 - (i) the Horizon Plan does not have a deposit schedule to follow;
 - (ii) the Horizon Plan does not include plan insurance;
 - (iii) the management fee charged on the Horizon Plan is 1.95% per annum; and
 - (iv) the Horizon Plan charges early withdrawal fees.
16. Section 9.2 of NI 81-106 requires an investment fund that does not have a current prospectus as at its financial year-end to file an AIF.
17. Most investment funds follow a disclosure regime that allows them to omit information from their prospectuses provided that this information is accessible to investors and prospective investors in an AIF. Scholarship plans are not permitted to use this simplified system and there is no requirement for scholarship plans to include the information required by the form for an AIF in a prospectus.

Decision

Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation of each Jurisdiction is that the Filer shall not be required to prepare and file an annual information form for the Horizon Plan in accordance with the AIF Requirement, provided that:

- (a) the renewal prospectus for the Active Plans discloses the material details of the significant differences between the Horizon Plan and the Active Plans;

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- (b) at the request of a Subscriber to the Horizon Plan, the Filer will send, without charge, to the Subscriber within ten days after the Filer receives the request, a copy of the most recent prospectus for the Active Plans; and
- (c) for each Jurisdiction, this decision shall terminate one year after the coming into force of any rule or other regulation under the Legislation of the Jurisdiction that relates, in whole or in part, to continuous disclosure applicable to scholarship plans.

Rhonda Goldberg
Manager, Investment Funds Branch
Ontario Securities Commission