

# 2003 BCSECCOM 724

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – exemption from the requirement to deliver comparative annual and interim financial statements to registered securityholders of certain scholarship plans – copies of financial statements to be delivered on request

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 91

*Securities Rules*, B.C. Reg. 194/97, s. 149

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, NEWFOUNDLAND, NOVA SCOTIA, ONTARIO, QUÉBEC, AND SASKATCHEWAN**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF HERITAGE PLANS and IMPRESSION PLAN**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Québec, and Saskatchewan (the “Jurisdictions”) has received an application from Allianz Educational Foundation (the “Foundation”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Heritage Plans and Impression Plan (collectively, the “Plans”) be exempt from the requirement to send to their members (“Members”) interim and annual financial statements, and an annual report, where applicable, unless they have requested to receive them;
2. AND WHEREAS pursuant to section 3.2 of National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (the “System”), the Ontario Securities Commission is the principal regulator for this Application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-401 *Definitions*;

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4. AND WHEREAS the Foundation has represented to the Decision Maker that:
- 4.1 The Foundation is a non-profit corporation without share capital incorporated by Letters Patent dated December 1, 1986 as Heritage Scholarship Trust Foundation under the *Canada Corporations Act* (and formerly known as Heritage Scholarship Trust Foundation).
  - 4.2 The head office of the Foundation is currently located in Toronto, Ontario.
  - 4.3 The Foundation is the administrator and promoter of the Plans, which are contractual arrangements pursuant to which trusts are established to hold property under a registered education savings plan (an “RESP”).
  - 4.4 Neither the Foundation nor the Plans are mutual funds.
  - 4.5 The Plans are reporting issuers in all of the provinces and territories of Canada.
  - 4.6 The Plans are not in default of the requirements of the Legislation.
  - 4.7 Securities of the Plans are presently offered for sale on a continuous basis in all of the provinces and territories of Canada pursuant to an amended prospectus dated June 25, 2003.
  - 4.8 The securities offered in respect of the Plans are units in a trust in which a Member agrees, pursuant to an education savings plan contract (the “Contract”), to make deposits to one of the Plans on behalf of a nominated child.
  - 4.9 The Member authorizes certain deductions from such deposits and the net deposits accumulated over the term of the Contract are returned to the Member at maturity, with the income earned thereon (in specified circumstances) paid to the nominated child.
  - 4.10 Each of the Plans is required to deliver to its Members (i) annual financial statements and an annual report, where applicable, within 140 days of its financial year end, and (ii) within 60 days of the date to which its interim financial statements are made up, interim financial statements. By Order of the Commission dated June 27, 1994, Heritage Scholarship Trust Plan (the former name of Heritage Plans) was exempted from the requirement to file and send to its Members interim

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financial statements for each of the first and third quarters of each of Heritage Scholarship Trust Plan's financial years.

- 4.11 Members will be able to access the Plans' interim and annual financial statements, and annual report, where applicable, either on the SEDAR website or on the website of the Foundation or by telephoning a toll-free number and will be periodically advised of their availability.
- 4.12 The Foundation will send to Members of the Plans in each year a notice advising them that they will not receive the interim financial statements for the relevant period or annual financial statements and annual report, where applicable, for the year then ended unless they request same, and providing them with a request form to send back, by telecopy or prepaid mail, if they wish to receive the interim and annual financial statements, and annual report, where applicable. The notice will advise the Members where the interim and annual financial statements, and annual report, where applicable, can be found on the Internet (including on the SEDAR website) and downloaded. Members will also, at any time, be able to receive the interim and annual financial statements, and annual report, where applicable, by telephoning or telecopying the Foundation to request same. The Foundation would send the interim and annual financial statements, and annual report, where applicable, to any Member who requests them in response to such notice or who at any time requests them.
- 4.13 There would be substantial cost savings if the Plans are not required to print and mail interim and annual financial statements, and annual reports, where applicable, to those Members who do not want them.
- 4.14 The Canadian Securities Administrators have published for comment proposed National Instrument 81-106 ("NI 81-106") which, among other things, would permit an investment fund not to deliver interim and annual financial statements to those of its members who do not request them, if the investment fund provides each member with a request form under which the member may request, at no cost to the member, to receive the investment fund's interim and annual financial statements for that financial year.
- 4.15 NI 81-106 would also require an investment fund to have a toll-free telephone number for, or accept collect calls from, persons that want to receive a copy of, among other things, the interim and annual financial statements of the investment fund.

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- 4.16 The Foundation will deliver to its Members any requested interim or annual financial statements within ten business days of the later of filing the statements or receiving a request from a Member.
5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
7. AND WHEREAS the Decision Makers are satisfied that making the Decision will not adversely affect the rule-making process with respect to proposed NI 81-106 and is consistent with NI 54-101;
8. THE DECISION of the Decision Makers pursuant to the Legislation is that the Plans shall not be required to deliver their interim and annual financial statements, and annual report, where applicable, to their Members other than to those Members who have requested to receive them, provided that:
- (a) the Plans shall file on SEDAR, under the interim and annual financial statements categories, respectively, confirmation of mailing of the request forms that have been sent to the Members as described in clause 4.12 of the representations within 90 days of mailing the request forms;
  - (b) the Plans shall file on SEDAR, under the interim and annual financial statements categories, respectively, information regarding the number and percentage of requests for interim and annual financial statements, and annual report, where applicable, made by the return of the request forms, on a province-by-province basis within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;
  - (c) the Plans shall record the number and summary of complaints received from Members about not receiving the interim and annual financial statements, and annual report, where applicable, and shall file on SEDAR, under the interim and annual financial statements categories, respectively, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request forms and ending 12 months from the date of mailing;
  - (d) the Plans shall, if possible, measure the number of “hits” on the interim and annual financial statements, and annual report, where applicable, of

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the Plans on the Foundation's website and shall file on SEDAR, under the interim and annual financial statements categories, respectively, this information within 30 days after the end of each quarterly period beginning from the date of mailing the request form and ending 12 months from the date of mailing;

- (e) the Plans shall file on SEDAR, under the interim and annual financial statements categories, respectively, estimates of the cost savings resulting from the granting of this Decision within 90 days of mailing the request forms;
- (f) the exemption granted in this Decision shall expire upon the coming into force of NI 81-106; and
- (g) the exemption granted in this Decision will terminate 30 days after the occurrence of a material change in the Plans' affairs, unless the Plans satisfy Ontario and the Non-Principal Jurisdictions that the exemption granted should continue.

DATED October 10, 2003

Robert L. Shirriff  
Robert W. Davis