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August 15, 2006

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 the securities legislation of the Jurisdictions (the Legislation) for an exemption

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from the annual information form (AIF) requirements in the Legislation (the AIF Requirements).

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 together with the Family Single Student Plan, the Active Individual Savings Plans);
 - (d) USC Horizon Education Savings Plan (the Horizon Plan);
 - (e) USC Classic Education Savings Plan (the Classic Plan);
 - (f) USC Family Multiple Student "Grandfathered" Education Savings Plan (the Multiple Grandfathered Plan); and
 - (g) USC Family Single Student "Grandfathered" Education Savings Plan (the Single Student Grandfathered Plan and together with the Multiple Grandfathered Plan, the Grandfathered Plans).

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The Classic Plan and the Grandfathered Plans are hereinafter collectively referred to as the Discontinued Plans. The Family Group Plan, the Family Single Student Plan, the Family Multiple Student Plan and the Horizon 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.
4. Each of the Discontinued Plans 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 Plans (other than the Discontinued Plans) is being made pursuant to a prospectus dated August 30, 2005, in respect of the continuous offering of education savings plan agreements.
7. Scholarship plan agreements evidencing interests in the Discontinued Plans are no longer being offered for sale, and therefore there is no current prospectus for the Discontinued Plans. Sales of interests in the Discontinued Plans ceased on the respective dates set out below:
 - (a) Classic Plan: August 22, 2000; and
 - (b) Grandfathered Plans: August 13, 1999.
8. The Discontinued Plans are scholarship plans. These plans are structured as long term savings plans 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. Each Subscriber committed in their respective scholarship plan agreements to make contributions to a Plan in accordance with a predetermined deposit schedule. The deposit schedules for scholarship plans such as the Discontinued Plans are designed to generate approximately the same amount of income per unit for all beneficiaries of contributors to the same plan who are expected to commence their post-secondary education in the same year. This is the year in which a Subscriber's scholarship plan agreement matures and is the basis for determining the year (a Year of Eligibility) in which the beneficiaries of scholarship plan agreements maturing in the same year will

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become eligible to collect their first education assistance payments (each, an EAP).

10. The principal contributed to a Discontinued Plan by a Subscriber is returned to the Subscriber after the maturity date specified in the Subscriber's scholarship plan agreement. For the Classic Plan, at the maturity date, income earned on contributions made in respect of beneficiaries sharing the same Year of Eligibility is pooled in a fund (an EAP Fund) out of which EAPs are made to these beneficiaries subsequent to enrolment as students in a qualifying educational program. The EAPs may also include (i) a share of income earned on contributions made by other Subscribers with beneficiaries sharing the same Year of Eligibility whose participation in the same Plan terminated before maturity or whose beneficiaries did not claim the maximum number of EAPs and (ii) discretionary amounts that may be paid by The International Scholarship Foundation out of its general funds.
11. A beneficiary of a Subscriber to a Discontinued Plan is eligible to receive EAPs out of the applicable EAP Fund, representing the beneficiary's interest in the fund together with the corresponding amount of government grants (and income earned thereon) that have been contributed to the Plan for the beneficiary.
12. All of the Classic Plan scholarship plan agreements will have reached their maturity dates as of 2019. The final EAPs will be paid to beneficiaries of the Classic Plan in 2022, following which the Classic Plan will be wound up. All of the Grandfathered Plans scholarship plan agreements will have reached their maturity dates as of 2016. The final EAPs will be paid to beneficiaries of the Grandfathered Plans in 2024, following which the Grandfathered Plans will be wound up.
13. 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 transfers all amounts held in the Subscriber's accounts under the Classic Plan to an Active Plan.
14. 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.
15. The renewal prospectuses for the Active Plans will contain all material information that would otherwise have been included in the AIF for the Discontinued Plans.

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16. The significant differences between the Discontinued Plans and Active Plans occur in the following areas:

- (a) The Classic Plan is a group savings plan that operates on substantially similar terms and conditions as the Family Group Plan currently being offered by Prospectus with the following significant differences:
 - (i) the contribution frequency and amounts were determined with reference to the contribution schedule in effect at that time for that plan;
 - (ii) the criteria that must be met by a child to qualify for an EAP are more stringent in the case of the Classic Plan in that the qualifying educational program must be a member of the Association of Universities and Colleges of Canada, the Association of Canadian Community Colleges or their equivalent;
 - (iii) the age limit for substitution of a beneficiary is 13 years old in the case of the Classic Plan;
 - (iv) income earned in the Classic Plan cannot be transferred to another RESP;
 - (v) an amount equivalent to the enrolment fee paid in respect of units of the Classic Plan is not refundable.
- (b) The Grandfathered Plans are individual savings plans that operate on substantially similar terms and conditions as the Active Individual Savings Plans currently being offered by Prospectus with the following significant differences:
 - (i) the Grandfathered Plans are not eligible to collect government RESP grants; and
 - (ii) section 146.1(2)(g.1)(ii) of the *Income Tax Act* in respect of the \$5000 EAP limit does not apply to these plans.

17. 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.

18. 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

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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 AIF for the Discontinued Plans 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 Discontinued Plans and the Active Plans;
- (b) at the request of a Subscriber to a Discontinued 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.

Leslie Byberg
Manager, Investment Funds Branch
Ontario Securities Commissions