

2006 BCSECCOM 126

February 15, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - 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 and 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, s.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
Canadian Scholarship Trust Foundation (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 on behalf of certain scholarship plans sponsored and administered by the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements in

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the Legislation for an investment fund to prepare and file an annual information form (the AIF Requirements) shall not apply to such group scholarship plans.

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 non-profit corporation without share capital incorporated by Letters Patent dated December 15, 1960 under the *Canada Corporations Act*.
2. Each of the following scholarship plans (each, a Plan and, collectively, the Plans) is sponsored and administered by the Filer:
 - (i) The Canadian Scholarship Trust Plan – Plan I (Plan I);
 - (ii) The Canadian Scholarship Trust Plan – Plan II (Plan II);
 - (iii) The Canadian Scholarship Trust Plan – The Founders’ Plan (the Founders’ Plan); and
 - (iv) The Canadian Scholarship Trust Plan – Group Savings Plan 2001 (the Group Savings Plan 2001)
 - (v) The Canadian Scholarship Trust Plan – Group Savings Plan (the Original Group Savings Plan).
 - (vi) The Canadian Scholarship Trust Plan – Individual Savings Plan (each, an Individual Plan); and
 - (vii) The Canadian Scholarship Trust Plan – Family Savings Plan (each, a Family Plan).

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Plan I, Plan II, Founders' Plan and the Original Group Savings Plan are hereinafter collectively referred to as the Discontinued 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.
4. Plan I, Plan II and Founders' Plan are all part of a single trust known as Canadian Scholarship Trust Plan. 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. The Original Group Savings Plan and the Group Savings Plan 2001 are part of a single trust known as Canadian Scholarship Group Savings Plan Trust. Each of the Original Group Savings Plan and the Group Savings Plan 2001 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 June 20, 2005, in respect of the continuous offering of education savings plan agreements for the sale of units in the case of the Group Savings Plan 2001, and scholarship savings plans in the case of the Individual Plan and the Family Plan.
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) Plan I – November 30, 1979;
 - (b) Plan II – September 1, 1988;
 - (c) Founders' Plan – July 12, 2000; and
 - (d) Original Group Savings Plan – April 27, 2001.

On April 27, 2001, the Group Savings Plan 2001 was established as a separate investment pool for future contributions under group education savings plan agreements entered into after that date in order to segregate funds contributed according to different contribution schedules.

8. The Discontinued Plans are group 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.

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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 group 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 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 when the Foundation receives evidence that the Subscriber's beneficiary is enrolled in a qualifying educational program. 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, (ii) income earned after maturity on any principal not withdrawn from the Plan at maturity, and (iii) discretionary amounts that may be paid by the 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 proportionate interest in the fund for his or her Year of Eligibility together with the corresponding amount of government grants (and income earned thereon) that have been contributed to the Plan for the beneficiary. The number of EAPs actually paid depends on whether the beneficiary is enrolled in an eligible educational program in each of the years during which EAPs are paid out to beneficiaries sharing that Year of Eligibility.
12. All of the Plan I scholarship plan agreements have reached their maturity dates. The final EAPs will be paid to beneficiaries of Plan I in 2006, following which Plan I will be wound up. The final maturity dates for outstanding scholarship plan agreements in the case of Plan II and Founders' Plan fall in 2010 and 2017, respectively. The latest EAP

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payments out of Plan II and Founders' Plan are expected to be made within 7 years of these final maturity dates. The final maturity dates for outstanding scholarship plan agreements for the Original Group Savings Plan will fall in 2020. The latest EAP payments out of this plan are expected to be made within 8 years of the final maturity dates.

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 a Discontinued Plan to an Individual Plan or a Family Plan.
14. The Filer intends to continue to annually file a renewal prospectus to permit the continued offering of the Group Savings Plan 2001 or another group scholarship plan that operates on substantially similar terms and conditions as the Group Savings Plan 2001.
15. The significant differences between the Group Savings Plan 2001 and Plan 1, Plan II and Founder's Plan occur in the following areas:
 - (a) contribution schedules;
 - (b) definition of qualifying educational program;
 - (c) limitations on the age by which a different child can be substituted for a beneficiary;
 - (d) the timing of the payment of the first education assistance payment and the maximum number of education assistance payments for which a child is eligible; and
 - (e) terms of the enrolment fee refund.
16. Aside from different contribution schedules, there is no distinction between the Original Group Savings Plan and the Group Savings Plan 2001, except with regard to the timing of the potential enrolment fee refund.
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

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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 Discontinued Plans in accordance with the AIF Requirement, provided that:

- (a) the renewal prospectuses for the Group Savings Plan 2001 discloses the material details of the significant differences between the Discontinued Plans and the Group Savings Plan 2001;
- (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 Group Savings Plan 2001; 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
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Ontario Securities Commissions