

CSA Notice and Request for Comment

Modernization of Scholarship Plan Regulation Phase 1 – a New Prospectus Form for Scholarship Plans

Proposed Amendments to National Instrument 41 - 101 *General Prospectus Requirements*, Form 41-101F2 and Related Amendments

Introduction

We, the members of the Canadian Securities Administrators (the CSA), are publishing for a comment period of 90 days proposed amendments to National Instrument 41-101 *General Prospectus Requirements* (the Proposed Rule) and Form 41-101F2 *Information Required in an Investment Fund Prospectus* (the Form). New Form 41-101F3 *Information Required in a Scholarship Plan Prospectus* is part of the Proposed Rule. We refer to the Proposed Rule and the Form as the Instrument.

This Instrument, together with the related amendments, sets out the first phase of the CSA's approach to modernize the securities regulation of scholarship plans, by providing investors with more meaningful and effective prospectus disclosure.

This is an important investor-focused initiative. The number of investors, particularly investors with low to modest incomes, in scholarship plans has grown substantially since 1998 when the Government of Canada actively began encouraging saving for post-secondary education through the Canada Education Savings Grant (CESG). The Government of Canada later added the Canada Learning Bond (CLB) in 2004. Two provincial governments added their own incentive programs, the Alberta Centennial Education Savings Plan (ACES) and the Quebec Education Savings Incentive (QESI), in 2005 and 2007 respectively. The aggregate value of assets held in scholarship plans has grown from \$1.9 billion in 1998 to \$7.6 billion as of December, 2008¹. This represents 33.6% of all the assets currently held in Registered Education Savings Plans (RESPs).

We know that many investors have trouble understanding the unique features and complexity of scholarship plans. This was one of the key findings in the recent report prepared for the department of Human Resources and Skills Development Canada (HRSDC)² on RESP industry practices (the Federal Report), which identified the need for clearer and simpler prospectus disclosure.

¹ HRSDC: Canada Education Savings Program. Annual Statistical Review, December 2008.

² *Review of Registered Education Savings Plan Industry Practices – Report prepared for Human Resources and Social Development Canada* prepared by Informetrica Limited, Final Report, released August 2008.

Having a new prospectus form tailored for scholarship plans will provide investors with the opportunity to make more informed investment decisions because it will give them key information about a scholarship plan in language they can better understand. Central to the new prospectus form is the Plan Summary document. It is in plain language, will generally be no more than three pages and highlights the potential benefits, risks and the costs of investing in a scholarship plan. It will form part of the prospectus, but will be bound separately.

As a second phase of the CSA's initiative, we intend to reformulate National Policy 15 *Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses* (NP 15) by replacing it with a new operational rule for scholarship plans. During this phase, we will consider issues such as the investment restrictions for scholarship plans, fees, the calculation and disclosure of performance data, sales communications and actuarial certification.

We are carrying out the first two phases of this policy initiative concurrently, but with implementation in stages, depending on the advancement of each phase. As a third and final phase, we will consider the issue of SRO membership for scholarship plan dealers and salespersons.

The proposed amendments to the Instrument are set out in Appendix B.

Background

Description of scholarship plans

Scholarship plans are eligible for registration with the Canada Revenue Agency as an RESP. This allows scholarship plans to be eligible for both Government of Canada and some provincial grants.

Like other RESP products, the objective of a scholarship plan is to fund post-secondary education by investing money contributed by investors (typically called subscribers) to generate income for designated beneficiaries. The maturity date specified for the plan is usually during the year when the beneficiary turns 18 and is expected to enrol in a post-secondary education program. At maturity, the net amount contributed is returned to the subscriber, and the net income earned on the contributions is paid to the beneficiary as 'education assistance payments' (EAPs). Any government grants or incentives received on behalf of the beneficiary and any income earned on those monies are paid to the beneficiary as part of the EAPs.

There are three types of scholarship plans, all of which are offered by prospectus: individual scholarship plans, family scholarship plans and group scholarship plans.

Group scholarship plans account for approximately 95% of the total assets under management of scholarship plans. A group scholarship plan pools the investment income of beneficiaries expected to enter a post-secondary education program in the same year. Subscribers sign up for one or more units of the plan, which provides for a share of the income available for distribution at maturity of the plan. A key feature is that the investment income earned on the monies contributed by subscribers for beneficiaries who fail to qualify for payments from the plan is distributed to the beneficiaries who remain in the plan at maturity and qualify for EAPs.

A beneficiary may fail to qualify for EAPs if, for example:

- the subscriber withdraws from the plan;
- the plan is cancelled because the subscriber failed to make contributions on schedule, or failed to make catch-up payments, or to exercise other options available;
- the subscriber transfers the plan to another RESP provider; or
- the beneficiary decides not to pursue a post-secondary education or attend a qualifying education program.

A beneficiary may fail to receive the full value of their EAPs if they do not attend a qualifying education program for the full period required in their particular plan.

As indicated in the Federal Report, the ramifications for failing to qualify for scholarship payments are significant. While the principal contribution (net of fees) is returned to the subscriber, the subscriber loses the EAPs (which include all federal and provincial grant money received), any rebate of enrolment fees, any discretionary payments and the beneficiary's contribution room relating to lost grants.

The Federal Report observed that group scholarship plans have their own rules for awarding EAPs that are different and more restrictive than the Government of Canada's rules. The report also noted the significant pre-maturity attrition rates for group scholarship plans.

National compliance review

In 2003, CSA staff performed a national compliance review of scholarship plan dealers. The purpose of the review was to assess the compliance of scholarship plan dealers with applicable provincial securities legislation.³

Subsequent to this review, the Ontario Securities Commission (OSC) staff issued a report⁴ to provide guidance to scholarship plan dealers in complying with Ontario securities law. The report was based on the findings of the national compliance review and a focused follow-up

³ The participating jurisdictions were British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Prince Edward Island.

⁴ *Industry Report on Scholarship Plan Dealers* by the Compliance Team, Capital Markets, Ontario Securities Commission, July, 2004.

compliance review conducted by OSC staff. The report identified a number of deficiencies in areas such as business practices, sales practices and disclosure practices, for example:

- inadequate disclosure or misrepresentation of fees;
- misleading marketing and exaggerated claims about zero risk;
- inadequate product knowledge by sales representatives;
- no consistent methodology for calculating rates of return (even for the same dealer firm), and
- high-pressure sales tactics, sometimes encouraged by firm training manuals.

The report noted that it was clear from the nature and volume of deficiencies found during the national compliance review and the focused follow-up reviews that more specific rules to regulate scholarship plans and dealers were required.

Ongoing staff reviews

As part of their ongoing regulatory oversight function, staff review the current business and disclosure practices of group scholarship plans. As a result of these reviews, staff have asked all group scholarship plans in the last few years to make changes in their prospectus disclosure at the time of their prospectus renewals. These changes included:

- improved disclaimers regarding the discretionary payments made to EAPs;
- removing any discretionary payments from the discussion of the rate of return;
- improved disclosure of the assumptions underlying the contribution schedule; and
- improved disclosure of the financial consequences of attrition (subscribers who withdraw from the plan or fail to qualify for EAPs).

These disclosure enhancements are codified in the Instrument.

The Federal report

The stated objective of the Federal Report was to review industry practices with respect to RESPs to identify policies, practices and contractual arrangements that may impede, deter or harm an individual's ability to save and access funds for a child's education after high school. The report made a number of observations related to the prospectus disclosure of scholarship plans, including:

- Current prospectuses are lengthy and difficult to understand. One reason for this is that there is so much information to convey. The full details of the scholarship plan are not always set out in the best order and in clear, simple language;
- Group scholarship plans are complex. In order to understand all of the risks and rewards of a group scholarship plan or to choose among plans, a considerable amount of time is needed. There is also a risk that investors do not fully understand what they have signed up for;

- Scholarship plan prospectuses do describe the rules of group scholarship plans, and the various possible outcomes, but this information is difficult to find; and
- Saving for education through RESPs is one of many saving options available to consumers. It is vital that investors have good information that enables them to make choices that are in their best interest. Investors will benefit from simple, clear information in plain language.

You can find the Federal Report on the website of HRSDC at www.hrsdc.gc.ca.

The current prospectus regime

Disclosure requirements for scholarship plan prospectuses are found in National Instrument 41-101 *General Prospectus Requirements* and Form 41-101F2 *Information required in an Investment Fund Prospectus* (the Investment Fund Prospectus Form), which came into force in March 2008. It introduced a new prospectus disclosure form for all investment funds other than those that file a simplified prospectus under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. Before the Investment Fund Prospectus Form came into force, scholarship plans used Form 15 of the *Securities Act (Ontario) Information Required in a Prospectus of a Mutual Fund*, and the equivalent provision in Quebec, Regulation Q-28 *Respecting General Prospectus Requirement*, both of which are mutual fund forms, as a guide for making full, true and plain prospectus disclosure.

While generally better than its predecessor, the Investment Fund Prospectus Form still has many aspects that are not applicable or relevant to scholarship plans. There are also unique features of scholarship plans that while generally disclosed, are not disclosed in a consistent manner. This makes it difficult for investors to understand the possible outcomes and risks associated with scholarship plans, particularly group scholarship plans.

As a result, the prospectus disclosure for scholarship plans does not provide as meaningful or effective disclosure as it could for investors. This is illustrated by the number of complaints securities regulators, HRSDC and other government agencies continue to receive about scholarship plans, particularly group scholarship plans. The majority of complaints illustrate a general lack of investor understanding of the product. They often relate to causes of forfeiture, fees and the operation of group scholarship plans.

Purpose and Summary

Purpose of the Instrument

The Instrument proposes to address the shortcomings of the current disclosure regime for scholarship plans by focusing on providing investors with key information about a scholarship plan and providing the information in a simple, accessible and comparable format.

Scholarship plans disclose a great deal of information to investors through the prospectus, the financial statements and the contract agreements. While these documents are intended to provide critical information to investors who are considering whether to buy a scholarship plan, we know that many investors have trouble finding and understanding key information because these documents tend to be long and complex. Investors also find it difficult to compare information about different scholarship plans.

Further, we know that for some of these investors, a scholarship plan is the only security they will ever purchase. Many of these investors have little to no financial literacy. In some instances, they may not speak or understand English or French as a first language, making the information in the prospectus even more difficult for them to access.

We are proposing a new disclosure form tailored to scholarship plans that will allow securities regulators to address these investor issues and to codify some of the prospectus disclosure that is currently requested during the prospectus review and renewal process. We have attempted to organize the format and content of the prospectus from the perspective of the investor who is considering purchasing a scholarship plan, in order to make the document more understandable, accessible and readable.

Where appropriate, we have considered the content and approach to the mutual fund simplified prospectus and annual information forms, as well as the Fund Facts document proposed under the CSA point of sale initiative for mutual funds.⁵

We expect the Instrument and related amendments to benefit investors by providing them with disclosure that gives them a simpler, clearer understanding of the potential benefits, risks and costs of investing in a scholarship plan, and allows them to meaningfully compare one scholarship plan to another. By making disclosure more effective, we are giving investors the opportunity to make more informed decisions. We are also enhancing transparency in the marketplace.

Summary of the Instrument

Application

The Instrument and related amendments apply only to scholarship plans subject to National Instrument 41-101 *General Prospectus Requirements*.

Plan summary

The Plan Summary document set out in new Form 41-101F3 is central to the Instrument. It must be bound separately from the rest of the prospectus.

⁵ *CSA Notice and Request for Comment: Implementation of Point of Sale Disclosure for Mutual Funds*, published for comment June 19, 2009.

It is written in plain language, generally fits on three pages and highlights key information that is important to investors, including the key risks and the costs of investing in a scholarship plan. It is designed using a question-and-answer format that makes it easier for investors to find information. It also contains a number of statements that we think will help investors understand the risks of investing in a scholarship plan. We think putting this information at the front of the prospectus form will provide investors with the opportunity to make a more informed investment decision.

To promote comparability and simplicity, many aspects of the Plan Summary document are prescribed, but it is also sufficiently flexible to accommodate different types of scholarship plans.

You will find a sample of the Plan Summary document at Appendix A.

Prospectus form

The prospectus form mandates specific headings and subheadings so that the information in the prospectus is shown in an order that we think is more meaningful and effective for investors. The table of contents is intended to act as a quick guide to what happens during the life of the product and what investors have to do.

The proposed prospectus form consists of four parts:

- Part A is the plan summary.
- Part B describes the features common to all the scholarship plans offered under the prospectus.
- Part C provides plan-specific information. A separate Part C will be required for each plan, or class of plan offered under the prospectus.
- Part D provides information about the organization and management of the scholarship plan(s), as well as the appendices, such as the contribution schedule, and certifications.

The Instrument precludes from the new prospectus form much of the general information about government grant and incentive programs currently found in the prospectus. We think this disclosure has significantly contributed to the large size of the prospectus and that it has been a source of confusion for investors, who may think that the scholarship plan is a government product. By limiting the disclosure in the prospectus to the aspects of RESPs that are relevant to investing in a particular scholarship plan, we are making the disclosure comparable to other investment products.

The Instrument will also preclude from the new prospectus form disclosure related to personal insurance products that a scholarship plan issuer may be selling, again making the disclosure comparable to other investment products.

Incorporation by reference

The Instrument now permits the incorporation by reference into the prospectus of the most recently filed annual financial statements, any interim financial statements filed after the annual financial statements and the most recently filed annual management reports of fund performance. We have made this change because we have moved the key information from these continuous disclosure documents into the new prospectus form.

Delivery

The Instrument contemplates delivery of the prospectus, which consists of the Plan Summary document and the remaining parts of the prospectus. Delivery must occur as currently required under applicable securities legislation, which is within two days of the purchase. We understand that the current practice for delivering the scholarship plan prospectus is before or at the point of sale. Accordingly, the Instrument does not currently contemplate mandating point of sale delivery of the prospectus. However, we may revisit the delivery requirement if warranted.

Alternatives Considered

An alternative to the Instrument would be not to create a tailored prospectus form for scholarship plans and to continue to raise disclosure issues at the time of prospectus renewals on a case-by-case basis. We believe that the status quo is not an acceptable alternative because the existing prospectus for scholarship plans is not assisting investors in making an informed investment decision.

Anticipated Costs and Benefits

We think the disclosure regime set out in the Instrument will benefit both investors and the capital markets by helping address the “information asymmetry” that exists between participants in the scholarship plan industry and investors. Unlike industry participants, investors often do not have an understanding of key information about a scholarship plan before they make their investment decision and may have difficulty sorting through the information they receive. Providing more effective disclosure will help bridge this information gap.

However, the extent to which investors and the scholarship plan industry will be affected in terms of benefits and costs is difficult to quantify.

Benefits

The benefits of a more effective disclosure regime can be subtle and difficult to measure. For example, it can be a challenge to quantify the value of investors having the opportunity to make more informed investment decisions.

Some anticipated benefits of a more effective disclosure regime for scholarship plans include:

- less risk of investors buying inappropriate products or not fully benefitting from the advice services they pay for;
- investors being in a position to better understand and compare scholarship plans, particularly the costs of investing in the scholarship plans, as well as determining whether another investment product is more suited to their needs;
- greater transparency in areas such as charges or commissions, which may enhance the overall efficiency of the market;
- increased comparability and ease of readability for investors; and
- greater use of the prospectus as a reference tool by investors throughout the life of this long-term investment.

Costs

We think the costs of a new disclosure regime fall into two main categories: the one-time costs of moving to the new disclosure regime and the ongoing costs of maintaining the new regime in comparison with the cost of the existing disclosure regime.

We anticipate that costs to industry stakeholders will fall into the following general categories:

- preparation of the new prospectus form; and
- regulatory filings.

Overall, we believe the potential benefits of the changes to the disclosure regime for scholarship plans are proportionate to the costs of making them.

Related Amendments

Local Rule Amendments

If necessary, we propose to amend elements of local securities legislation, in conjunction with the implementation of the Instrument. The provincial and territorial securities regulatory authorities may publish these proposed local changes separately in their jurisdictions. These local changes may be to rules or to statutes. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial government.

Proposed consequential amendments to rules or regulations in a particular jurisdiction or publication requirements of a particular jurisdiction are in Appendix C to this Notice published in that particular jurisdiction.

Some jurisdictions may need to modify the application of the Instrument using a local implementing rule. Jurisdictions that must do so will separately publish the implementing rule.

Unpublished Materials

In developing the Instrument and related amendments, we have not relied on any significant unpublished study, report or other written materials.

Request for Comments

We would like your input on the Instrument and related amendments. To allow for sufficient review, we are providing you with 90 days to comment.

We are seeking specific feedback on the following questions. We also welcome your comments on any other aspects of the Instrument, including our general approach.

1. We are considering requiring the detailed disclosure set out in the prospectus form under Part C- Plan Specific Information for unregistered education savings accounts. These accounts currently have various names, such as escrow accounts or advance deposit accounts. In our view, these accounts appear to be securities because they evidence the investment contract.

Do you agree with this approach? If not, how should these accounts be disclosed and why?
2. To make the prospectus document shorter and more accessible for investors, we are considering allowing Part D – Information about the Organization, of the prospectus form to be made available on request. This is similar to the annual information form for conventional mutual funds. Do you agree or disagree with this approach? Why?
3. We are considering requiring additional disclosure in the prospectus form about the trustee of the scholarship plan, including information about the trustee's policies on business practices and conflicts of interest, proxy voting and particulars of existing or potential conflicts of interest related to the scholarship plan. Do you agree or disagree with this approach? Why?

All comments will be posted on the OSC website at www.osc.gov.on.ca. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Thank you in advance for your comments.

Deadline for Comments

Your comments must be submitted in writing by **June 22, 2010**.

If you are not sending your comments by fax, mail or hand delivery, please forward an electronic file containing the submission in Word, Windows format.

Where to Send Your Comments

Please address your comments to all CSA members, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8
Fax: 416-593-2318
E-mail: jstevenson@osc.gov.on.ca

M^c Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Questions

Please refer your questions to any of

Noreen Bent
Manager and Senior Legal Counsel
Legal Services, Corporate Finance
British Columbia Securities Commission
Phone: 604-899-6741
E-mail: nbent@bcsc.bc.ca

Bob Bouchard
Director and Chief Administration Officer
Manitoba Securities Commission
Phone: 204-945-2555
E-mail: Bob.Bouchard@gov.mb.ca

Sarah Oseni - Project Lead
Senior Legal Counsel, Investment Funds Branch
Ontario Securities Commission
Phone: 416-593-8138
E-mail: sozeni@osc.gov.on.ca

Christopher Bent
Legal Counsel, Investment Funds Branch
Ontario Securities Commission
Phone: 416-204-4958
E-mail: cbent@osc.gov.on.ca

Rhonda Goldberg
Manager, Investment Funds Branch
Ontario Securities Commission
Phone: 416-593-3682
E-mail: rgoldberg@osc.gov.on.ca

Susan Swayze
Senior Editorial Advisor
Ontario Securities Commission
Phone: 416-593-2338
E-mail: sswayze@osc.gov.on.ca

Catherine Bohémier
Senior Policy Adviser
Autorité des marchés financiers
Phone: 514-395-0337 ext. 4466
E-mail: catherine.bohemier@lautorite.qc.ca

Stéphanie Camirand
Financial Analyst
Autorité des marchés financiers
Phone: 514-395-0337 ext. 4478
E-mail: stephanie.camirand@lautorite.qc.ca

Wendy Morgan
Regulatory Affairs Officer
New Brunswick Securities Commission
Phone: 506-643-7202
E-mail: Wendy.Morgan@gnb.ca

Chris Pottie
Compliance Examiner
Policy and Market Regulation
Nova Scotia Securities Commission
Phone: 902-424-5393
E-mail: pottiec@gov.ns.ca

The text of the Instrument follows or can be found elsewhere on a CSA member website.