



Canadian Foundation *for*
Advancement *of* Investor Rights

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RE: Second Request for Comment on the Modernization of Scholarship Plan Regulation Phase 1: A New Prospectus Form for Scholarship Plans

FAIR Canada is pleased to offer comments on the proposed amendments to National Instrument 41-101 *General Prospectus Requirements*, Form 41-101F2 *Information Required in an Investment Fund Prospectus* and proposed Form 41-101F3 *Information Requirement in a Scholarship Plan Prospectus* along with amendments to Companion Policy 41-101CP *Companion Policy to National Instrument 41-101 General Prospectus Requirements* (hereafter referred to as the “2011 Proposed Amendments”).

The 2011 Proposed Amendments aim to improve the prospectus disclosure provided by scholarship plans in order to provide more understandable and effective disclosure for investors so that they can make more informed decisions. Amendments were first published for comment on March 24, 2010 (the “2010 Proposal”) and FAIR Canada provided comments dated July 7, 2010. The Canadian Securities Administrators (the “CSA”) is now proposing a number of amendments to the 2010 Proposal. We welcome the opportunity to provide comments on the 2011 Proposed Amendments.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

FAIR Canada Comments and Recommendations – Executive Summary:

1. FAIR Canada believes that improvements need to be made to the Plan Summary in order that it adequately disclose the benefits, risks and costs to Canadians in a way that they will understand so that they can make informed decisions. In particular, the following areas of disclosure need improvement in order to adequately protect consumers:

- (1) disclosure of alternatives to group scholarship plans;
 - (2) disclosure of the more restrictive criteria as to what schools and programs qualify;
 - (3) improved fee disclosure;
 - (4) disclosure of conflicts of interest (or misalignment of incentives between buyer and salesperson);
 - (5) improved risk disclosure; and
 - (6) clear and plain language must be used throughout the Plan Summary.
2. FAIR Canada believes that more than simply better disclosure is required in order to adequately protect investors. Disclosure alone will only create the illusion of consumer protection and cannot be an end in itself given the problems with the design of group scholarship plans, the aggressive manner in which they are marketed and advertised, and the misalignment of incentives between the salespersons and consumers. Many purchasers of these plans are modest or lower income Canadians who often have low financial literacy and who are urged to invest in these plans in order to take advantage of the government grants associated with them. FAIR Canada is of the view that group scholarship plans are generally poor savings vehicles with little or no benefits to consumers.
3. FAIR Canada urges the following substantive changes to group scholarship plans:
- (1) prohibit group scholarship plans from further restricting the programs and schools that are eligible for grants and investment earnings beyond the criteria set by the government;
 - (2) regulate fees and set a maximum of 10 per cent or less of the contributions in any one year that can be charged as a fee;
 - (3) require group scholarship plan dealers to become members of an existing self-regulatory organization (“SRO”), either the Mutual Fund Dealers Association of Canada (“MFDA”) or the Investment Industry Regulatory Organization of Canada (“IIROC”);
 - (4) require mandatory membership in the Ombudsman for Banking Services and Investments (“OBSI”); membership should be required of group scholarship dealers immediately;
 - (5) require salespersons to act in their clients’ best interests when offering scholarship plan products;
 - (6) require salespersons to explain that there are other types of education savings plans available to Canadians; and
 - (7) ensure that salespeople make specific representations to prospective purchasers about the potential unsuitability of scholarship plans for some consumers, drawing attention to that point, and discussing potential alternatives.
4. FAIR Canada urges the CSA to finalize the 2011 Proposed Amendments, including the requirement for the Plan Summary, within the next six months.
5. FAIR Canada urges the CSA to mandate physical delivery of the Plan Summary at or before the point of sale, also within the next six months.
6. FAIR Canada urges the CSA to move forward with Phases 2 and 3 of the Modernization Project, including addressing concerns with the corporate governance of Group Scholarship Trusts and complete the Modernization Project in timely fashion. The CSA has been made aware of the problems with group scholarship plans for several years. It has been four years since the federal government reviewed industry

practices and issued a report which was prepared for the Department of Human Resources and Skills Development Canada (“HRSDC”)¹ to improve outcomes (the “Federal Report”). A timely response is necessary in order to protect Canadians. We recommend that the CSA target completion of Phases 1, 2 and 3 by the end of 2012.

1. Background on RESP Industry and Government and Regulators’ Response

- 1.1. Saving through Registered Education Savings Programs (“RESPs”) is one of the savings options available to Canadians to save for their children’s education. Canadians hold a considerable amount of money in RESPs with \$27.6 billion invested in RESPs by the end of 2010.² In 2010 alone, families contributed \$3.39 billion to their children’s RESPs. This form of saving is encouraged through grants from the federal government; two provincial governments added their own incentive programs, the Alberta Centennial Education Savings Plan (“ACES”) and the Québec Education Savings Incentive (“QESI”) in 2005 and 2007 respectively. In 2010, the federal government paid \$667 million in Canada Education Savings Grant payments and \$65.18 million in Canada Learning Bond Payments.³
- 1.2. Group scholarship trust plans have a sizable portion of the education savings market with 32.9 per cent of the market share of RESP assets while investment banking and securities dealers have 34.7 per cent of the total assets⁴.
- 1.3. In 2008, the Federal Report was released which reviewed industry practices in light of government policy objectives and the experience of subscribers and made key recommendations to improve outcomes.
- 1.4. The Federal Report noted that the group scholarship plan is a savings instrument that is probably not widely known or understood and that many of the complaints lodged with federal and provincial regulators related to the design of plans sold by the group scholarship providers.⁵ The Federal Report stated “It is vital that consumers have good information that enables them to make choices that are in their best interest. Consumers would benefit from simple, clear information in plain language, a standard that group scholarship provider prospectuses could more closely achieve.”⁶ One of its three enumerated recommendations was that: “...the Government of Canada, working with the RESP industry, examine opportunities to improve the disclosure of the specific features of plans and the probabilities of various potential outcomes of plans to consumers.”⁷
- 1.5. The Federal Report indicated its concerns with the design of the group scholarship plans and likened them to a “tontine”, a particular type of investment vehicle where those who “survive” the longest receive the greatest benefits –in the case of group scholarship plans, these are the payments of investment income to beneficiaries who “survive” (who make all the required contributions and meet all of the criteria and qualifications) which are enhanced by the proceeds earned in plans that are closed (those who fail to qualify for payments).⁸ Concerns highlighted in the Federal Report over the design of

¹ Review of Registered Education Savings Plan Industry Practices – Report prepared for Human Resources and Social Development Canada prepared by Infometrica Limited, Final Report released August 2008 (“Federal Report”).

² HRSDC: Canada Education Savings Program Annual Statistical Review – 2010, at page 5.

³ *Supra*, at page 6.

⁴ *Supra*, at page 8.

⁵ Federal Report, at pages 5 to 6.

⁶ Federal Report, at page 24.

⁷ Federal Report, at page 24.

⁸ There are three situations where investment income is available to distribution to other beneficiaries: 1) where the subscriber closes a plan and withdraws contributions; 2) the provider closes a plan when the subscriber fails to make contributions on schedule and fails to make catch up payments or exercise other options available; and 3) when all

the plan were heightened by the fact that lower-income Canadians disproportionately sign up for group scholarship plans.⁹

- 1.6. The Federal Report made it clear that many purchasers have trouble understanding the features and complexity of scholarship plans and the CSA undertook, as Phase 1, the 2010 Proposal to improve the prospectus and provide to consumers a plain language document which is to provide information about the benefits, risks and costs of investing in a scholarship plan in a three page document (now four pages) known as the Plan Summary. Having received a number of comments, the CSA has now made a number of amendments to the 2010 Proposal in its 2011 Proposed Amendments.
- 1.7. **FAIR Canada agrees that more than simply better disclosure is required in order to adequately protect consumers. Disclosure alone will only create the illusion of consumer protection and cannot be an end in itself given the problems with the design of group scholarship plans, the aggressive manner in which they are marketed and advertised, and the misalignment of incentives between the salespersons and consumers.** Below, we provide comments on how to improve the disclosure provided to consumers and also provide other substantive recommendations in order to better protect consumers and improve outcomes.
- 1.8. **FAIR Canada believes that in order to address the problems identified in the Federal Report and in order to adequately protect consumers, salespersons should be required to: (1) act in their clients' best interests when offering scholarship plan products; (2) explain that there are other types of education savings plans available to consumers; and (3) make specific representations to prospective purchasers about the potential unsuitability of scholarship plans for some purchasers, drawing attention to that point, and discussing potential alternatives.** We provided these recommendations in our submission dated July 7, 2010.
- 1.9. Phase 2 of the CSA's initiative, which was to be carried out concurrently with Phase 1, involves the reformulation of National Policy 15 *Conditions Precedent to Acceptance of Scholarship or Education Plan Prospectuses* (NP 15). Phase 2 is to consider issues such as the investment restrictions for scholarship plans, fees, the calculation and disclosure of performance data, sales communications and actuarial certification. The November 25, 2011 CSA Notice and Request for Comments does not provide any information as to the status of Phase 2. We encourage the CSA to take steps in a timely manner to address issues that will improve investor protection and improve outcomes for Canadians.
- 1.10. Finally, Phase 3 of the CSA initiative was to consider the issue of SRO membership for scholarship plan dealers and salespersons. **We support a requirement for scholarship plan dealers and salespersons to become members of an SRO, as we believe that this could lead to increased oversight and supervision.**
- 1.11. **FAIR Canada recommends that membership in OBSI be mandatory for all group scholarship dealers as it is for mutual fund dealers and investment dealers. Membership should be required of group scholarship dealers immediately.** Currently, only those scholarship plan dealers that are members of the RESP Dealers Association of Canada ("RESPDAC") are members of OBSI. It is our understanding that one RESP dealer resigned from OBSI when they also resigned from RESPDAC.
- 1.12. FAIR Canada believes that the Group Scholarship Modernization Project should proceed quickly given the need for greater investor protection for vulnerable consumers (particularly less-sophisticated, lower-income Canadians) in group scholarship plans. **We recommend that the CSA mandate the use of the Plan Summary within the next six months.**

contributions have been made according to schedule, the beneficiary may fail to qualify for a full scholarship under the rules of the plan (rules that are more restrictive than the rules established by the federal government). Federal Report at pages 12 to 13.

⁹ Federal Report at page 25.

- 1.13. FAIR Canada notes that the Federal Report also highlighted its concern with the governance structures of the group scholarship trust and that at two of the five trusts the majority of the board had a financial interest in the distributor (who markets and administers the plan). Its third enumerated recommendation was that "...the Government of Canada establish minimum standards regarding the governance structures of RESP providers with whom it enters into agreements"¹⁰. The governance of investment funds clearly falls within the remit of securities regulators. Accordingly, **FAIR Canada urges the CSA to require adequate standards of corporate governance of group scholarship plans including that a majority of the board of directors of the scholarship plan trust or foundation be independent directors.**
- 1.14. FAIR Canada believes that the CSA's reforms have not progressed quickly enough. The CSA has been made aware of the problems with group scholarship plans for several years. It has been four years since the Federal Report. At this rate, it would be years before the CSA completes Phases 1, 2 and 3. Meanwhile, billions of dollars are held in these plans and these plans continue to be aggressively marketed and sold to some of the least sophisticated and lower income consumers. Time is of the essence. We recommend that the CSA target completion of the Modernization Project (including all Phases) by the end of 2012.

2. FAIR Canada Comments on the Plan Summary

- 2.1. FAIR Canada fully supports the concept of a concise, meaningful, plain language document that highlights the key information that consumers need to make more informed investment decisions; the Plan Summary will provide information regarding the benefits, risks and costs of investing in a group scholarship plan.
- 2.2. **We believe that there are improvements that need to be made to the Plan Summary in order to ensure that it adequately discloses the benefits, risks and costs to Canadians in a way that they will understand so that they can make informed decisions. In particular, the following areas of disclosure need to be improved in order to adequately protect consumers:**
- a) **disclosure of alternatives to group scholarship plans;**
 - b) **disclosure of the more restrictive criteria as to what schools and programs qualify;**
 - c) **improved fee disclosure;**
 - d) **disclosure of conflicts of interest (or misalignment of incentives between buyer and salesperson);**
 - e) **Improved risk disclosure; and**
 - f) **clear and plain language must be used throughout the Plan Summary.**
- 2.3. We consider the Plan Summary document to be the most important document from the consumer's perspective. Given its shorter length, it will be the document that is most likely to be read by prospective purchasers before an investment decision is made.

Disclose Alternatives to Group Scholarship Plans

- 2.4. We note that the changes to the first paragraph of the Plan Summary have removed the reference to alternative products; this lessens investor protection. **These plans are associated with aggressive marketing and are sold to many individuals with low to modest incomes, and many will not know that there are other alternatives available.** The text should therefore reference the fact that other alternatives are available in order to protect consumers. We recommend that the text read "*A scholarship*

¹⁰ Federal Report at page 25.

plan is one of the many ways to save for a child's education and is one of several alternatives available from banks, investment dealers and other financial institutions that are considered to be a Registered Education Savings Plan (RESP). Other alternatives are also associated with grants provided by the federal and some provincial governments”.

- 2.5. The CSA has stated in Appendix C of the 2011 Proposal: “We do not think it is appropriate to require a scholarship plan provider to include specific disclosure about other investment products in its prospectus.” **FAIR Canada believes that disclosure about alternative government sponsored savings plans, including an individual registered education savings plan, is appropriate and necessary in order to adequately protect consumers. Many consumers who are being sold a group scholarship plan will not have any other form of investments and this may be the only instance where they will purchase a security. Canadians who are being sold these plans include many modest income individuals who do not have any investment experience, investor sophistication or have sufficient financial literacy. This makes them a very vulnerable investor demographic. In addition, individuals are urged to invest in these plans in order to take advantage of the government grants associated with them. As a result, unless it is disclosed to them that alternatives exist, many will not know or consider any alternative to the one that is being presented to them.**
- 2.6. **FAIR Canada therefore strongly recommends that clear language be provided under “Who is this plan for?” that includes information about other alternative products that will also provide the benefit of the government grants.** We would suggest adding a sentence that indicates that an individual or family registered education savings plan can also be obtained at many financial institutions.
- 2.7. **In addition, we recommend that the education initiatives of securities commissions (such as the OSC’s Investor Education Fund) provide to families in a plain language pamphlet or other document an explanation of the different alternative RESP vehicles and their main advantages and drawbacks and arrange to have such information mailed to all parents when they register the birth of a child and/or apply for a social insurance number for their child.**

Make Clear What Are Qualifying Schools and Programs – Eligibility Requirements

- 2.8. **The CSA should prohibit group scholarship plans from restricting beyond the governmental rules the programs and schools that are eligible for grants and investment earnings as it is contrary to the public purpose behind the RESP.**
- 2.9. **The Federal Report highlighted this concern in its conclusion: “...plans also cause some savers to lose money and deny EAPs and government subsidies to students who are entitled to these benefits under government rules. These outcomes are bound to have negative effects on saving by households and participation in post-secondary education. We do not know the precise extent to which these situations occur, but we wonder whether the concentration of the benefits of saving on some beneficiaries does not come at too high a price in losses and denial of benefits to others.”¹¹**
- 2.10. Alternatively, the description under the heading “*What is a group scholarship plan?*” should make it clear that the child will not receive the investment income known as the Educational Assistance Payment (“EAPs”) and will lose the earnings and grants if they do not enrol in a school or program that qualifies according to the terms and conditions or criteria set by the group scholarship plan, which are different and more restrictive than the government’s rules and regulations. As presently worded, readers may think that it is the government’s rules that are applicable rather than the more restrictive group scholarship plan’s criteria. We recommend that the wording in be changed to “*your child does not enrol in a school or program that qualifies under the criteria set by the Group Scholarship Plan which is more*

¹¹ Federal Report, at page 20.

restrictive than required by the government” and provide a reference to the prescribed table setting out specific types of institutions and programs that qualify in Part C, Item 6 – Eligible Studies.

- 2.11. We note that the 2011 Proposed Amendments have removed the requirement for the table and instead only require a description of the types of programs that are and are not eligible for EAPs based on characteristics such as the types of educational institutions offering the programs, the length of the programs and the location of the educational institution. This results in less clarity for consumers prior to investing in the plan as to whether the institution or program of study that the child may end up attending will be eligible or not. **Discovering at the time of entering post-secondary study that the child is not eligible can be devastating for a parent and his or her child. We recommend that the table be required to be provided and that it be required to indicate which institutions and programs, eligible under the government’s criteria, are ineligible under the plan’s criteria.**
- 2.12. It should also be made clear that beneficiaries will not receive the maximum EAP payout if they enrol in a program that is not of sufficient duration; the duration required in order to receive the maximum EAP payout should be specified.
- 2.13. **Under “Who is this plan for?” it should be made clear that the child has to attend a school and program that meets the group scholarship plan’s qualification criteria which is more restrictive than the government’s rules. It should be made clear that, under many plans, part-time studies, co-operative studies and apprenticeships do not qualify.**

Require Clear Disclosure of Fees

- 2.14. We continue to believe that the “How much does it cost?” information is vitally important to Canadians, given the impact that costs have on the ability to accumulate savings and should be more prominently displayed in the Plan Summary. We recommend that this information should be provided directly after “Who is this plan for?” and not near the end of the document.
- 2.15. We understand that, in most cases, 100 per cent of the first year’s contributions are used to pay fees leaving nothing of the contribution. The section under costs headed “Fees deducted from your contributions” should be presented in a way that is more meaningful to consumers; we would suggest requiring the provision of a simple sentence which states the dollar amount of fees that would be paid on the amount of a contribution in year one. For example, “If you invested \$2,500 in year one, you would have paid \$2,500 in fees.” Telling Canadians they will pay \$100 per unit does not have much meaning and does not help inform consumers that they will likely pay as much if not more in fees in their first year than the amount of their contribution for that year.
- 2.16. We note that exactly this type of disclosure, albeit under the heading “Ongoing plan fees”, was provided in the 2010 Proposal - “If you invested \$2,500 last year, your share of these ongoing fees would have been \$18.50” but has been removed from the Plan Summary contained in Appendix A of the 2011 Proposed Amendments.¹² **We believe that a statement in words about the total amount of fees that will be charged in a year (and especially in year one) is necessary for consumers to be able to understand the amount of direct and indirect fees that they would pay.** We agree with the Federal Report that consumers would benefit from a presentation of fees that shows their combined cost to the extent possible.¹³
- 2.17. The amount of indirect fees will be deducted from the plan’s earnings and will reduce the plan’s (and the consumer’s) returns. In FAIR Canada’s view, the original heading “Ongoing plan fees” is more clear than “Fees the plan pays” because the latter suggests (without reading further) that the consumer does not

¹² It was Item 1.3(11) of the 2010 Proposal.

¹³ Federal Report, at page 18.

end up paying them through reduced earnings or returns on their investment. We suggest the heading be *“Ongoing plan fees you pay”*.

- 2.18. In addition, both of these fees (direct and indirect fees) should be expressed as a percentage as well as a dollar figure, so as to be comparable to disclosure of the management expense ratio (“MER”) of a mutual fund or other investment fund product.
- 2.19. **We continue to believe that a clear description of what Canadians will have to pay if they withdraw from the plan is required. A table should be presented in the Plan Summary that shows the results of withdrawal prior to 60 days on a \$1,000 investment, the results of withdrawal after 60 days but at an early stage, a late stage and at maturity.** Such a table could show fees charged (such as fees charged to transfer contributions to another institution), loss of grants, investment income and any other charges that will affect the amount of contributions returned to the consumer.

Misalignment of Incentives and Need for Explicit Conflicts of Interest Disclosure

- 2.20. The Plan Summary should disclose any existing conflict of interest that gives the salesperson or distributor a financial incentive to sell the group scholarship plan over other alternatives. Principle 1 of IOSCO’s Point of Sale Disclosure states: “Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product **and the remuneration and conflicts associated with the intermediary through which the product is sold.**”¹⁴
- 2.21. Such language should include a description of any payments made or incentives provided by the group scholarship plan trust and/or distributor to the salesperson for having the consumer join and participate in the plan. The description should state that *“these payments create a conflict of interest in that they influence the salesperson to recommend the Plan over another Plan or alternative investment.”* Details of such payments or incentives could be set out in the prospectus and reference to the appropriate section of the prospectus could be provided in the Plan Summary.
- 2.22. As set out in our submission on the 2010 Proposal, the Federal Report found that **enrolment fees create incentives for sales representatives that are not aligned with those of consumers in the plan.** The Federal Report notes that:
- To the sales representative, the relatively high enrolment fees for plans with a long contribution period are an incentive to seek out families with a very young child. An early start with savings is a positive thing, provided the subscriber is able to maintain contributions over the term of the RESP. However, there is a risk that sales representatives, in order to generate a higher amount of fees out of which they get paid, may attempt to make people commit to contributions they cannot maintain in the long run... If enrolment fees were structured differently as a share of total contributions instead of being based on a per Unit basis, interests of sales representatives and consumers would be more aligned.”¹⁵
- 2.23. Given the foregoing, **FAIR Canada recommends that the CSA substantively regulate fees and set a maximum of 10 per cent or less of annual contributions.** One option is to limit the extent to which contributions can be used to pay enrolment fees in any one year. Currently, up to 100 per cent of contributions in the first year may go to pay enrolments fees (it depends on the age of the beneficiary (child) when the plan is opened). If payments of the enrolment fees were made over a number of years with a limit of 10 per cent of the contributions in any one year, this could reduce the financial incentives

¹⁴ Technical Committee of the International Organization of Securities Commission, Principles on Point of Sale Disclosure: Final Report (February 2011), online: <<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf>> [emphasis added].

¹⁵ Federal Report, at pages 18-19.

to sell group scholarship plans to consumers who cannot maintain contributions in the long run, while increasing incentives to sell to consumers who have the ability to maintain contributions over the life of the plan. Given the high drop-out rate (discussed below) and the significant financial consequences that result, regulation is necessary in order to protect these vulnerable consumers.

Improve Risk Disclosure

Risk of Insolvency and Lack of Contingency Fund

2.24. The disclosure should include the risk of insolvency of the dealer or group scholarship trust. It should state that there is no industry-sponsored contingency fund in the event of insolvency. The CSA should consider requiring group scholarship plan trusts and dealers to be members of an industry-sponsored contingency fund. Realistically the only way to advance this is to require them to become members of an existing SRO (IIROC or the MFDA) which already have contingency funds. If the CSA required firms offering “contracts for difference” to be members of an SRO, there is no reason why scholarship plan dealers are not similarly required to join.

Retain Drop-Out Rate

2.25. FAIR Canada believes that the inclusion of the drop-out rate augments consumer understanding. Unfortunately, it has been replaced by “plans that did not reach maturity” where it provide the percentage of plans that did not reach maturity over the past five maturity dates. This is not nearly as meaningful and is difficult for consumers to comprehend. **The drop-out rate should be retained as it is a key piece of information for consumers and is something that consumers can understand.** We also recommend that the figures be expressed as a ratio: “approximately 3 in 10 subscribers” as well as a percentage.

Retain Lost EAP Percentage

2.26. Similarly, the side-bar which indicates the percentage of beneficiaries who did not collect all of their EAPs for those plans that have matured and closed was an important item of information that has been removed from the 2011 Proposed Amendments. **We recommend retaining the Lost EAP Percentage in the Plan Summary.** We do not agree with the CSA that “...the information regarding the number of payments of EAPs to the five most recent beneficiary groups required to be provided in Item 22 of Part C of the Form sufficiently illustrates for prospective purchasers that some beneficiaries do not collect all EAPs”¹⁶. For this information to be meaningfully disclosed to consumers, it needs to be provided in the Plan Summary. The best way to convey this information is through the Lost EAP Percentage sidebar.

Clear Language throughout the Plan Summary

2.27. We agree with Kenmar Associates’ comments that suggest changes to the wording of the first paragraph of the Plan Summary in order to improve its clarity. The Plan Summary “does” not contain all the information you “need” rather than “It may not contain all the information you want”. You should read “and understand” the entire prospectus carefully before you decide to invest rather than “You should read the entire prospectus carefully before you decide to invest”

2.28. Similarly, we agree with Kenmar Associates’ comments about the fact that these plans are a long-term commitment and therefore, under the heading “Who is this plan for?” it should read that a group scholarship plan “is” a long-term commitment rather than “can be”. Consumers must be certain that they can make contributions on time, stay in the plan until it matures, and that their child will attend a school and program that meets the group scholarship plan’s criteria for eligibility. Accordingly, it is meant

¹⁶ See Appendix C: Summary of Comments on the 2010 Proposal at page 40.

for people who “are certain” rather than “fairly sure” they can meet all three bullet points and the wording should be changed to reflect that fact. It should be noted that the Annual Statistical Review for 2010 indicates that not all families contribute every year and that 670,000 beneficiaries or 33 per cent (2.21 million beneficiaries had contributions in 2010 out of the 2.88 million CESG beneficiaries) had no contributions in 2010.¹⁷ This number will include all types of RESPs and not just group scholarship plans, but clearly a significant number of families do not make yearly contributions. There are profound consequences to parents and their child for missing contributions in group scholarship plans.

- 2.29. Where there is a reference to fees, the consumer should be provided with a reference to the section of the prospectus where it is possible to find out more information on how much that fee will be. For example, under *“How do the payments work?”* it states that in the child’s first year of university or college, you will get back your contributions “less fees”. The Plan Summary should let the purchaser know where he or she can find out how much those fees will be. Similarly, a reference to the section of the prospectus which describes the restrictions and fees when you reduce or suspend your contributions, or transfer to an individual plan or close the plan, should be provided under *“You miss contributions”*. The same comment goes for the restrictions and fees under *“You or your child misses a deadline”*, and *“Your child doesn’t go to a qualifying school or program”*.
- 2.30. Under *“Are there any guarantees?”* we recommend that the language be made more clear by stating that we cannot tell you in advance if your child will receive any payment from the plan “including the payment of any EAPs or how much of your contributions will be paid to you”. Wording should also be added that *“Unlike RESPs held with investment dealers, mutual fund dealers or banks, group scholarship plan dealers are not insured by any industry or government funded insolvency fund”*.
- 2.31. The amount of tax that will be paid by the child/beneficiary should not be assumed in *“How do the payments work?”* We suggest that the wording simply be that “EAPs are taxed in the child’s hands” and not include “As a student, your child may pay little or no tax on their EAPS” since, while that may be true, it is not necessarily the case.
- 2.32. The bold language at the end of the section *“What is a group scholarship plan?”* should add that *“if you leave the plan you also lose your grants which are repaid to the government and your grant contribution room is lost.”*

3. Plan Summary Should be Delivered Before or At the Point of Sale

- 3.1. The Instrument contemplates delivery of the prospectus, which will consist of the separately bound Plan Summary together with the rest of the prospectus (Parts B through D) within two days of the purchase. The CSA indicated in its 2010 Proposal that the current practice for delivering the scholarship plan prospectus is before or at the point of sale but that they were not contemplating mandating it unless warranted.
- 3.2. **FAIR Canada urges the CSA to mandate physical delivery of the Plan Summary at or before the point of sale. Canadians should receive the Plan Summary prior to or at the point of sale as this would increase their ability to understand the key information about the plan and result in a more informed decision and therefore better investor protection.** Principle 2 under IOSCO’s Point of Sale consultation is “[k]ey information should be delivered, or made available, for free, to an investor **before the point of sale**, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.”¹⁸

¹⁷ HRSDC: Canada Education Savings Program Annual Statistical Review – 2010, at page 12.

¹⁸ *Ibid.* note 14, Principle 2 at page 30.

- 3.3. Given that these plans are complex and are a long-term commitment, a document setting out the key information a person needs before investing is essential. In addition, group scholarship plans are actively marketed using a commissioned sales force who present the key features of their plan and promote it to modest income individuals, many of whom have low financial literacy, on the basis of the advantageous tax treatment and subsidies (as a result of the government provision of grants and favourable tax treatment for RESPs) and who tend to down play the costs and risks.¹⁹ Given the foregoing, and in light of the fact that delivery before or at point of sale is not onerous to the industry as current practice is to deliver the prospectus before or at point of sale²⁰, delivery at or prior to sale should be mandated in order to adequately protect consumers.
- 3.4. The CSA has stated that “[w]e are not proposing to mandate point of sale delivery at this time because changing the existing prospectus delivery requirements is outside the scope of the project”²¹. **Given the mandate of regulators, its importance to vulnerable consumers, the existing practice of the industry and the considerable time that it has taken to reach this point in the Modernization Project, FAIR Canada can see no justification for not immediately requiring its physical delivery at or before the point of sale.**

4. Part B and Part C of the Prospectus

- 4.1. We support the introduction of a requirement to provide a description of the key stages in the life cycle of the scholarship plans offered under the prospectus, starting from enrolment to the payout of EAPs.²²
- 4.2. The fact that fees that are deducted from the plan’s earnings will reduce the plan’s and the consumer’s return should also be included in the disclosure provided in Part B, item 6.7 – Fees and Expenses.
- 4.3. We disagree with the removal of a prescribed table (now Item 6) which sets out the specific types of institutions and programs that are eligible or not eligible and its replacement with a description of the types of programs that are and are not eligible. We have discussed our concerns in paragraph 2.8 to 2.13 above. This information is important to any decision as to whether to invest, and has significant consequences to parents and their child if not appreciated prior to investing and prior to enrolment in a given school and program of study.
- 4.4. We agree with requiring disclosure if the plan has more restrictions on the type of educational programs that qualify for EAPS than the restrictions imposed under the *Income Tax Act* (Canada) (“ITA”) (Item 6 of Part C), but believe that more than a general description is required. A list of specific schools and programs that would be ineligible would assist potential purchasers and we reiterate our comments that the fact of more restrictive criteria needs to be made clear and transparent in the Plan Summary.
- 4.5. We believe that whether or not the contribution schedule has been certified by an actuary is information that is more valuable than simply disclosing the entity that prepared the contribution table. Both should be disclosed (Part C, Item 12 – Contributions).
- 4.6. We disagree with removing the requirement in Item 14.4 to disclose the share of ongoing plan expenses for an annual investment of \$2,500. Mutual funds are able to determine this fee on an example of \$1,000 and we see no reason that group scholarship plans should be unable to do so.

¹⁹ See Federal Report at page 16.

²⁰ See Appendix C: Summary of Comments on the 2010 Proposal at page 21

²¹ See Appendix C: Summary of Comments on the 2010 Proposal, at page 21.

²² Part B, Item 6.1 of the 2011 Proposed Amendments.

4.7. We agree with Kenmar Associates' comments on the refund of sales charges and other fees which should disclose that there is no interest earned on the charges, it is not a contribution and does not form part of the investment, and that it may be returned many years later in deflated dollars.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Ermanno Pascutto at 416-572-2282/ ermanno.pascutto@faircanada.ca or Marian Passmore at 416-572-2728/ marian.passmore@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

CC: 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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut