

**IN THE MATTER OF THE SECURITIES ACT,  
R.S.N. 1990, CHAPTER S-13, AS AMENDED (the "Act")**

**AND**

**IN THE MATTER OF  
SELF-DIRECTED REGISTERED EDUCATION SAVINGS PLANS**

**R U L I N G  
(Subsection 75(1))**

**UPON** the application of certain interested parties to the Director of Securities (the "Director") pursuant to the powers conferred on the Director by section 146 of the Act for a ruling pursuant to subsection 75(1) of the Act with respect to trades of self-directed education savings plans which have been approved by Revenue Canada, Taxation pursuant to the provisions of the *Income Tax Act* (Canada) (the "ITA") and which subsequently become registered as registered education savings plans ("RESP's") under the ITA upon the requisite number of subscribers (the "Subscribers") having been obtained (individually, a "Plan", collectively the "Plans");

**AND WHEREAS** the sale of contracts or plans which are governed by National Policy Statement No. 15 ("NP 15") and which are referred to as "university scholarship plans" or "scholarship agreements" under NP 15 are not affected by this ruling;

**AND WHEREAS** Plans are structured such that contributions by Subscribers to a Plan are deposited directly into an account in the name of the Subscriber and may be used, at the direction of the Subscriber, to purchase other investments as may be permitted under applicable law (the "Investments");

**AND WHEREAS** for the purposes of the immediately preceding recital, such Plans include RESP's offered under a prospectus offering shares or units of a mutual fund, where the contributions to the RESP are invested in the shares or units of the mutual fund;

**AND WHEREAS** the Subscriber maintains control and direction over the Plan which enables the Subscriber to direct how the assets of the Plan are to be held, invested or reinvested in a manner similar to the self-directed retirement savings plans ("RRSP's"), which RRSP's are not subject to the registration and prospectus requirements under the Act;

**AND WHEREAS** in order to qualify for registration as an education savings plan under the ITA prior to February 20, 1990, a prospectus was required to be filed with a securities commission in Canada;

**AND WHEREAS** it has been proposed in the federal budget of February 20, 1990 that, effective February 20, 1990, a promoter not be required to file a prospectus with a securities commission in Canada in order to obtain registration of an education savings plan under the ITA where the promoter is otherwise exempt from the requirement to do so under applicable securities law;

**AND UPON** the Director being satisfied that to do so would not be prejudicial to the public interest;

**IT IS RULED** pursuant to subsection 75(1) of the Act that the trades of Plans are not subject to section 54 of the Act, provided that:

- A. the application form provided to a Subscriber for purposes of establishing a Plan includes, or is accompanied by, a copy of the terms and conditions of the Plan and any additional documentation which may be necessary to provide disclosure of the income tax consequences of investing in a Plan, the responsibilities of the Trustee under the Plan, the refund provisions, the types of Investments in which the assets of the Plan may be invested or reinvested, the designation of a beneficiary under the Plan, the nature of any payments which may be made by the Plan to the beneficiary or otherwise, and any fees and charges associated with investment in the Plan; and
- B. the contributions by a Subscriber to the Plan are not pooled with the funds contributed by other Subscribers but, rather, are deposited into an account in the name of the particular Subscriber and may be used, at the direction of the Subscriber, to purchase Investments;

and for purposes of condition A of this ruling, where the assets of the Plan are to be invested in a mutual fund and the Plan application form is accompanied by a prospectus or simplified prospectus offering the mutual fund securities in which the RESP is to be invested, the disclosure regarding the terms and conditions of the Plan may be contained in the prospectus or simplified prospectus, as the case may be;

**AND IT IS FURTHER RULED** pursuant to subsection 75(1) of the Act that trades of Plans by:

- i. a person or company which is registered as a dealer under the Act in the category of mutual fund dealer or is registered as a salesman or as a partner or officer of a registered mutual fund dealer and is acting on behalf of the dealer; or
- ii. a person or company which is a financial intermediary as defined in paragraph 2(1)(p) of the Act, or is an officer, salesman or employee of the financial intermediary and is acting on behalf of the financial intermediary;

are not subject to section 26 of the Act, provided that the Plans offered, to the extent they invest in securities, shall restrict their Investments to securities in which the persons or companies referred to in (i) or (ii) above, as the case may be, are permitted to trade.

**DATED** at St. John's, Newfoundland this 27th day of October, 1994.

GEORGE F. KENNEDY  
Director of Securities