

1.1.3 CSA Staff Notice 81-314 - Removal of Foreign Content Restrictions for Registered Plans - Eliminating Indirect Foreign Content Exposure in Certain RSP Funds

CSA STAFF NOTICE 81-314: REMOVAL OF FOREIGN CONTENT RESTRICTIONS FOR REGISTERED PLANS – ELIMINATING INDIRECT FOREIGN CONTENT EXPOSURE IN CERTAIN RSP FUNDS

Introduction

This Staff Notice applies to RSP Funds, which for the purpose of this Staff Notice are:

- (a) an “RSP clone fund” which is a mutual fund that has adopted fundamental investment objectives to link its performance to the performance of another mutual fund whose securities constitute foreign property for registered plans and to ensure that the securities of the mutual fund will not constitute foreign property under the *Income Tax Act*, as defined in National Instrument 81-102 – *Mutual Funds* (“NI 81-102”);
- (b) a mutual fund which qualifies as an RSP clone fund except that it links its performance to the performance of a group of foreign securities that are similar to the portfolio of the underlying fund; and
- (c) a mutual fund which qualifies as an RSP clone fund except that it links its performance to the performance of more than one underlying fund.

The purpose of this Staff Notice is to set out staff’s guidance in response to the recent federal government budget proposal to remove foreign content restrictions for registered plans. In particular, this Staff Notice addresses the following:

- RSP Funds closing out their forward contracts, derivatives, or debt-like securities that link the performance of the fund to the performance of either another mutual fund or funds whose securities constitute foreign property for registered plans, or a group of foreign securities that are similar to the portfolio of the underlying fund (the Indirect Foreign Exposure);
- whether RSP Funds require securityholder approval to do so; and
- timely disclosure requirements and requirements to amend prospectuses and annual information forms (collectively, Prospectus Documents) for RSP Funds that: (i) close out their Indirect Foreign Exposure; or (ii) remove

references to the pre-budget foreign content restrictions for registered plans in their Prospectus Documents.

Background

On February 23, 2005, the federal government introduced a budget in Parliament that, if implemented, will eliminate the 30% limit on foreign content for registered plans retroactive to the start of 2005. While the related implementing legislation has not been passed yet, industry has asked staff to clarify a number of issues stemming from the change. In particular, we have been asked for guidance on whether closing out the Indirect Foreign Exposure for RSP Funds would under Part 5 of NI 81-102 constitute:

1. a change to the fundamental investment objective of the RSP Funds that would require securityholder approval; and
2. a significant change with respect to the RSP Fund that would require compliance with the timely disclosure requirements under securities legislation and the filing of an amendment to the Prospectus Documents of the RSP Funds.

We have also been asked whether we will expect RSP Funds, whose Prospectus Documents contain disclosure about the foreign content restrictions, to immediately amend their Prospectus Documents to correct this disclosure.

Staff Guidance

We recognize that the legislative process will take time before it is complete and that RSP Fund managers are monitoring this process closely. RSP Fund managers will wish to assess the progress of the adoption of implementing legislation before they decide if and when to close out any Indirect Foreign Exposure. If they decide that to close out the Indirect Foreign Exposure is in the best interests of the fund, then RSP Fund managers will also need to determine whether closing out the Indirect Foreign Exposure would constitute a change to the fundamental investment objectives of their RSP Funds or a significant change with the implications described above.

While not recommending any specific course of action to RSP Fund managers, if RSP Fund managers decide to close out Indirect Foreign Exposure, we offer the following guidance with respect to Part 5 of NI 81-102.

1. Securityholder Approval

For RSP Fund managers who conclude that closing out the Indirect Foreign Exposure is not a change to the fundamental investment objective of a RSP Fund which requires securityholder approval, we will not look behind the decision if the only change is to discontinue the Indirect Foreign Exposure and replace it with a direct investment in the underlying funds or group of foreign securities.

2. Timely Disclosure Requirements

For RSP Fund managers who conclude that closing out the Indirect Foreign Exposure is not a significant change requiring compliance with the timely disclosure requirements in securities legislation and requiring the filing of an amendment to the Prospectus Documents of the RSP Funds, we will not look behind the decision if the only change is to discontinue the Indirect Foreign Exposure and replace it with a direct investment in the underlying funds or group of foreign securities.

In making this decision, RSP Fund managers should be alert to the fact that the parameters of “a significant change” are different from those of “a change to the fundamental investment objective”.

If RSP Fund managers conclude that closing out the Indirect Foreign Exposure is not a significant change, we encourage RSP Fund managers to consider other forms of communication that would provide securityholders with access to information about this change, but that would not be prohibitively costly to RSP Fund managers. Examples include a message on the RSP Fund’s website or a notice in the next scheduled mailing to securityholders.

If RSP Fund managers decide to remove references to the 30% foreign content limit in Prospectus Documents of RSP Funds as a result of the recent budget proposal, in our view, it will generally not be necessary to make such changes until the next renewal of the Prospectus Documents.

Additional Guidance

RSP Fund managers of a RSP Fund, that does not fit within the circumstances set out above but who still think that closing out the RSP Fund’s Indirect Foreign Exposure would not be a change to the fundamental investment objective or a significant change, may wish to contact the CSA to seek specific guidance.

We will consider issuing additional CSA Staff Notices in the future if appropriate to address further issues.

March 18, 2005