ACPM · ACARR
The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

Davin Hall
Policy Manager (A)
CAPSA Secretariat
c/o Joint Forum Project Office
5160 Yonge Street
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September 5, 2003

Dear Davin,

Re: Proposed Guidelines For Capital Accumulation Plans

The Joint ACPM/PIAC Task Force (the "Task Force") has reviewed the *Proposed Guidelines For Capital Accumulation Plans* issued April 2003. The Task Force commends the Joint Forum of Financial Market Regulators (the "Joint Forum") for their efforts in developing industry standards for the dissemination of information to the members of CAPs. In particular, we commend the collaborative and inclusive nature of this development process.

We have several overall observations, including some clarification questions. In addition, we have a number of suggested edits to the Guidelines. We have black lined a copy of the Guidelines so that you may see our suggested edits. For the sake of clarity, we will present our observations first, followed by our critical edits and other suggested edits. The order of the suggested edits will follow the order of the Guidelines.

Overall Observations

Our first observation is that the Proposed Guidelines are good. They have largely addressed industry concerns, and will provide a great deal of assistance to employers and administrators in an area where there have been few clearly articulated rules, standards or practices.

The development of any industry guidelines requires a delicate balancing between the desire for clarity and direction, on the one hand and over-regulation on the other.

The clarity and direction of the Guidelines are good. The Guidelines are sound, and generally reflect industry practices. We believe that the Guidelines, if followed properly, will provide a reasonable due diligence defence for employers/administrators against actions by members in the event of disappointing investment performance. The uniform approach across jurisdictions will also be beneficial to the industry. But we are concerned that there are very important areas of the Guidelines that remain unclear, despite the Joint Forum's best efforts. We refer to these in our conclusions below.

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As to over-regulation, we first recognize that there is no comprehensive study to properly assess the cost and the associated benefits to plan members of this regulatory effort. Thus, we are left to apply our extensive experience in assessing the impact of these Guidelines. While some arrangements for non-pension plans might comply with these standards, we believe that not all arrangements will currently so comply. Specifically, we believe it is inappropriate to assert that arrangements (including voluntary, non-contributory plans) currently meet the monitoring requirements included in these Guidelines. We feel it is our duty to bring these concerns to your attention as part of the feedback we committed to provide. In the end, only time will tell whether, on balance, certain plan sponsors will decide to terminate or not start a non-pension CAP because the benefit to members saving for their financial needs is not worth the associated costs and potentially increased liabilities for the plan sponsor. Only the marketplace will determine if these Guidelines will have a significant cost impact on non-pension arrangements.

As to the timing of implementation, we observe that, the application of the Guidelines to non-pension CAPs may take some time as employers must develop compliance procedures for the Guidelines for the first time. Further, although most pension plans or their providers on their behalf, comply with many aspects of the Guidelines, there are areas where compliance will take a little longer. We envision the need to adjust systems to collect and provide information broken down as required by the Guidelines (the collection of all plan expense information is one such area). We expect that implementation will also involve re-negotiation by employers and administrators of contracts with providers and advisors. Accordingly, we suggest that a reasonable time be given for the expectation of full compliance by the regulators. Again, we recognize that exemptions under securities legislation can only be given on conditions that are clear to both the regulator and the employer. We suggest that the expectations be of substantial compliance by the end of 2004, and full compliance by July, 2005.

Conclusions

While you will find many suggested edits below, the critical ones for the Task Force are shown first. If the Joint Forum can resolve these fundamental uncertainties, the Task Force supports the Guidelines.

We appreciate the Joint Forum's extensive consultation with the pension industry, which we believe was beneficial to all stakeholders. We suggest that the Joint Forum plan now to review industry experience with the Guidelines a year after the date of expected full implementation, certainly before any jurisdiction codifies the Guidelines into legislation or regulations. As we have said many times, we believe that guidelines are much preferable to legislation. Industry practices in respect of CAPs are evolving, and uniformity is very difficult to achieve through legislation.

Suggested Edits to the Guidelines

Critical Edits:

A. It is not clear to the Task Force if a single investment choice CAP is subject to these Guidelines. We suggest that Item 1.1.1 provide clarity to this question. For example, would an employer stock purchase plan (where employer stock is the only option), be subject to a number of the requirements of the Guidelines (see, for example, Item 2.2.1 "*Factors a CAP sponsor should consider when choosing investment options*"). The Task Force also suggests that if it is the intention of the Joint Forum to include all types of CAPs in these Guidelines, this should be re-addressed with the industry as this is a departure from the original intent of these Guidelines;

B. In the second paragraph of Item 1.2.1, remove the word "educational" before "tools". While not universal, many in the industry believe that the word education implies the need for testing for knowledge. The Task Force is strongly against this concept, believing it will add undue burden on the plan sponsor and create an environment for unnecessary liability. We would hope that the Joint Forum would want to make this clear rather than leave this uncertain;

C. Item 2.1.3 states that the CAP sponsor "prudently" select service providers "with regard to the best interests of the CAP members". The Task Force has suggested removal of this phrase as we feel it creates a fiduciary responsibility. It was agreed that fiduciary responsibilities would be removed from these Guidelines;

D. The Task Force has several issues with Item 2.2.2 *"Selecting investment funds"*. The Item as currently drafted is at marked variance to what was contained in the Revised Principles. The Revised Principles indicated that compliance by an investment fund with any one of the three investment regimes would qualify that fund as an eligible investment for a CAP. The three regimes in question were the IVIC rules, NI 81-102 or the federal pension benefits standards legislation. The Task Force agrees with this approach. The majority of the money currently invested in investment funds in CAPs is invested in institutional pooled funds that may or may not comply with the IVIC rules or NI 81-102 but would in all likelihood comply with the federal pension rules. The current language in Item 2.2.2 would have the effect of disqualifying such funds as investment options under CAPs thus forcing members out of those funds or forcing the respective managers to change the fund investment mix. In both cases, members of non-registered CAPs would be forced to realize taxable capital gains or losses and be forced to rebalance the majority of their holdings within the CAP.

The Task Force agrees that funds made available as investments under a pension plan must comply with the applicable federal or provincial pension investment rules. As a result, we see no need for the current construction of Item 2.2.2 and instead see only needless upheaval and cost for members. Our edits to this section ensure that compliance is necessary but not multi-jurisdictional;

E. Item 3.1.4 refers to "distinct and identifiable groups of members within the plan" when determining the appropriate amount and type of investment information and decision-making tools to provide. The Task Force feels that only the entire membership should require consideration in these Guidelines. Plan Sponsors will be left trying to decide how thinly to slice the membership in order to provide information and tools;

F. The fourth bullet of Item 4.1.2 states that plan members "ought" to obtain investment advice. We would suggest that same change as Item 3.7 (see #20 below).

Other Suggested Edits:

1. In the *Table of Contents*, the item "*Adding an investment option*" (5.2.4) has been included twice. Once removed, the subsequent numbering should be revised.
2. For consistency, the word "trade" should be added in front of "association" in Item 1.1.4.
3. The Guidelines state that they "represent existing industry practices" (Item 1.2). The Task Force suggests the addition of "generally".
4. The Task Force has removed Item 3.6 and included a reference to privacy regulation in Item 1.2.1 as the issue of privacy goes beyond the information that is provided to an investment advisor. There are privacy issues with which the recordkeeper and the CAP sponsor must deal.
5. In addition, in Item 1.2.1, we have added reference to "other services" and the "nature of" the plan. We feel that this adds clarification to this point as there are other services available to CAP members and the nature of the plan will contribute to what services are offered to the members.
6. In addition, in Item 1.2.1, we have brought forward the concept of "plain and simple language" from the beginning of Section 4 as this was an overall goal for these Guidelines. By moving to the front of the Guidelines, we believe it will be incorporated into all aspects of member communications.
7. We have removed the first sentence of Item 1.3.1 as we do not feel it is necessary, given that what follows are descriptions of responsibilities for all parties involved.
8. The last sentence of Item 2.1.2 is not necessary as this concept has already been dealt with in Item 1.3.2.

9. In Item 2.2.1, the Task Force is concerned about the statement that the choice of a service provider "will define or limit the type and quality of investment options available to a plan." We suggest removal of "and quality" as it implies substandard offerings.
10. The fourth bullet point in Item 2.2.1 should be eliminated. Determining the "financial sophistication of members" implies testing.
11. Continuing in Item 2.2.1, the Task Force suggests that the "degree of diversification, liquidity and the level of risk…" are also relevant to non-retirement savings plans. These are often offered by employers in the form of After Tax Savings Plans. We suggest the removal of this sentence.
12. The last paragraph of Item 2.2.1 is redundant in light of the content of Item 1.2.1.
13. In addition to the above, it should be noted that the CSA is proposing to eliminate NI 81-102 and replace it with a newly named Code. We would suggest that wording should be modified to the following "applicable to prospectus qualified mutual funds" so that subsequent or differently named legislation is included.
14. The Task Force suggests that the default option will be treated like any other investment options in terms of CAP sponsor selection. The last sentence of Item 2.2.4 is redundant.
15. In Item 2.3.1, it is stated that the CAP sponsor "should promptly correct any identified errors." We have consolidated the two sentences.
16. We suggest the elimination of Item 3.1.2 as member responsibilities have already been outlined in Item 1.3.3. If elements are missing from Item 1.3.3 (that are contained in Item 3.1.2, we suggest that they be consolidated in Item 1.3.3.
17. In Item 3.1.3, the "financial sophistication of members" should be eliminated as criteria for determining the type of investment information and decision-making tools necessary for the same reason that we suggested removing from Item 2.2.1.
18. We have added "to members" in Item 3.4.2 for clarification purposes.
19. Item 3.5 indicates that "up-front or lump sum fees should not be charged to members for basic investment information or decision-making tools". The Task Force understands why the Guidelines contain this, but feel that prescribing to plan sponsors how costs can be distributed is prohibitive. The overall costs of the administration of CAPs contain fees for this information and these tools. Prohibiting plan sponsors from passing on these costs could inhibit them from offering CAPs. We would suggest that language that we have included in the blacklined copy of the Guidelines.
20. The Task Force suggests that CAP sponsors caution members that they "should consider" obtaining additional independent investment advice (Item 3.7)
21. Section 4 refers to the use of "plain and simple language". This was one of the overriding principles in the Revised Principles. We feel this is better addresses in a general paragraph such as Item 1.3.1 so that it is seen to apply to all of the Guidelines.
22. The third bullet of Item 4.1.1 refers to "investment choice responsibilities". We are not sure what this means. It seems redundant in light of the list of member responsibilities.

23. The fourth bullet of Item 4.1.1 indicates that the names of all service providers should be communicated to plan members. Should this include service providers such as the name of the consultant utilized by the plan sponsor? What about the name of the legal counsel? What value would this information provide to the plan member? We suggest adding "with whom CAP members interact" in order to clarify the disclosure requirements.
24. In Item 4.2.1, the fifth bullet requires a ";" at the end of the point; in the sixth bullet "and" should be removed from the end of the point and added at the end of the seventh bullet.
25. There is a possibility that legislation will require providing the names of the underlying managers in a fund of funds structure. If this is not required, we suggest the removal of the seventh bullet in Item 4.2.1.
26. The first sentence of Item 4.2.3 should be situated at the front of Section 4.2. It is an overall philosophy that should govern what information is provided to plan members.
27. Item 4.3.1 contains extensive information about what a plan sponsor must provide to a member in order to make a transfer from one investment option to another. These seem excessive in terms of the amount of the detail. The Task Force suggests removal of the first two points as these are obvious. In addition, we suggest that the CAP sponsor should advise members of the duration of the suspension.
28. The use of the term "commissions" in Item 4.4, first bullet point, could be interpreted as communicating brokerage commissions incurred by investment managers in the normal course of running the fund. We suggest changing commissions to "costs".
29. In Item 5.1.3, transaction details should be moved to Item 5.2.1 and a transaction summary made part of Item 5.1.3.
30. In Item 5.3.2, the Task Force suggests that this is the responsibility of the oversight group for investment options.
31. The Task Force suggests that "or resources" be added after "…the necessary knowledge and skills" in Item 6.2.1.
32. Item 6.2.1 states that the performance of the investment option should be reviewed in relation to the purpose of the CAP. The Task Force suggests that more appropriate language would be "objective of the investment option" as the purpose of the CAP has nothing to do with the performance of the option.
33. Item 6.2.3, bullet three should be deleted. It is the plan sponsor's responsibility to select/monitor/de-select investment options. Taking into account "any preferences voluntarily indicated by members" may put a CAP sponsor in the position of accommodating the wishes of a very few vocal CAP members. Criteria for the selection of investment options has been outlined in Item 2.2.1. If an option remains available to members, it is implied that the option is suitable and meeting all requirements.

34. It is not necessary to include “clearly” in Section 7.
35. Item 8.2 is redundant in light of Item 1.3.1.
36. In the final sentence of Item 8.2.1, “or personal representative” should be added after “…designated beneficiary.”

Both the ACPM and PIAC again thank you for the opportunity to be involved in this initiative. We look forward to working with the Joint Forum and CAPSA in respect to other issues that are of concern to the industry and to pension regulators.

Sincerely,

ORIGINAL SIGNED BY:

Priscilla Healy
Chair, Advocacy and Government Relations Committee, ACPM
Co-Chair, Joint ACPM/PIAC Task Force

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VIA E-MAIL

August 26, 2003

Joint Forum Committee on Capital Accumulation Plans
Canadian Association of Pension Supervisory Authorities (CAPSA) Secretariat
c/o Joint Forum Project Office
5160 Yonge Street
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Attention: Davin Hall, Policy Manager

Dear Sirs and Mesdames:

Re: Guidelines for Capital Accumulation Plans

In January 2003, Advocis commenced operations as the merged association of the Canadian Association of Insurance and Financial Advisors (CAIFA) and The Canadian Association of Financial Planners (CAFP), pending enactment of a federal act of amalgamation. The legal name of the association will be The Financial Advisors Association of Canada carrying on business as Advocis. We are writing to convey the comments of Advocis on the noted Guidelines for Capital Accumulation Plans (CAPs), published on April 25, 2003.

Advocis' Code of Professional Conduct binds its members to act in a client's best interests, whether the clients are CAP sponsors or plan members. The comments in this letter reflect our members' commitment to advocate in the best interests of their clients.

1. ADVOCIS

Advocis is a community of financial advisors coming together in voluntary association to advance the practice of their profession. Our association traces its origins to the founding of the Life Underwriters Association of Canada (LUAC) in 1906. CAFP was founded in 1981. Advocis continues an uninterrupted history of serving Canadian financial advisors, their clients and the nation for almost a century.

Advocis members are financial advisors licensed to sell life and health insurance, mutual funds and other securities. Advocis comprises 16,000 voluntary members across Canada, organized in 50 chapters. Advocis' members provide financial products and services to over 12 million Canadians. Our common goal is to assist individuals and families to achieve their financial objectives security through the optimal application of individual and group financial products.

The comments in this letter originate with members of the Conference for Advanced Life Underwriting (CALU), a conference of Advocis. CALU's members specialize in advanced insurance-based areas of practice, including employee benefits.

2. Prior Participation

CAIFA submitted comments in October 2001 on the draft regulatory principles for CAPs published in April 2001. At that time, we expressed serious reservations about the proposed regulatory principles:

> **…** the paper as a whole…presume[s] a two-dimensional regulatory option for CAPs.
>
> The two dimensions are based on pension and securities models of existing regulation. The paper appears to imply throughout that a regulatory model for CAPs should either impose fiduciary liability on a CAP sponsor for the failed expectations of CAP members or impose a scheme of securities regulation on the CAP member's enrollment and participation in the CAP. CAIFA believes that CAPs have distinctive characteristics as vehicles for employee group benefits that place them outside of the pension or securities models of regulation.
>
> … Above all, the paper does not hold up the governing principle that CAPs uniquely provide social value by removing barriers and offering incentives to save for retirement and that a regulatory system for CAPs must foster and not threaten their continuing existence.

We also expressed cautious optimism:

> The paper is a valuable first step…. With input from participating financial sectors and other stakeholders, CAIFA is confident that the Joint Forum will develop a body of regulatory principles that are appropriate to CAPs.

Over the intervening period, a representative of CAIFA (subsequently of Advocis) participated in the industry task force that developed detailed guidelines based on the regulatory principles that were revised following the 2001 consultation.

3. General Assessment

Advocis is pleased to observe that the published CAP Guidelines have addressed most of the deficiencies in the initial regulatory principles that we identified in our 2001 submission.

In our 2001 submission, we agreed with the 2001 discussion paper where it identified two needs:

1. The need to ensure that members of CAPs uniformly have adequate information and other tools to make informed investment decisions regardless of the legal character of the plan (pension, RRSP or another form of trust) or its underlying investments (segregated funds, mutual funds or annuity products)

2. The need of employers and pension administrators to have their duties and responsibilities with respect to CAPs clearly defined and harmonized across jurisdictions and products.

The CAP Guidelines substantially balance those needs with the additional need for a framework of flexible standards that will accommodate the varying circumstances of employers and other sponsors and maintain CAPs as a viable employee benefit.

Advocis especially endorses the decision to implement the guidelines through the publication of best practices rather than detailed prescriptive regulations.

4. Best Regulation: Best Practices in a Competitive Market

Our 2001 submission observed that the market for CAPs (and other employee benefits) is highly competitive. The CAP service providers with which Advocis members are most familiar have exerted themselves to maximize investor information and service while minimizing cost:

> … a market characterized by employers who willingly sponsor a CAP, employees who willingly participate in it, financial institutions that willingly provide it and a competitive market have combined to develop best practices. Those practices constitute a sound basis for regulation that may depart from existing regulatory principles [for individual investors].

Advocis continues to believe that most CAP providers, competing for sponsors by offering enhanced and innovative services to plan members, now adhere to virtually all the proposed best practice Guidelines. If regulators adopt those best practices as industry guidelines and publicly endorse them, market pressures will compel new or substandard providers in the CAP market to follow them, without need for detailed prescriptive regulation.

If the guidelines are to be implemented through prescriptive regulation rather than best practices, the likely outcome will be a reduced level of service and innovation as CAP sponsors and providers are compelled to focus on compliance rather than the needs of plan members.

5. Fundamental Test: Acceptance by Plan Sponsors

Sponsors, especially small and medium-sized enterprises, have adopted CAPs as an alternative to the cost and compliance burdens of maintaining a defined benefit pension plan. In some cases, CAP plans are offered as a supplement to a defined benefit pension plan. Sponsors will abandon CAPs if regulation becomes too complex and costly.

Recommendation

Advocis recommends that the CAP Guidelines should remain best practices guidelines and not be implemented as prescriptive regulation and compliance obligations that will dissuade sponsors from offering CAP benefits.

6. Viable Plans Must Contain Compliance and Other Costs

Our 2001 submission stressed the need for regulation that preserves the unique cost advantages of CAPs so that new compliance costs will not cancel those advantages and the economic rationale for CAPs:

> The paper does not sufficiently identify the unique benefits of CAPs to employer and employee—why the employer chooses to sponsor a CAP (attract and retain employees) and why the employee chooses to participate (the ability to save for retirement with greater convenience and at lower cost than are generally available to younger and more modestly compensated employees in the retail sector). …
>
> The paper does not sufficiently acknowledge the genuine cost advantages to saving for retirement that CAPs now make possible compared with the retail sector: reduced management expenses, reduced or nil switching costs, reduced minimum purchase amounts. …
>
> Sponsors will abandon CAPs if employees no longer perceive participating in a CAP as a benefit of employment. That may occur as the cost of regulatory compliance makes participating in a CAP as expensive as investing in a mutual fund or segregated fund or if the experience of enrolling in a CAP becomes indistinguishable from purchasing an individual investment.

Advocis continues to be concerned that the best practices guidelines for CAPs should not create additional costs of regulatory compliance that, whether absorbed by a sponsor or passed on to a plan member, will negate the current advantages of the CAP benefit.

7. Investment Options: Disclosure of Investor Protections and Compensation Plans

Guideline Item 4.2 “Investment Options” sets out minimal disclosure requirements to enable a CAP member to make an informed decision. Items 4.2.1 “Investment funds”, 4.2.2 “Employer securities” and 4.2.3 “Other investment options” each require disclosure of “any material risks of investing”.

Advocis believes that, in addition to material risks of investing, CAP service providers should disclose material safeguards.

Recommendation

Advocis recommends that Guideline Item 4.2.3 "Other investment options" should require CAP service providers to disclose, with particulars, that

- *purchasers of guaranteed investment certificates (GICs) issued by a bank or trust company will be protected by the Canada Deposit Insurance Corporation (CDIC) or the applicable provincial facility, and*
- *purchasers of annuity contracts will be protected by the Canadian Life and Health Insurance Compensation Corporation (CompCorp).*

8. Obligations of CAP Members

Our 2001 submission noted that:

> Apart from a passing reference to "members' … obligations under the CAP" (page 28), the paper entirely fails to recognize that CAP participants have their own obligations to participate responsibly.

We recommended:

> In addition to the regulatory principles outlined in the paper, CAIFA **recommends** that an effective process "to provide appropriate investment decision-making tools to CAP members" will include measures to make CAP members aware of their responsibility to utilize the tools that are provided and the consequences to them personally if they fail to do so.

Advocis is pleased to observe that the CAP Guidelines have adopted that recommendation. Item 4.1.2 "Outlining the rights and responsibilities of CAP members" states that the CAP sponsor must inform CAP members that they:

- are responsible for making investment decisions and that those decisions will affect the amount of money accumulated in the plan;
- are responsible for educating themselves about the plan, using the documents, information and tools available to them; and,
- ought to consider obtaining investment advice from an appropriately qualified individual in addition to using any information or tools the CAP sponsor may provide.

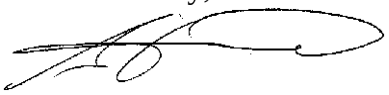
This requirement is intended to encourage plan members to take responsibility for their economic welfare but more proactive and practical guidance is needed to assist plan members to be self-reliant. For example, in 2001, we proposed that:

Simple measures could include signed acknowledgments by CAP members, signed attendance sheets for educational events and follow-up notices to absentees.

14. Further Assistance

Advocis appreciates this opportunity to comment on the CAP Guidelines. We would be pleased to offer further assistance to the Joint Forum as the Guidelines are refined and implemented. Any questions or request for further information may be addressed to Ted Ballantyne, CMA, TEP, Director, Advanced Tax Policy, CALU, calutax@advocis.ca, 1.888.989.0858, or Ed Rothberg, General Counsel, Advocis, erothberg@advocis.ca, 416.444.5251.

Yours sincerely,



Steve Howard, CA

Comments on the
Proposed Strategy for Implementation
of the Guidelines
for Capital Accumulation Plans

and

Comments on the
Proposed Guidelines for Capital Accumulation Plans

Submitted to the Joint Forum of Financial Market Regulators
by Aon Consulting

August 2003

PART I

Comments on the *Proposed Strategy for Implementation of the Guidelines for Capital Accumulation Plans*

It is our understanding that the Joint Forum agrees in principle that the guidelines should not result in additional regulation bur rather advocate a form of self regulation. We are surprised and concerned by the statement made in the Proposed Strategy which says : "These issues cannot be addressed by the guidelines alone, but must be addressed through further regulatory initiatives by the constituent members of the Joint Forum."

Also, we are wondering if the "regulatory initiatives" mentioned in the Proposed Strategy are exhaustive. Will there be other "regulatory initiatives" not mentioned in the document?

Assuming the initiatives are exhaustive, we have the following comments on the proposed strategy:

a) Relief from prospectus and registration requirements

This initiative would mainly affect banking institutions, trust companies and mutual fund companies who offer CAPs. We recognize that this might promote a level playing field which in turn might have an impact on the quality of products on the market and reduce prices. In the event that the quality of financial products remain at "high" standards and are consistently applied among all providers/agents, CAP members and sponsors would likely benefit from greater choice.

b) Incorporating the guidelines into the CLHIA standards structure

Not all insurance companies are members of the CLHIA. In Quebec, for example, some companies are provincially incorporated and have formed the Regroupement des assureurs du Québec. It is not clear whether the RAQ has been involved in the Joint Forum and whether it would bind its members to the guidelines. It would be important that the guidelines be endorsed by all insurers, regardless of their association.

c) Adoption of the guidelines by CAPSA for DC plans

It is not clear in what form the guidelines would be adopted by CAPSA members. Again, we are concerned about the consequence of integrating the Principles and the Guidelines into the regulation (or legislation) of each province. The goal of harmonization will be jeopardized.

i) Preferred strategy

Our preference would be that the guidelines be adopted as a best practice by the government authorities and not integrated in any legislation or regulation. More direct regulation on CAP sponsors will likely result in fewer CAPs. We also, in our previous

submission, advocated a “safe harbour” rule but it appears that the Joint Forum has rejected the idea.

Rather than implement additional legislative or regulatory burdens on CAP sponsors, we prefer self regulation by the industry. Once an acceptable “standard of care” has been developed, providers/agents will be subject to great market pressures to consistently adhere to the standards.

We believe that by allowing CAP sponsors to assign some of their duties to providers/agents who in turn would be required to provide consistent standards of care, then the goal of harmonization and providing CAP members with sound vehicles for retirement saving will be achieved.

If the Joint Forum decides not to favor this approach, we have the following comments depending on the approach that will be implemented:

ii) More regulations for DC plans

- Expected consequences

If DC plans were to be more regulated than they currently are, this could lead to greater administration burden and even lead to some plan sponsors moving towards Group RRSPs. In order to avoid this situation from happening, we would recommend that DC plans be imposed no more new regulations than Group RRSPs.

Or, looking at this from the opposite point of view, if the Joint Forum proposals generate new regulations for DC plans, we believe it would be unfair for group RRSPs to avoid such regulations and yet we doubt that there would be many parties in favour of new regulations for Group RRSPs.

- Proposed solution

We believe that a different way to deal with this problem might be to remove DC plans from the legislation governing DB plans and create a new set of legislation/regulations specifically designed for CAPs (including DC plans and Group RRSPs). This approach would be consistent with the Joint Forum’s views that these types of plans should be treated in a similar manner.

iii) Integration of the proposed guidelines in pension legislation

If, as the proposed strategy seems to imply, only the investment rules currently existing in pension legislation would be affected by these proposed measures and especially the 10 % rule. We think that changes to existing investment regulations may be a challenge. For example, Quebec changed its legislation with Bill 102 a couple of years ago to remove the 10 % rule except for securities issued by the employer or a company it controls. Unless the changes to the 10 % rule are similar to Quebec’s, it would be cumbersome to harmonize provincial regulations in that respect.

If, on the contrary, it is the intention of the Joint Forum and CAPSA members to integrate more details from the guidelines into their pension regulations, we suggest that only

general rules or principles be integrated and leave up to plan sponsors the details of their application in the administration of their CAPs.

d) Banks and Trust Companies

We wonder to what extent these institutions will be affected by the guidelines and principles. Is there a proposed strategy in order for the guidelines to equally apply to all CAPs whether they are provided by an insurance company, a bank or a trust company ?

As mentioned above, we believe it is important to avoid creating two categories of CAPs where one would be more regulated than the other. If not all CAP providers agree to apply the guidelines, we believe the harmonization efforts will remain in vain.

e) Group RRSPs

One should also keep in mind that Group RRSPs are only a “pooling” of individual RRSPs. Many employers or plan sponsors have put them in place as a supplement to an existing pension plan and solely for the purpose of offering employees an investment product with lower administrative costs. There is no underlying expectation of employer’s involvement or fiduciary duties attached to it.

With the Guidelines, this may all change with the consequence of forcing employers to withdraw from this type of benefit and to only offer access to individual RRSPs with no employer’s involvement whatsoever. Will this be as cost effective for employees as Group RRSPs? The problem won’t be solved and it will be just another way to go around the Guidelines. Who then will bear the responsability to apply the Guidelines ? Should then individual RRSPs offered to a group of persons be subject to the Guidelines ?

PART II

Comments on the *Proposed Guidelines for Capital Accumulation Plans*

COMMENTS ON THE *PROPOSED GUIDELINES FOR CAPITAL ACCUMULATION PLANS*

a) General comments

i) Flex Plans and Voluntary Contributions

These plans and contributions presumably are not targeted by the Guidelines, whether members are permitted or not to make investment decisions, and we are of the opinion that it would be preferable to clearly state this fact in the guidelines.

ii) CAPs where no investment decision is made by the members or where employees do not contribute.

Here as well, we would suggest a clear statement in the Guidelines whether these types of CAPs are subject or not to the Guidelines.

iii) Group RRSPs

Should Group RRSPs where no employer “contributions” are made be subject to the Guidelines? Such RRSPs are identical to individual RRSPs. Why should there be more requirements on Group RRSPs than on Individual RRSPs? To be fair, maybe individual RRSPs should be subject to the same requirements as Group RRSPs and the guidelines should also apply to financial institutions that provide individual RRSPs, although some adjustments might be necessary since those plans do not involve an employer.

iv) Investment choices

There are many references throughout the document pertaining to the number of investment choices without specifying what is a reasonable number. The Québec pension legislation provides for a minimum of three investment choices when plan members have to make investment decisions. These options should not only be diversified and involve varying degree of risk and expected return but also allow the creation of portfolios that are generally well-adapted to the needs of the members.

The Guidelines could provide in a similar manner. We do not think that a standard number of fund options should be included.

v) Minimum requirements

Sub-item 2.2.2, Section 3, and sub-items 4.1.2 , 4.2.1 and 6.2.1 only make sense under programs which offer sufficient investment fund options to meet proper diversification requirements, various degrees of risk tolerance, personal circumstances, investment

horizons and objectives. It seems somewhat inconsistent to call for proper delivery of information and investment planning tools without addressing in the first place what constitutes a minimum ensemble of funds to work with. It would be quite helpful to get from the Joint Forum any guidance to that effect.

vi) Repetitiveness

The guidelines, though quite comprehensive and well written, seem repetitive in contents. It might be preferable to reduce this repetitiveness. For example, rules on transfers can be found under section 3, item 4.3, sub-items 5.2.2 and 5.2.4.

vii) Use of “must” and “should”

The Guidelines use the terms “must” and “should” indistinctively. On a legal point of view, the word “should” can be interpreted differently depending on various factors and is a very tricky word as it is not clear whether it would mean "will/must" or "may". Therefore, for consistency and in order to avoid any confusion as to the imperative character of the Guidelines, it would be preferable to use “must” or “will”.

On the other hand, “must” and “will” may seem to impose too much on plan sponsors and may discourage sponsors and employers to subscribe to the Guidelines. Therefore, it might be best not to use either terms. Since Guidelines are not mandatory in nature, maybe the present tense of all verbs could be used without preceding them with the word "must".

Eg. In Section 4.1.2, instead of writing "The CAP sponsor **must also inform** CAP members that" we would write "The CAP sponsor **also informs** CAP members that".

viii) Lack of clear direction

The Guidelines do not always provide the CAP sponsor with clear direction and thus opens the opportunity of not meeting their fiduciary duties.

b) Specific Comments

1.2.1

According to this sub-item, the guidelines supplement existing legal requirements while in the Proposed Strategy, it is planned for some of the guidelines to be integrated into provincial legislation. The status of the guidelines seems to be ambiguous and we would like the Joint Forum to provide a clear statement on the purpose of the guidelines (see also comments on the Proposed Strategy).

1.3.1

In delegating the responsibilities to a service provider, we suggest that the contract between the parties clearly (i.e. explicitly versus implicitly) recognizes such. Section 2.1.3 indicates that the CAP sponsor must ensure that the applicable roles and responsibilities of the CAP sponsor and service provider are carefully documented. Would this be explicit enough for CAP sponsors to be held harmless?

Also, the English version of the Guidelines refers to “on going communication” to be provided to plan members while the French version refers to “maintenir une communication constante”. The obligation under the French version seems much more compelling. We think that the English version better describes the nature of the obligation and that the French version should be changed to “maintenir une communication régulière”.

2.2.1

The term “diversification” should be better defined (see the 5th bullet point)

2.2.3

The rules with respect to transfers among investment options should clearly differentiate between :

- conditions related to the number of transfers to be allowed (regardless of who pays the resulting fees) and

- conditions related to how many transfers are to be paid by the employer (free transfers) or to be paid by the plan members.

While we agree that transfers, regardless of who pays the resulting fees, should be permitted at least once per month, the plan should be entitled to provide certain resulting fees to be payable by plan members (either for each transfer or after a certain number of transfers).

Consequently, the last paragraph of the French version of sub-item 2.2.3 should be amended as follows ;

« Le promoteur peut par exemple limiter le nombre de transferts **sans frais pour le membre** ou imposer des frais si la limite établie est dépassée. »

We also think that the guidelines should provide the possibility to impose an overall limit per year, per member, paid by the employer, which could be as low as 12.

2.2.4

This Section states that any default options must be selected prudently and should be chosen using the same factors used when choosing the investment options. This could be taken to mean that a simple money market fund may not be sufficient as a default option considering risk/return profiles of each member. Greater direction/clarity is required by the Joint Forum.

2.3

It is important that the word “record” be defined. There is a distinction to be made between the “plan record” which contains the technical information about the plan and the investment options, the plan text, the correspondence between the plan sponsor and providers, resolutions of the Board and other related documents, and the “plan member’s record” which contains all personal information on the plan member.

In some cases, providers also can keep some of those “plan records” rather than the sponsor, so we have difficulties with imposing on the plan sponsor the obligation to correct any identified errors as they do not necessarily hold all parts of the records.

When there is a delegation of certain tasks to a third party, is responsibility delegated as well in order to provide the sponsor with a hold harmless protection?

2.3.2.

- If plan sponsors are to have the responsibility to establish and maintain a retention policy, providers should also have the same responsibility towards their own records.

-The French version requires that the retention policy specifies “the names of the persons who can have access to the documents (translation) ” while the English version refers to “who can have access to the documents”. The English version is less demanding than the French. If the intent is to show the name of the persons, it will be difficult to administer and update the retention policy with staff turnover. We suggest that only the title of the persons who have access be shown in the policy (this needs to be reflected in the French and English wording).

3.3

If a decision making tool is adopted, there are a few areas of additional concern that might be taken into account in the Guidelines.

- what are the underlying assumptions used to make projections;
- do you allow members to vary the assumptions;
- do you put limits on the ranges of assumptions (acceptable levels);
- should some assumptions be linked together so they are reasonable and consistent.

3.4

The concept of providing advice and guidance is a debate in itself. We suggest that there may be problems in ensuring consistency of advice and qualifications. The Joint Forum may need to review this section in concert with the various associations that provide accreditation to financial planners, etc.

3.5

- In the first paragraph of the French version, we should read “Le promoteur doit informer clairement les participants qui **paiera**”. The plan sponsor must inform plan members of who will “bear the cost” and not “inform those plan members who are paying the costs”.

- In the 2nd paragraph of the French version, reference is made to “renseignements de base” in respect of “Up front fees”. In both versions, we think that these two notions should be better defined. We are of the opinion that it should only refer to the fees in relation to the questionnaire to determine the investor’s profile of the plan member and to the information found at sub-item 3.1.4.

- When applicable, full disclosure on a commission basis should be required as well as how this can affect a CAP member’s savings.

3.6

This section may need to be enhanced to address privacy legislation requirements. Most service providers have been addressing this area in anticipation of the rules but there probably should be some explicit references.

4.1.2

- If plans for which employees do not make investment choices are subject to the guidelines, the 2nd and 4th items under this sub-item are not relevant.

- In the English version of the last paragraph of this sub-item, the verb used is conditional “ought to” while in the French version is present “doivent”. We think that the English version is more appropriate and it should not be an obligation for plan members to consult with an independent financial advisor.

- Bullet point 1 - It might be preferable to require disclosure of the sources of the information, where it can be found.

4.2.2

In the French version, it is the responsibility of the plan sponsor to provide information on employer’s securities. In the English version, it is not clear who has this responsibility and it should be changed to show who bears it.

Who is to provide this information? Should there be a specific reference to the prescribed limitations for registered pension plans?

4.2.3

The introductory sentence of the examples of other investment options (i.e. the second list) should be amended as follows :

“Examples of investment options other than **investment** funds and employer securities include :”

The French version would also have to be changed accordingly.

4.3.1

CAP members should be informed of the risks of transferring among investment options. When a suspension occurs, the duration of the suspension should also be communicated (this seems obvious but the Guidelines are not clear on this point).

4.4

This item only refers to fees paid by plan members. We think that it would be better to also communicate fees paid by the plan sponsor and providers so plan members can understand they are not the only ones to bear the costs of the plan.

Also, the obligation should apply not only to explicit but implicit fees as well, such as investment consultant fees.

If the plan sponsor or employer should also inform CAP member on what they can do to voice their disagreement with respect to fees/expenses.

5.1.1

Examples of acceptable forms of communication should be explicitly identified (e.g. written, electronic, web based, etc)

5.1.2

The Guidelines should provide the appropriate requirement for CAP sponsors to be able to confirm that their members have received an electronic statement. It would have to be clear that if a CAP sponsor cannot confirm such, a paper statement should be sent.

5.1.3

The last paragraph indicates it is not required to provide the rate of return for each plan member. We are not in agreement with this statement. We think it should be mandatory. However, instead of requiring that the statement describe the method used, it should only require to indicate where a plan member can get details on how it was calculated. This requirement would be quite cumbersome and we think that only requiring statements to "show the name of the person to contact for more information" should suffice.

The 3rd bullet point should be expanded to include the source of contributions and subtotals/totals (e.g. member required, member voluntary, employer, etc).
Personal returns and returns on each fund would be beneficial metrics for CAP members.

5.2.3

Fifth item on the list: To require the communication of **any** tax consequences is adding a heavy burden on the shoulders of the plan sponsor since these consequences can largely vary from one individual to another. It would be preferable to add "the main tax consequences **of a general nature**"

5.2.6

"Significant changes" should be defined. It might also be preferable to include employer expenses in this section.

5.3.1

5.1.3 and 5.3.1 are contradictory. Sub-item 5.1.3 indicates that "**If** a statement includes the calculation of a personal rate of return" where as sub-item 5.3.1 makes it mandatory to provide performance reports for each investment fund and member portfolio. We believe that it should be mandatory.

5.3.2

To require the performance report to show the method used to calculate the fund performance seems too much of a burden for the purpose of the guidelines. The guidelines should only require that reports indicate that explanations are available on demand and the name of the person that may be contacted.

The Guidelines should also include a description of the risk (i.e. volatility on each fund) and include a reference to the relative performance of each to fund to similar funds/managers with the same objectives and/or styles.

6.1.1

Monitoring advice will be difficult if not impossible. There might be a need to review how the Joint Forum could work with the associations that provide the accreditation for financial planners and look to those bodies to maintain minimum compliance standards.

6.1.2

Adding examples of "appropriate" actions would help sponsors who would need to take measures in case of unsatisfactory performance.

6.3.1

Consideration might be given to whether an explicit reference to privacy legislation is included.

In the second grouping of bullet points, should the word "and" be inserted after periodic audit?

6.5.1

Add a bullet to include a review with governing bodies of advisors or require some form of certification.

7

While the reasons for changing the purpose of a CAP should be well documented for corporate and liability purposes, we do think these reasons should be required to be explained in details to plan members. We agree the decision should be communicated but, here again, assessing the impact on plan members can be onerous and may expose the plan sponsor to additional liability for failing to have provided information that the sponsor considered too specific. Maybe the obligation to assess the consequences should be limited to the **general** impact.

It may also not be possible to communicate these changes “prior to taking effect” as required by the second paragraph (change of control, hostile takeover and mergers, etc), so we would like you to add wording allowing a reasonable delay.

8.2.1

The last sentence of that sub-item refers to information to the member’s designated beneficiary. In the case of DC plans, the beneficiary may not be the designated beneficiary but the spouse.

In other cases, the member may have omitted to designate a beneficiary and any benefit may be payable to the estate.

This last sentence should be changed as follows :

“(…) this information should be given to the person entitled to the death benefit, whether the member’s designated beneficiary or the spouse, provided that person can be identified at the time of termination.”

August 29, 2003

BY E-MAIL

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RE: Comments on the *Proposed Strategy for implementation of the Guidelines for Capital Accumulation Plans* and *Proposed Guidelines for Capital Accumulation Plans*

Dear Sir:

Once again, Aon Consulting welcomes the opportunity it is being given to comment on proposed documentation prepared by the Joint Forum of Financial Market Regulators on Capital Accumulation Plans.

You will find attached a two part document which contains, in Part I, Aon Consulting comments on the *Proposed Strategy for implementation of the Guidelines for Capital Accumulation Plans* and, in Part II, comments on the *Proposed Guidelines for Capital Accumulation Plans*.

To provide comments on the proposed Strategy and Guidelines requires to look back on our submissions of October 31, 2001, to the Joint Forum on the *Proposed Regulatory Principles for Capital Accumulation Plans* ("Proposed Regulatory Principles"). We gladly noticed that a fair number of our submissions are now reflected in the Guidelines.

As a consulting firm, it has always been our concern to try to balance the employers' and employees' needs with respect to benefits. However, the responsibilities of other stakeholders (insurance companies, banks, trust companies and investment manages), are not clearly shown in the document, except through the delegation provisions. We are of the opinion that not all responsibilities should lie on the shoulders of the employers or the plan administrators but, there should be a multi-partied system where each party bears its own share of liability depending on its own expertise.

Our comments should be read in the light of the same concerns we initially raised with the Proposed Regulatory Principles, especially those concerns which do not seem to have been addressed in the Guidelines :

- **Flex modules**

  There remains no indication whether flexible contribution modules related to defined benefits plans where employees choose investments are targeted by the Guidelines

- **Trust companies, banks and brokers**

  It is still unknown to what extent the Guidelines would apply to trust companies, banks and brokers. There are needs to be only one normative rule applicable to all similar products whoever the provider or issuer might be.

- **Regulatory and legislative measures**

  We do not think the industry requires regulatory measures to support good governance practices. This can be achieve otherwise through voluntary base guidelines such as the ones proposed.

  In order to work, regulatory measures would require national regulatory harmonization. If consensus is not reached by all provinces and by the various government authorities within a same province (banks, insurance companies, pension plan, etc) it would force varying degrees of regulatory protection depending on the nature of the investment products and the regulation applicable to that product.

- **Safe harbour**

  There is no indication of a “safe habour” approach to the Guidelines. We strongly support legislative amendments to confer “safe harbour” protection to plan sponsors and employers who subscribe to and apply the Guidelines.

- **Better contractual provisions**

  Clearer understanding of plan sponsors, administrators, plan members and third parties responsibilities would also be achieved through more detailed agreements and contracts, not necessarily through guidelines.

- **Pre-approval of products**

  There are already some pre-approval requirements by government authorities for certain financial vehicules and products. If CAPs products were to be pre-approved, this would reduce employers' and plan sponsors' liability.

- **"Know your client" obligations**

  The proposed Guidelines raises the "know your client" requirement again especially with respect to financial monitoring of financial advisers and to communication to plan members. This standard of conduct is too burdensome for plan sponsors considering an also important part of CAPs has to do with personal financial, tax and estate planning of each members. This should not be the role of the plan sponsors but of the personal financial advisors whether their services are made available through the plan sponsor or personally chosen by the member. Monitoring of financial advisors should also take that element in consideration.

- **Communication means**

  The place of electronic and other sophisticated communication means is not addressed through the Guidelines. Communication being a major component of the Guidelines, whether new communication tools would meet the Guidelines requirements are not clear.

We look forward to further collaboration with the Joint Forum on this particular matter and should you need any additional information on our document, we invite you to contact us.

Yours truly,

Jean-François Gariépy, *FCIA, FSA*
Vice President

JFG/

August 26, 2003

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M2N 6L9

Dear Mr. Hall:

RE: Guidelines for Capital Accumulation Plans

Acquaint Financial is an independent provider of employee financial education and counseling located in Toronto. We assist employees across Canada by providing them with the tools and education they need to make informed financial decisions. The methods we use include seminars/workshops, web-based interactive tools, telephone, print and individual counseling. Acquaint does not mange any money or share in the revenue from the sale of investment products – our goal it to provide high quality, unbiased and objective financial education. We feel that selling investment products or sharing in the revenue from the sale of investment products would represent a strong conflict of interest for our clients and their employees.

This letter is in response to the paper entitled "Proposed Guidelines for Capital Accumulation Plans" released by the Joint Forum of Financial Market Regulators in April of 2003.

The initiative to improve CAP regulation is both timely and a significant step in the right direction to satisfy the needs of CAP sponsors, CAP members and service providers. There is a definite level of uncertainty in the CAP industry today that needs to be addressed in an efficient and effective manner. In order to manage uncertainty, the parties involved must have a very clear description of their roles and responsibilities. This way each party knows what is expected of them and can concentrate on meeting those expectations. When uncertainty exists, organizations opt to do either nothing, or the absolute minimum, which of course, does not benefit anyone.

Acquaint Financial supports the Joint Forums initiatives to improve guidelines for CAPs and we have prepared this response to address issues that we feel will help the uncertainty which is evident in the CAP industry today.

Please note that our comments will be directed at investment information, investment decision making tools and advice as this is our field of expertise and we do not want to form opinions on issues that we are not as familiar with.

We have outlined our feedback in five areas:

- Education and Advice
- Timeline and Format
- Conflicts
- Advice
- Protection

EDUCATION AND ADVICE

One of the biggest concerns that Acquaint Financial has regarding CAP sponsors and the compensation and benefits area in general is the lack of understanding between the terms "education"(or investment information and decision making tools in the paper) and "advice". All too often we hear industry professionals using these two terms interchangeably when in fact they are very different. The Joint Forum needs to ensure that there is a clear distinction made between education and advice and what constitutes each.

Section 3 of the proposed guidelines is "Investment Information and Decision-Making Tools for CAP Members". Included in section 3 under 3.4 is Investment Advice. "Investment Advice" is very different from "Investment Information and Decision-Making Tools". Either the section title should reflect the inclusion of advice or the "Investment Advice" points should not be included in section 3.

In terms of providing investment information and decision-making tools to CAP members, section 3.1.3 point one says CAP sponsors should consider the purpose of the plan and then goes on to give the example of a retirement plan. This is a very vague comment and needs to be emphasized and expanded upon. A large part of the decision of how much to invest and what to invest in comes from outside factors such as how much of your retirement income will come from other sources (government, personal and other income) and what your investment holdings outside your CAP are. Other factors that come into play include money management and where the money you are planning to invest in a CAP come from? What are tax and estate issues? Etc. These are all things that need to be explained to a CAP member. CAP sponsors need to clearly understand what they are expected to provide.

TIMELINE AND FORMAT

The proposed regulations do not give any indication as to when and how often investment information and decision making tools and advice should be offered to plan members. Are sponsors required to provide this to plan members within a certain time period after enrollment? Some forms of investment information and decision-making tools cannot be offered to CAP members on a continual basis (i.e. workshops or seminars) due to costs,

geographic location of members, etc. What is a prudent time line for member updated or continuing education? For retirement plans, are sponsors responsible for providing additional information and/or advice at or prior to retirement?
There are many different delivery methods for investment information and decision making tools such as seminars/workshops, electronic methods, over-the-phone, and one-on-one in person. The type of delivery method used depends on the different needs and constraints of each CAP Sponsor such as the knowledge level of plan members, geographic location of plan members, number of plan members and budget. The proposed guidelines do not address the issue of which delivery methods should be provided. What delivery method or combination of delivery methods will satisfy the CAP Sponsors responsibilities to plan members? For example, can Plan Sponsors provide just electronic, just print, just seminars or does there have to be a combination of delivery methods offered?

CONFLICTS

An important decision CAP Sponsors must make when supplying members with investment information, decision-making tools and/or investment advice is who the provider will be. CAP Sponsors can do this in house or hire a service provider to deliver these services. However, there are many conflicts and potential conflicts that may be associated with each of these options. For example, using the plan provider to deliver these services would be a definite conflict of interest. Using employer resources can also raise conflict of interest issues. It has been our experience that many CAP Sponsors are not educated enough to see potential conflicts of interest and therefore, we feel that the CAP Guidelines should provide a clearer definition of what conflict and potential conflicts of interest are.

Under section 3.4.2 of the guidelines it states that "Factors for the CAP sponsor to consider when selecting service providers to provide investment advice include: any real or perceived lack of independence of the advisor relative to any other service providers, the CAP sponsor and its members." While this statement refers to investment advice specifically, there is no such statement that says the same about investment information and decision making tools. There are many situations that can arise where investment information and decision making tools provided to CAP members contain conflicts or potential conflicts of interest. For example, a CAP sponsor that manages some or all the assets of the members have an incentive to provide biased information and investment decision making tools in order to gain more of the members contributions. They would have a clear incentive to promote their products or funds which may not be in the best interests of plan members. This is a definite conflict of interest that needs to be clearly avoided. We feel that the guidelines should state that investment information and decision making tools should be selected from a service provider without any real or perceived lack of independence.

We all to often run across sponsors who tell us that they are getting investment information and investment decision making tools for free from their plan provider. They

fail to realize that the cost has already been built into the fees they are paying for the plan. Not only is this a conflict of interest but the quality of investment information and tools suffers greatly. Therefore, it would be best for all parties involved to make service providers disclose the costs involved in providing investment information, decision making tools and/or advice.

ADVICE

There is an extremely large grey area in the industry today surrounding investment advice. We are finding that most CAP sponsors are responding by staying away from it completely for fear of resulting liabilities. As a result, it is crucial that these guidelines clearly state what sponsors can and should do. They should also give protection to those sponsors, who implement it correctly, against potential future liabilities.

A guideline that is set out under Item 3.4 – Investment Advice is that CAP sponsors are to consider "any real or perceived lack of independence or the advisor relative to other service providers, the CAP sponsors and its members." There are many different definitions of "independence" that are used in the financial industry today and any CAP guidelines should make sure that there is a clear definition as to what the word independence should consist of. What does "independence relative to other service providers" mean? There are service providers that provide advice to plan members that manage there own investment funds and/or mange individual client assets. There are other service providers that earn and/or share revenue from the sale of investment products. Then there are some service providers that provide counseling and do not manage any money or share in the revenue of product sales. We believe there needs to be a clearly defined process where a CAP Sponsor can provide investment advice for their clients on a fee for service basis and if the member chooses to continue to receive advice (where this is an option) then there is a process (i.e. through singing a waiver form) where sponsors can eliminate any future liabilities.

Another relatively new area in the pension industry that we feel the guidelines need to address is that of providing investment advice over the internet and other electronic formats. Although it is not prevalent in Canada, more and more service providers in the United States are choosing to provide advice over the internet. It is only a matter of time until this trend comes to Canada and the CAP guidelines need to address the issues in advance. It would be in the Joint Forums best interests to address this issue in the guidelines so plan sponsors, service providers and members have a clear understanding as to whether investment advice should or should not be provided via electronic format and the associated implications that may or may not arise. It is our view that providing investment advice to plan members over the internet without having a thorough understanding of their entire financial position can and will lead to many future problems for CAP sponsors, service providers and members. As such, the Joint Forum would be wise to address this issue in the CAP guidelines.

PROTECTION

Unlike ERISA in the United States, the Joint Forum has not included the concept of a "safe harbour" provision in the proposed guidelines. Without protecting employers from potential future liability from providing investment advice to plan members, employers will not opt to provide this service to members for fear of such potential liabilities. We believe that it is in the best interests of the Joint Forum to revisit this issue particularly if plan sponsors will be required to provide investment advice under the new guidelines. Unless there is a "safe harbour" built into the guidelines, we feel that plan sponsors will opt not to provide investment advice to plan members for fear of potential future liabilities.

CONCLUSIONS

In developing new guidelines for the CAP industry that will serve to provide guidance to CAP sponsors, service providers and plan members, it is crucial to make every effort possible to ensure that the guidelines are set out in a way that will provide clear and appropriate guidelines. The guidelines need to consider all parties involved and at the same time, avoid any chance of multiple interpretations. They need to clearly set out the roles and responsibilities of all interested groups because once there is uncertainty most people will respond by doing nothing. This does not benefit any of the parties involved and is counterproductive to the purpose of the guidelines which the Joint Forum worked so hard to establish.

Acquaint Financials goal in writing this response was to share with the Joint Forum some of the issues and insights that we have experienced in working in the CAP market. We would like to see a set of guidelines that will better define the roles and responsibilities of all parties involved in the CAP market with a clear view toward bettering the industry as a whole. We trust that the Joint Forum will incorporate our thoughts and come up with the best set of guidelines possible.

We look forward to further correspondence with the Joint Forum as you continue to work toward a set of guidelines.

Sincerely,

Brian Hayhoe

ATCO
GROUP

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August 29, 2003

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Dear Sir:

Re: Comments on the Proposed Guidelines for Capital Accumulation Plans

Thank you for the opportunity to comment on the proposed Guidelines for Capital Accumulation Plans and the proposed implementation strategy released in April 2003 by the Joint Forum of Financial Market Regulators. I appreciate the efforts made by the Joint Forum in seeking input on the proposed Guidelines and for providing opportunities to meet with representatives from the Joint Forum either individually or in group format.

The ATCO Group of Companies employs over 5,000 employees in Canada. ATCO Group provides a full range of benefits under a number of comprehensive benefits programs, and sponsors several Defined Benefit pension plans, Defined Contribution pension plans, and Group RRSPs. Over 2,000 employees are members of a Defined Contribution Pension Plan or Group RRSP.

The concerns of the ATCO Group of Companies with the proposed CAP Guidelines include:

? **Potential Fiduciary Liability Exposure.** The proposed Guidelines produce a significant extension of fiduciary-like responsibilities for CAP sponsors where no fiduciary duties currently exist under law. This is particularly the case for Group RRSPs and other savings plans which are not subject to minimum standards legislation.

  The Guidelines imply that plan sponsors would be protected if they complied with the Guidelines. However, the Guidelines only provide a framework for "prudent" administration and operation of CAPs in the best interest of members. They set out factors to be considered in a variety of administrative areas, using terms such as "prudent", "appropriate", "reasonable", "properly" and "sufficient" without guidance on the meaning of those terms.

- **Monitoring Service Providers.** The extent to which a plan sponsor monitors a service provider needs to be clarified, along with how this is practically achieved, given that the resources and sophistication varies greatly from one plan sponsor to another.

- **Lack of "Safe Harbour" Provision**. If the Guidelines are adopted as drafted, the result may be a raising of standards to which CAP sponsors could be held, with a corresponding increase in the uncertainty of how to satisfy such standards. Accordingly, a due diligence defence from member lawsuits based on compliance with the Guidelines should be included in the Guidelines.

- **Increased Cost of Compliance.** The proposed Guidelines state that CAP sponsors may use service providers where the sponsor does not possess the necessary knowledge or skill to fulfill its obligations. However, the responsibility to monitor, evaluate and make decisions based on service providers' advice remains with the sponsor. With the increased obligation on sponsors resulting in a significant increase in work involved to comply with the Guidelines, use of service providers to meet those obligations could result in potentially significant cost increases to sponsors.

- **Information Versus Education.** The distinction between information versus education should be clarified. e.g. is there a hidden assumption that a plan sponsor would "test" the investment knowledge of its plan members?

- **Oppose Inclusion of "Member Preferences".** The provision and maintenance and continuation of a capital accumulation plan, including the design of the plan, and the selection, monitoring and terminating of investment managers lies with the plan sponsor. Accordingly, the preferences of plan members should not be required to be taken into consideration in deciding appropriate action in light of unsatisfactory performance by an investment option provider.

- **Shorten the Document**. A 29-page document is rather overwhelming. Consider shortening the document by consolidating some of the sections.

The increased complexity and potential risk for a CAP sponsor resulting from the principles and guidelines put forward by the Joint Forum may result in choosing to discontinue offering CAP plans to employees. Employers have specifically offered non-pension CAPs in order to avoid the cost and complexity of pension regulation.

Rather than harmonizing the rules applicable to CAPs, it is more likely that the Guidelines will result in increased complexity and more uncertainty as to the legal effect of the new rules. Employers may look to reallocate their scarce financial resources and employees could be faced with attempting to replicate such benefits with their own dollars (often after tax).

Increasing employees' cash compensation may ultimately be preferable to administering a CAP under the new Guidelines.

Again, thank you for the opportunity to comment on the proposed CAP Guidelines.

Yours sincerely,

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Manager, Pensions & Benefits

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August 29, 2003

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Dear Sirs/Mesdames:

Re: Proposed Guidelines for Capital Accumulation Plans

Bennett Jones LLP is a leading Canadian law firm with offices in Calgary, Edmonton and Toronto. We are legal counsel to a significant number of small, medium and large Canadian businesses. Bennett Jones LLP also sponsors a group registered retirement savings plan for its support staff employees.

In these capacities as a legal advisor and plan sponsor we are writing to respond to the discussion paper entitled Proposed Guidelines for Capital Accumulation Plans released by the Joint Forum of Financial Market Regulators ("Joint Forum") on April 25, 2003.

We applaud the work of the Joint Forum in attempting to rationalize and harmonize the rules applicable to capital accumulation plans ("CAPs") generally across the pension, securities and insurance regulatory regimes. We also applaud the Joint Forum's involvement of industry in the discussion and development of both the Revised Principles for Investment Disclosure in Capital Accumulation Plans as well as in the Proposed Guidelines.

Background Goals and General Concerns

The stated purposes of the Proposed Guidelines are to:

1. describe the rights and responsibilities of CAP sponsors, service providers and members;

2. ensure that CAP members have the information and assistance they need to make investment decisions in a capital accumulation plan; and

3. ensure that there is a similar regulatory result for all CAP products and services regardless of the regulatory regime that applies to them.

These are clearly legitimate and worthwhile purposes which are becoming increasingly important due to the apparent expansion in the prevalence of capital accumulation plans.

With those goals in mind, our review of the Proposed Guidelines has raised a number of concerns which we wish to express in this letter. We do not propose to make specific point-by-point commentary or express proposed wording revisions, which we understand that various others who will be submitting comments to you will have done. Rather, our comments are of a more principle-based nature, with a view to the potential implications of the implementation of the Proposed Guidelines.

Among the stated goals of the Joint Forum in developing the Principles and Guidelines for CAPs is avoidance of enactment of any new regulation while still creating certainty and clarity in the rules applicable to CAPS. We would not suggest that we favour additional regulation in the area. However, the Proposed Guidelines as drafted, while being thorough and comprehensive, lack the certainty and clarity necessary to provide proper guidance to CAP plan sponsors in addressing their implementation.

Specific Issues

The concerns this creates from our perspective include the following:

- Establishing the Guidelines as "best practices", while not having the legal authority of regulation, enunciates a standard clearly endorsed by three regulatory regimes. Without the force of regulation, this new standard will be left to be applied by the courts in any action by aggrieved plan members, with a risk of being adopted by the courts as a benchmark or minimum standard to which plan sponsors will be held;

- The implications for non-compliance by plan sponsors with each and every aspect of the Guidelines remains unclear, particularly until each of the three regulatory regimes conclusively determines the manner of implementation of the Guidelines within their sphere;

- While the Joint Forum has expressed that it did not intend to create any new or additional fiduciary obligations through the Guidelines, the courts have made it clear that the categories of fiduciary relationships continue to be expanded. The Proposed Guidelines use a great degree of "fiduciary-like" terminology, bringing the result into conflict with the stated intent. This could lead to the unintended consequence of the courts creating fiduciary duties for plan sponsors and, potentially, service providers, based on that language where either no such duties presently exist or their existence is at best arguable;

- While the Proposed Guidelines provide plan sponsors with certainty as to the various areas to be addressed by them in the administration of CAPs, the widespread use of vague and open-ended terminology (such as "prudent", "appropriate", "reasonable", "properly", and "sufficient")

provides little certainty or clarity for plan sponsors in how to actually implement the Guidelines. A plan sponsor may, in their discretion, approach the Guidelines in a manner which will ultimately be deemed insufficient because of that lack of clarity;

- Because the Guidelines provide no clear minimum standards or "safe harbours" (which we understand were specifically rejected by the Joint Forum), plan sponsors will be left to determine how to apply the Guidelines in their context while at the same time developing a "due diligence" defence to any potential claims;

- The expanding role of service providers mandated by the Guidelines will result in an inevitable reliance by plan sponsors on those providers. The Guidelines provide no clear direction on the allocation of responsibilities between sponsors and providers where the sponsor so relies. This will require that sponsors and providers expend significant energy, time and resources in developing acceptable allocations of the related risks between them, which is likely to result in higher costs for providers. Those cost increases will, either in the short term or long term, almost certainly be borne by plan sponsors and members.

Potential Implications

Ultimately, our primary concern is that the expansion of the CAP principles and guidelines into areas and types of plans where no such rules previously existed, without sufficient certainty and clarity to enable sponsors to implement the new rules in an efficient and cost effective manner, will act as a disincentive to sponsors in providing such plans. It may become much simpler and more cost effective for employers to increase cash compensation to employees and refrain from offering any such group savings vehicles. The inevitable result of this is that it will be more expensive for employees to invest as a consequence of having to do so on an individual basis. Employees will become less likely to invest for their future needs, with the resulting social policy implications.

Clearly, the implementation of the Proposed Guidelines will not result in the wholesale abolition of capital accumulation plans. However, the anecdotal commentary made by many plan sponsors with whom we have contact indicates that a large number of sponsors will consider whether it is in their organizations' best interest to continue offering such plans. They question why their organizations would subject themselves to the cost and complexity, and attendant risk, of the proposed rules simply because they choose to offer a group savings vehicle for the benefit of their employees, when other employers who offer no such advantage to their employees are not subjected to the same risks. It is clearly not to the advantage of employees to move away from group savings arrangements, nor would it be advantageous to Canadian society as a whole.

Much discussion is currently taking place in Canada, both in the area of pension benefits regulation and other areas generally, about the appropriate role of the courts in making policy decisions. The Proposed Guidelines, as drafted, leave significant areas open to interpretation by the courts. In order to encourage employers to take on the role of plan sponsor and offer group savings arrangements to their employees, the members of the Joint Forum, as the regulatory arms of the elected legislatures in Canada, have the opportunity to clearly set the policy direction for CAPs, thereby providing certainty and clarity sufficient to enable employers to make this vital decision.

We would encourage the Joint Forum to engage in further consultation with industry, particularly plan sponsors directly involved in the provision and administration of CAPs, to develop more specific parameters within the Proposed Guidelines providing more clear direction for such sponsors. While "safe harbours" may not be appropriate in the context of non-regulation guidelines, more specific "minimum compliance" standards would at least establish a floor against which plan sponsors could evaluate whether continuing to offer a CAP to their employees is appropriate in their particular circumstances.

Thank you for the opportunity to provide the Joint Forum with our comments in respect of the Proposed Guidelines. We would be more than willing to be involved in any further discussion of the Guidelines that may occur.

Yours truly,

BENNETT JONES LLP



Christopher A. Brown

CAB/av

cc: Mr. Dennis Gartner
Alberta Superintendent of Financial Institutions and
Assistant Deputy Minister of Pensions, Insurance and Financial Institutions

Mr. William S. Rice, Managing Partner
Mr. Douglas A. Ast
Bennett Jones LLP

August 28, 2003

Davin Hall, Policy Manager (A)
CAPSA Secretariat
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Dear Davin,

Thank you for the opportunity to comment on the Proposed Guidelines for Capital Accumulation Plans (CAPS).

- CAPS will obviously save employers money and long-term responsibilities when compared with Defined Benefit Plans. Indeed, a comparison of the two types of plans should be included with the materials on CAPS.

- Members of this Plan must be made aware of the differences in the two types of Plans – and the implications of both those differences and of the implications for their future retirement incomes if a CAPS is in effect.

- The proposed Guidelines make no reference to matching funds by the employer. Will this occur as in a Defined Benefit Plan?

- The Guidelines are process-oriented and prescriptive. They encompass broad directives **without** any specifics on implementation (for example, see pgs. 17 to 20).

- The investment literacy of most Canadians is not generally very high and this is probably true for members (p. 11) as well. They will need to receive a very good grounding in investment education. Documentation must be written in plain and simple English. By the way, CARP would welcome the opportunity to partner with the Joint Forum on providing investment education programs in some format across the country to 50-plus Canadians.

- Members have a lot of responsibilities. In fact, what they are being asked to do can become “a full time job”, but they have very few rights! For example, the sponsors determine without consultation with members if, when and how changes of investments will be made (p. 14, 23-24) Also for example, 4.1.2 will incur a high expense for members.

- Similarly, I understand that there is no provision for members to be represented by a selected representative(s) on the Board of Directors or Management Committee. Even Defined Benefits Plans are usually overseen by Boards or Committees with members' representatives.

- What penalties – other than the threat of lawsuits, which are expensive in money and time - will be created for mismanagement of the fund? And who will monitor, oversee and enforce the operation of the fund? Are legislated regulations contemplated to underpin this fund?

- A lot of administrative and educational work is expected of the plan sponsors (p. 8 -11, 14). Who will pay for this? How will payment be assessed and how much can be assessed? Guidelines are needed for these issues. Who will ensure fairness? And what recourse is there for members if they feel fees are too high, assuming that costs will be passed along to them – which is probably a very good assumption.

- After the Enron experience, should company stock be included as an investment option?

I would be remiss if I did not acknowledge the assistance of Priscilla Healy with whom I discussed CARP's response.

I trust that my comments will be helpful, as I'm adopting the consumers' (i.e., member's) perspective. (Other comments may come to mind later.)

If you have comments or questions, please do not hesitate to contact me. I will be out of the office from August 29, returning on September 8th.

Sincerely,

Bill Gleberzon
Associate Executive Director
& Co-Director of Advocacy

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September 12, 2003

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Dear Mr. Hall,

The Canadian Bankers Association (CBA) is pleased to have the opportunity to comment on the *Proposed Guidelines For Capital Accumulation Plans* (Guidelines) issued by the Joint Forum of Financial Market Regulators (the "Joint Forum") in April 2003. We are keenly interested in developments in the regulatory environment for employer-sponsored capital accumulation plans since our members offer various types of these plans benefiting over 200,000 employees. We offer the following comments which include several requests for clarification.

1. It appears that all types of capital accumulation plan (locked-in, non-locked-in, registered, non-registered, voluntary, involuntary) are subject to the same Guidelines. We seek clarity around the rationale for this. While we understand the rationale for having the Guidelines apply to a capital accumulation plan (CAP) whose primary purpose is to assist employees with "investing" for their retirement, we are concerned about the cost of adhering to the Guidelines for ancillary plans that are offered to help employees "save" outside of their pension plans. These ancillary plans offer benefits to employees such as the convenience of payroll deductions, low cost investment options, deferring tax, etc. For example, one CBA member offers investment options within a voluntary stock purchase and savings plan. In general, these investment options are offered to plan members at "institutional rates", a cost that is approximately one-tenth of the cost of what employees would pay if they purchased the investment options directly from a "retail" provider. Another CBA member offers a savings plan that provides the convenience of payroll deduction and tax deferral savings. Both of these plans would fall under the Joint Forum's definition of CAPs. It is our view that plan sponsors will assess the cost of offering these ancillary plans in light of the Joint Forum's "expectations" and will likely terminate some of these plans due to the high cost of compliance and reporting. For these reasons, we recommend that stock purchase plans and voluntary savings plans be excluded.

2. We are concerned about any increased liability plan sponsors may assume by offering CAPs. Plan sponsors will assess whether it is worth offering such plans, not only due to increased cost, but also due to increased risk.

3. We seek clarity around the notion of whether a fiduciary responsibility exists for non-pension CAPs - voluntary plans that are offered entirely for the convenience of employees. Item 2.1.3 implies a fiduciary responsibility ("The CAP sponsor must prudently select service providers with regard to the best interests of the CAP members.") which may not be necessary or appropriate in the circumstances of such plans.

4. The CBA is very concerned about the implied need to educate plan members as opposed to providing plan members with sufficient information to operate within the parameters of the plan. The role of education is a social responsibility better left to schools/advisors. It is doubtful whether plan sponsors would be willing to assume the cost and liability associated with educating plan members. We suggest deleting references to "educational" in Section 1.2.1; the phrase, "distinct and identifiable groups of members within the plan" in Section 3.1.4; and the phrase "financial sophistication of members" in both Item 2.2.1 and Item 3.1.3. Determining the "financial sophistication" of members implies testing.

5. We think it is important to emphasize that a number of the new requirements proposed in the Guidelines will add considerably to the costs of sponsoring both pension and non-pension CAPs. In our view, the largest suppliers of CAP services, the insurance companies, would face significant expenditures to put in place the processes and infrastructures to deal with these proposals. For example, the Joint Forum's expectations re: monitoring of investment options (Item 6.2.1) may prove to be very costly for most plan sponsors with small to medium sized capital accumulation plans. Insurance companies and other suppliers will have to build in-house monitoring teams or outsource this to the pension investing community. Either way, costs are likely to increase for the plan sponsor who will require this service in order to adhere to the Guidelines.

6. We are concerned with the text contained in Item 3.5 which states that "upfront or lump sum fees should not be charged to members for basic investment information or decision-making tools". Prohibiting plan sponsors from passing on all or part of these costs to plan members may inhibit plan sponsors from offering CAPs. Many plan sponsors may not pay 100% of the recordkeeping cost that is usually charged on a per member basis. In general, this fee covers the cost of providing plan members with statements outlining their account activity, access to staff at the record keeper that are trained to answer questions about the plan and to complete transactions on the employee's behalf, and access to paper-based or electronic tools such as the asset allocation tool, investment manager profiles, etc.

7. We applaud the Joint Forum's recognition of plan member responsibility. To avoid confusion and maintain role clarity between plan member and plan sponsor, we have two recommendations. Firstly, delete the text in Item 6.2.3 that states that the plan sponsor should take into account "any preferences voluntarily indicated by members". The current text will place a CAP sponsor in the position of accommodating the wishes of a very few vocal CAP plan members at the expense of the general membership who may rightfully assume that the investment option is

suitable and meeting all requirements if available. Secondly, delete the text in Item 5.3.2 that applies to the disclosure to plan members of non-adherence to investment policies by investment managers. The monitoring of non-adherence to investment policies is a responsibility of the plan sponsor and would be one factor that is considered when making a decision whether to retain/terminate a manager. The investment policies for pooled or mutual funds are at the discretion of investment managers and are subject to change.

8. We recommend that the Guidelines provide more specificity regarding the level of oversight required by plan sponsors for providers of various services related to CAPs. A different or new level of oversight of service providers in addition to existing oversight functions would have significant resource implications for such sponsors. An indemnification by service providers may be required by most plan sponsors. This indemnification will be another increased cost that may dilute the benefits of offering the plan.

9. It has been our experience that plan members complain about the length and complexity of current statements. In Item 5.1.3, transaction details should be moved to Item 5.2.1 and a transaction summary made part of Item 5.1.3.

10. Item 6.2.1 states that the performance of the investment option should be reviewed in relation to the purpose of the CAP. The purpose of the CAP does not impact the performance of the investment option. This specific reference to the "purpose of the CAP" should be removed as it causes confusion.

11. We seek clarification of what is meant by "investment choice responsibilities" in Item 4.1.1.

12. In Item 4.4, is it the Joint Forum's intent to have disclosed direct transaction costs incurred by the plan member as opposed to brokerage commissions incurred by investment managers? The disclosure of brokerage commissions would be overly onerous. It is our understanding that performance is reported net of fees and operating expenses, including brokerage fees.

Thank you for the opportunity to comment on the Guidelines. The CBA would be pleased to engage in further discussion on this topic. In particular, we would appreciate an opportunity to hear from the Joint Forum regarding the issues for which we have requested clarifications

Sincerely,

CANADIAN SECURITIES INSTITUTE

August 31, 2003

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Submitted electronically to: capsa-acor@fsco.gov.on.ca

Dear Mr. Hall:

Thank you very much for giving the Canadian Securities Institute (CSI) the opportunity to comment on your Proposed Guidelines for Capital Accumulation Plans (April 2003) released through the Joint Forum of Financial Market Regulators (Joint Forum).

CSI is one of Canada's largest, most experienced and respected providers of financial education. In our capacity, we realize the importance of both professional and public education in contributing to a well-functioning financial market place. CSI provides licensing courses, financial sector management training and professional designation programs in financial planning/wealth management, portfolio management and derivatives.

It has always been part of CSI's mandate to deliver education for the public. Although we are the educator of financial professionals, our experience has also extended to building and providing resources to meet the needs of diverse Canadians. In 1996, CSI decided to enhance its involvement with the public through a new charity which it endowed called the Investor Learning Centre (ILC). Resources built by CSI to meet this mandate have included the writing, publishing and distribution of a number of books including *How to Start and Run and Investment Club* and *What Every Canadian Should Know About Mutual Funds*. The ILC also provided and franchised investing seminars at both the basic and advanced levels. As well, our work with Boards of Education to establish a new high school curriculum that provides an opportunity to teach investing basics led us to create a school program and teachers' resource that was endorsed in both Newfoundland and Ontario on a province-wide basis.

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CANADIAN SECURITIES INSTITUTE

Our expertise and experience in financial education has left us very heartened to see that the CAP Committee members realize the importance of providing CAP plan members with investment information and decision-making tools. We are very supportive of your initiative in this area. We do however want to take this opportunity to make a few comments and recommendations.

While we feel the Guidelines are clear in distinguishing the difference between advice and information, we would like to stress that it is equally important to distinguish the difference between information and education. Information is just data, facts and figures on straightforward aspects of a CAP such as what products are considered appropriate. Education takes information and makes it meaningful to the plan member – the "learner". Good education, as noted by Judy Armstrong, an instructional design specialist (Training, 1999) is the linking together of information to provide meaning that makes the information immediately applicable to the learners' circumstances. Education is meaningful because it meets the objectives of the learner. Education also provides opportunities for learners to become more expert in the application of knowledge through examples and trial and error. Ideally feedback is incorporated in education to ensure learning is on the right track. This is fundamental if any permanent impact is to be made on the plan holder's approach to his or her investment portfolio.

It has been our experience, that education is key to understanding the potential risks of an investment opportunity. However, even content on more advanced topics like asset allocation, investing in securities and understanding risk, by itself, does not constitute education.
The information, no matter how well written, does not, by itself, provide the context and support that assists a student's understanding and retention.

Noted education scholar David Merrill said it best "If you don't provide adequate practice, if you don't have an adequate knowledge structure, if you don't provide adequate guidance, people don't learn." (Training, June 1998). Thus, education is really the matching of instruction and information. Proper instruction gives students structure, context, opportunities for practice and self-assessment so that in the end they can better learn and retain the information presented.

The Guidelines need to differentiate between information and education such that the CAP sponsor can assess if they are meeting both the information and education needs of their members. As well, clear distinction will assist the CAP sponsor, if they wish, to identify and select a quality educator.

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CANADIAN SECURITIES INSTITUTE

With that in mind we have the following recommendations:

Specific Recommendations:

Section 3 of the Guidelines (Investment Information and Decision-Making Tools for CAP Members) should be modified to include the following:

Sub-Item 3.1.1 and Item 3.2 – The term 'information' is broad and could include information on plan details or, ideally, education on investment approaches, among other things. By specifying 'education' the CAP sponsor will more clearly understand the need to offer relevant education in an applied learning environment..

Sub-Item 3.1.2 - CAP member investment decisions should be reviewed on a regular basis or when major life changes occur. The investment education and decision-making tools should be kept up-to-date by service-providers and be reusable by members.

Sub-Item 3.1.3 – In selecting education the CAP sponsor should also consider:

- Additional learners beyond just the CAP member (e.g. partners of members),
- Repeatability of the education – as member circumstances change they may wish to revisit the materials and re-use the decision-making tools.

Item 3.2 – Investment information (or 'education' as recommended above) is distinct from plan information. Investment information is:

- Information on how investment funds work
- Information regarding the relative level of expected risk and return associated with different investment options
- Product guides, explaining specific features and benefits associated with products used within the CAP

Item 3.3 – To be renamed: Investment education and would include the following points:

- Content presented in a structured environment that transitions information into education
- Assessment tools of member's current financial situation
- Investment decision-making tools (the current content of item 3.3)
- Self assessment quizzes or other methods for the member to determine if they are gaining a deeper understanding of the investment content and concepts presented or if education materials should be reviewed.

Section 3 Title – To be renamed as: Education and Information for CAP Members. This would clarify the fact that there is a delineation.

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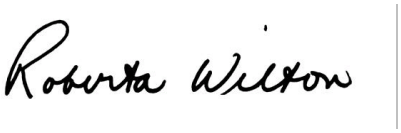
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We believe that a quality program that combines both information and education will result in increased employee participation and plan member satisfaction. This is supported by the 2002 Mercer Global DC Survey that concluded that a lack of understanding rather than a lack of interest is why employees do not participate in DC plans. Without quality education, employees are not provided with the tools with which they can make investment decisions based on sound principles.

Your Guidelines are providing an effective means for achieving quality outcomes. Thank you for this opportunity to present our views on information and education as presented within the Guidelines (April 2003).

My colleagues and I would be available to the Joint Forum Committee on Capital Accumulation Plans to discuss our comments or to provide additional assistance on issues pertaining to the education of CAP Members.

Sincerely,



Roberta Wilton, Ph.D.
President and CEO

Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

September 8, 2003

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Dear Davin:

Proposed Guidelines for Capital Accumulation Plans

Canada's life and health insurance industry gratefully acknowledges the opportunity to comment on the *"Proposed Guidelines for Capital Accumulation Plans"* ("the Guidelines"), as issued by the Joint Forum of Financial Market Regulators ("the Joint Forum") in April, 2003.

As you know, the Canadian Life and Health Insurance Association (CLHIA) and its members have a vital stake in both the public and private pension systems. The industry administers approximately $108 billion in pension and retirement savings plan assets, of which about $53 billion are in registered pension plans. Our members specialize in the administration of small and medium-size pension plans, and about two-thirds of all pension plans in Canada are funded by insurance contracts. Many of these plans offer members investment choice, and therefore fall within the Capital Accumulation Plan ("CAP") regime as well as being subject to pension rules.

As you are also aware, the CLHIA has been an active participant in the industry Task Force charged, in concert with the Joint Forum Working Committee on Capital Accumulation Plans, with developing these Guidelines.

The proposed Guidelines represent many months of thought and intensive drafting efforts on the part of many individuals. Members of both the Working Committee and the Task

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Force are to be congratulated for their accomplishment. In general, the Guidelines form a useful resource in a shared effort to enhance consistency, integrity and accountability in the CAP marketplace.

The Need for Harmony

The CAP marketplace has very broad scope and encompasses a plethora of plan and product designs and models drawn from a range of regulatory regimes. In many cases, those regulatory regimes overlap, creating duplicate or contradictory compliance requirements. For instance, it is quite plausible that a group RRSP that qualifies as a CAP might incorporate institutional pooled funds administered by a life insurance company as an investment option. While such funds may constitute segregated funds for the purposes of the Insurance Companies Act and the Income Tax Act, they may not be offered to retail consumers via Individual Variable Insurance Contracts. Furthermore, those segregated funds may invest in units of retail mutual funds operated and managed by third-parties. In such a scenario, it is unclear what investment rules apply to the group RRSP. Is it the mutual fund rules under National Instrument 81-102? Is it the segregated fund rules under the CLHIA's IVIC Guideline? Or do no statutory or regulatory rules apply because the group RRSP is outside of the pension regime? Might the plan be guided only by its own terms, however those may have been drafted?

Taking this example one step further, what conflicts would be created if a defined contribution pension plan that offered members investment choice attempted to include such an investment option?

This is simply one example of the types of challenges and opportunities posed by CAPs. While an opportunity clearly exists to create a consistent overarching regime applicable to such plans, it requires exemption from, harmonization with, or over-ride of rules applicable to the constituent parts of the CAP. And it may not be possible to resolve some of these issues independently from other ongoing projects, such as CAPSA's recent consultation process on pension investment rules.

Thus, while Canada's life and health insurance industry applauds the efforts of the Joint Forum to bring clarity to the roles and responsibilities of all CAP stakeholders, the industry is concerned that substantial refinement of the detailed standards contemplated by the Guidelines is still necessary. Moreover, a broad re-evaluation of the confusing interplay of these Guidelines with other relevant legislation and regulations must be considered in order to ensure that the generally effective framework that has already evolved for CAPs is not replaced by an indecipherable web of well-intentioned rules.

Canada's life and health insurance industry sees three challenges that arise from the April 25, 2003 version of the CAP Guidelines:

- Elimination of conflicts and inconsistencies between CAP standards and those applicable to pensions and/or underlying products is essential.

- Efforts to simplify the text and remove seemingly repetitive phrases may have introduced inconsistencies and ambiguities to the meaning of the Guidelines, resulting in a document that is confusing for consumers and sponsors as lay readers and for service providers and regulators as "experts." Clarity and consistency must be restored, and

- Attempts to add rigour and enforceability to the Guidelines appear to have altered the Joint Forum's intention that the Guidelines represent a voluntary, best practice, model, and this intended approach must be reinstated.

Canada's life and health insurance companies are very concerned that the Guidelines, as currently written, would actually be counter-productive, since their ambiguity and regulatory tone may encourage plan sponsors to "opt out" of any form of sponsored savings plan. While this could leave plan members with perhaps more cash compensation, this would be at a higher cost in terms of investing those funds, since CAPs typically operate at lower cost than comparable plans in "retail" markets. If sponsors stay within the CAP regime, the Guidelines seem likely to give rise to unintended and unexpected confusion among all stakeholders, be they plan members, sponsors, administrators, service providers or regulators.

The Need for Clarity

The roles of each of these parties are already self-evident or clearly defined in the Defined Benefit Pension Plan environment (where the plan sponsor is fully responsible for managing the risks) and in the retail market for financial services (where there are clear boundaries between manufacturing, distributing and advising).

In the CAP environment, success depends on the effective collaboration among sponsors, members and service providers who share the common goals of making retirement as secure and comfortable as possible for plan members. In general, Canada's life and health insurers believe that the roles and responsibilities of CAP participants are well understood and appreciated by each party; indeed, industry experience suggests that few Canadians have significant concerns about either the extent or the quality of information and services provided by insurers with respect to CAPs.

Canada's life and health insurers believe that the historical practice of fostering open competition within the marketplace has served CAP participants well. Such competition has enhanced pursuit of best practices by all industry participants, since CAP sponsors have increasingly and inevitably sought out advisors and service providers whose high standards minimize any potential liability to which sponsors might otherwise be exposed.

The Need for Transparency

To the extent that Canadians believe that guidelines regarding additional disclosure or intervention by regulators re CAPS are appropriate, the industry believes that consumers deserve guidelines that are consistent, comprehensive and comprehensible. Clear

definitions of roles for all stakeholders would ensure confidence, and such clarity and confidence are fundamental to the ability of each stakeholder to act responsibly.

Unfortunately, the April 25, 2003 version of the Guidelines incorporates a variety of words and phrases to describe CAP sponsors' responsibilities in respect of disclosure of information to CAP members. In the absence of consistency of usage and precision of definitions, each reader is left to interpret the document in his or her own way. No guidance is provided in discerning the meaning behind different wordings. For instance, what is the difference in the responsibility to "provide" versus "give" or "communicate" or "inform"? Similarly, certain activities "must" be undertaken, but the Guideline then describes what those activities "should" include. These discrepancies are troubling, to say the least.

Canada's life and health insurance companies recognize that the Joint Forum's original goal was that these Guidelines be drafted to be guidelines. They were intended as an outline of the practices which would represent an acceptable standard of practice for CAPs. They were not intended to be drafted as legalistic regulations to be enforced to the letter. (In part, this may have reflected the difficulty of enforcement of a Guideline, absent consensus to adopt that Guideline as a Regulation or Rule in all jurisdictions.) Accordingly, both the Working Committee and the Task Force sought to use consistent, simple language rather than the language of the courts.

Such simplicity can be a powerful tool. In fact, the principles underlying the Guidelines are not complex and the Guidelines themselves can reflect the intent in a straightforward way. Toward that end, Canada's life and health insurers suggest that unintended shades of meaning can be eliminated and enhanced clarity can be achieved by revising the text with two rules in mind:

- All of the terms used will be defined, and

- The same terms will be used consistently throughout the document.

The Need for Efficiency

A further enhancement would be to explicitly declare that the provision of information through electronic means is to be encouraged for its speed, ease of use and manageable cost. This would be consistent with the Joint Forum's own leadership practices with respect to the Task Force and the public generally, whereby the guidelines were distributed electronically and a preference was indicated for submissions to be delivered electronically. This focus on ease of access, cost and timeliness clearly makes modern technology the preferred tool.

Ultimately, good disclosure aims to ensure that intended recipients have access to the information they need when they need it, and in a format they can understand. Each of

the industry's recommended measures would significantly improve the likelihood of realizing that goal.

Some of the life and health insurance industry's concerns relating to the Guidelines have only come to light through distance from the drafting process, and being able to view the document with a more detached perspective. As part of the Task Force, we share responsibility for any such flaws. But many of the industry's concerns reflect changes introduced after consultation with the Task Force had been completed. These changes significantly alter the focus and approach of the Guidelines in a way that is not acceptable.

The Need for a Stand-Alone CAP Regime

For these reasons, insurers believe that a thorough re-evaluation of the April 25, 2003 version of the Guidelines must be undertaken, using the December 20, 2002 version, as revised by the industry Task Force, as a more coherent, accurate and internally-consistent reference. On behalf of the Canadian life and health insurance industry, the CLHIA stands ready to assist in that review.

Attached are detailed comments relating to sections of the April 25, 2003 version of the Proposed Guidelines that Canada's life and health insurance companies believe to be in need of reconsideration These comments are intended as a candid effort to assist in developing a strong Guideline that will be of use to the public generally, and specifically to our members and other stakeholders in the CAP regime. The life and health insurance industry looks forward to further refinements of this document, which the industry hopes will restore a voluntary best practices model as recommended by the Task Force, and result in something that can be incorporated into the industry's standards structures.

In the interim, please feel free to contact me directly should you have questions about our concerns. I can be reached by telephone at (416) 359-2021, by facsimile at (416) 777-1396 or by e-mail at rsanderson@clhia.ca.

Yours truly,



Ron Sanderson
Director, Policyholder Taxation
Acting Director, Pensions and Life Benefits

Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

Detailed Comments re "Proposed Guidelines for Capital Accumulation Plans" as released by The Joint Forum of Financial Market Regulators on April 25, 2003

Introduction

1.1.1. Definition of a CAP

It is unclear why the restriction to "trade" associations was added here and subsequently. Other associations, such as those relating to alumni of a particular university, or to members of a particular religious or other distinguishable demographic groups, may offer CAPs. Exclusion of such groups from the CAP definition essentially creates another tier of products and services where standards of practice and disclosure may not be universally adopted.

1.1.4 CAP members

Throughout the Guidelines references are made to "spouses." If this reference is intended to include common-law partners (i.e., partners of either sex) then clarification and expansion of that term may be appropriate.

1.2 The purpose of the guidelines

The first bullet indicates that the guidelines "describe" the rights and responsibilities of CAP stakeholders. Description may imply a level of completeness or limitation of the CAP that is not intended. The previous text used "outline and clarify" which would appear to provide greater scope, which would seem to be appropriate.

The final bullet refers to a "regulatory result." If the Guidelines are intended to be a voluntary best practice, then "regulatory" does not belong in this sentence – "result" is sufficient. If, however, the intent is to regulate, then it is a misrepresentation to do so under the guise of Guidelines.

1.2.1 Application of the guidelines

Similarly, if the Guidelines "supplement" legislative requirements, then it would appear that they may clarify or add to that legislation; the intent of "supplement" is unclear. If the intent is to impose additional requirements without eliminating any that currently apply, then this is not consistent with the mandate given to the industry task force, and that task force should be reconvened with an amended mandate.

The second paragraph indicates that “The purpose (of the CAP) must be consistent with the terms of the plan.” Since it is the purpose of the CAP that is primary, it would appear that the focus of the sentence in quotations is reversed. Rather, “The terms of the plan must be consistent with the purpose of the CAP.”

While the parenthetic example of the second paragraph may be misleading, (since it is not access to the assets of the plan but access to the cash equivalent value of those assets that is likely to be of interest to the stakeholder), the issue that it addresses is minor relative to the overarching scope of the Guidelines that appears to be the focus on this section. The parenthesized text should be deleted.

1.3.2 Responsibilities of service providers

As with the previous section, the focus here seems to be reversed. The addition of a delegate’s responsibility for “any applicable legal requirements” is unnecessary and inappropriate, particularly if the CAP sponsor attempts to avoid a fiduciary duty. This issue is compounded where multiple service providers perform separate functions, since the Guidelines may be interpreted to create overlapping or conflicting obligations under “any applicable legal requirements.” If the intent is to say that “The CAP sponsor can delegate work to service providers, but cannot escape legal responsibility by shifting it to third parties," then it should be stated as such.

The enforceability of this provision by any regulator is questionable. Ultimately, the enforcement would appear to be via legal action against the CAP sponsor by a plan member. The value of the statement is, therefore, questionable.

Setting Up a CAP

2.1.1 Defining the purpose of a CAP

See 1.2.1 above, second paragraph.

2.1.2 Deciding whether to use service providers

In the CLHIA’s January 15, 2003 comments with respect to the December 20, 2002 draft, the industry indicated that good governance, management and compliance rely not only on necessary knowledge and skills, but also on appropriate management methods and administrative tools. Insurers concluded that knowledge and skills, while necessary, were not sufficient absent such tools. The industry continues to believe that recognition of this “third leg” of the governance “stool” needs to be incorporated in these Guidelines.

The second paragraph appears to create two independent tests, both of which must be satisfied, for all service providers. Since “any advice requested by the CAP sponsor” may be beyond the scope of the tasks delegated to that service provider, this double test may

disqualify some service providers. Surely this test should be qualified as “any advice within their area of expertise.” Otherwise, for instance, a money manager could be held liable under this guideline for advice on how to buy socks rather than stocks!

2.1.3 Selecting service providers

Contrary to section 1.3.2, this section appears to recognize and respect the continued responsibility of the sponsor in regard to the actions of its delegates. This underscores to need to reflect this duty in section 1.3.2.

2.2.1 Selecting investment options

The April 25, 2003 version of the Guidelines correctly indicates that the CAP sponsor has a responsibility to ensure that the plan “offers a range of investment options that is appropriate considering the purpose of the CAP.” The crucial word is “offers,” as opposed to “provides” in the December 20, 2002 version, since “provides” may be construed as “delivering,” or specifying the choices to be made. While the difference is subtle, we believe that “offers” provides greater clarity. The CLHIA fully supports the April 25, 2003 revision in this matter.

The second paragraph indicates that the sponsor may delegate “entirely” the selection of the range of investment options to be offered by the plan. The sponsor thereby appears able to shift any legal liability for that selection to the service provider. This seems inappropriate, given the sponsor’s obligation to ensure that the terms of the plan, including the available investment options, are consistent with the purpose of the plan.

Whereas the second paragraph indicates that a sponsor “must prudently select investment options,” the criteria for that selection, as enumerated in paragraph four, appear to be subjective or optional. Since it is unreasonable to attempt to prescribe the complete range of potentially relevant factors, those criteria must be flexible, and this flexibility should be reflected in the selection methodology outlined in paragraph two. “Must” does not appear to be an appropriate term.

The inclusion of “and selection of” investment options in the second bullet of paragraph four is circular, since the paragraph as a whole lists potential criteria for the selection of investment options.

Insurers applaud the recognition that considerations of diversification, liquidity and risk apply to all CAPs, not solely those with a retirement focus, and the removal of that reference from the final paragraph of the December 20, 2002 version of this section.

2.2.2 Selecting investment funds

A number of responses to the recent CAPSA consultation on the Pension Investment Rules addressed the potential conflict between the investment rules applicable to segregated funds, mutual funds and pension plans. This conflict is again highlighted in

the closing two paragraphs of this section. Harmonization of investment diversification rules, or regulatory acceptance that compliance of an underlying investment with the investment diversification rules applicable to such underlying investments will be considered to be compliance with any alternative diversification level at a plan level should be implemented before adoption of these Guidelines.

2.2.3 Transfers among investment options

A requirement that monthly transfers be provided may be unreasonable given the long-term investment nature of many CAPs and the pricing assumptions of existing plans. It is unclear if there is a presumption that such a transfer would be required to be permitted without specific charges being levied against the member's account.

2.3.1 Record Keeping

Organizationally, it would appear that Item 2.3 – Administration may more appropriately belong in section 6 of the Guidelines.

While all members, sponsors and service providers would hope for and strive toward a "no errors" standard, the reality is that errors will occur and, in some cases, comparatively immaterial errors do not justify the cost of correction. For example, if a Net Asset Value per Share or Unit Value is revised, such a change may actually result in significant processing and administrative cost that will ultimately be borne by unitholders, and this cost may actually exceed the aggregate value of the correction. Put another way, spending $5,000 to correct a $50 error on a $5 billion portfolio may not be prudent or reasonable. Some notion of materiality should be considered.

2.3.2 Retaining documents

It may be inferred that plan members are expected to have access to documents relating to the establishment of the plan. As with other employee compensation documents, this implied broad access may not be reasonable. It may be appropriate to acknowledge that access to the plan details may be restricted on this basis.

Investment Information and Decision-Making Tools for CAP Members

3.1.1 Purpose of investment information and decision-making tools

Provision of investment information and decision-making tools does that guarantee that a CAP member will use such materials in making investment decisions. And there is no guarantee that any materials provided will be useful to the choice given the specific circumstances of any given individual member. Use of terms such as "must" and "will" implies such a guarantee. "Should" and "can" would be more appropriate terms.

3.1.2. CAP member investment decisions

Other than in section 4.1, no consideration appears to have been given to potential plan members and the provision of information and decision-making tools to individuals who are considering participation in a voluntary CAP. As contemplated elsewhere in the Guidelines, disclosure is most effective when provided in advance. That principle should also be applied to potential CAP members.

3.2 Investment Information

Compare to 3.1.1 re the use of "could" versus "will."

3.4.1 Investment Advice - General

Compare "can" in this section with "will" in section 3.4.2. Consistency should not imply any guaranteed result.

3.4.2 Selecting service providers to provide investment advice

Compare "will" in this section with "can" in section 3.4.1. Consistency should not imply any guaranteed result.

3.4.3 Qualifications for service providers who provide investment advice

While professional qualifications and designations may be evidence of appropriate knowledge and skills, they do not, unfortunately, guarantee such knowledge and skills. Similarly, the absence of such formal qualifications and designations does not preclude having appropriate knowledge and skills.

The focus here should be on knowledge and skill, which may be indicated by professional qualifications or designations, and on licencing or other legal requirements, where such licencing or other legal requirements are mandated.

Ultimately, whether a sponsor chooses to consider or retain a particular service provider is a business decision of that sponsor, and many are likely to focus their selection of candidates on those holding professional designations.

3.5 Fees related to investment information, decision-making tools or advice

Whether costs are expressed explicitly or not, costs will inevitably be borne by CAP members, either through transaction-specific fees charged to specific members, or by increased management and administration costs that will typically be allocated to all members in proportion to the size of their investments. Thus, small investors will pay a proportionately smaller portion of such implicit fees, and not be effectively prevented from participating in the CAP due to a large explicit fee.

While Canada's life and health insurers agree that lump-sum fees should not be used to block access to generally necessary information and tools, the determination of what constitutes "basic" information will vary depending on the specifics of the plan and the member group. To assume regulatory enforcement of such subjective standards by any means other than a competitive marketplace focused on best practices is unrealistic.

The reference to "any" information, tools or advice may not be appropriate.

3.6 Privacy rights

It should be noted that any information provided to a CAP sponsor based on a member's consent in writing may only be used for the purposes authorized in that consent.

Introducing the Capital Accumulation Plan to CAP Members

4.1.1 Information on the nature and features of the CAP

To most readers, "must give" is likely to imply physical delivery of a paper document. The reality is that such information is made available to potential consumers, but the choice of accessing such information is left to the potential consumers' discretion. This is a practical and effective means of timely communication with potential and current members of a CAP, available at minimal cost, "on-demand" by consumers.

There appears to be no valid argument for high cost, physical delivery of a paper document that may or may not be desired by potential members. The Guideline should not mandate inefficient communication methods, particularly when section 4.1.2 notes that the members are responsible for educating themselves about the plan and tools.

4.1.2 Outlining the rights and responsibilities of CAP members

Whether a member "ought" to obtain investment advice is a judgment that the sponsor should not undertake. A recommendation to consider obtaining such advice is sufficient and appropriate.

4.1.3 Making investment choices

Does "informed" imply delivery of instructions or access to instructions? This is simply one example of "fuzzy" language that has crept into the April 25, 2003 document.

4.2.1 Investment funds

"At least" in the preamble is unnecessary.

"Material" risk, as noted in the fifth bullet, is subjective; materiality should be defined.

Is identification of an underlying fund required for a "fund on fund" arrangement? It would seem that this would pose a higher risk than in a "fund of funds" arrangement, requiring at least comparable disclosure.

4.2.2. Employer securities

See first two comments under 4.2.1.

4.2.3. Other investment options

What does "Must be given" mean versus "Have access to"? Details and decisions should likely be pluralized.

"Material" risk, as noted in the fourth bullet, is subjective; materiality should be defined.

4.3.1 Information on transfer options

This is but one of the logical inconsistencies between "must" and "should."

Is the list of "possible situations where transfer options may be suspended" meant to be inclusive? While addressed subsequently, reference should be noted here that not all possible situations are in the control of the sponsor or service provider, and that the list is not intended to be exhaustive.

4.3.2 Transfer fees

Taxes are not transfer fees; they would be more logically addressed in section 3.2.

4.4 Description of fees, expenses and penalties

The last sentence of this section would be more clear if it concluded "*such* fees, expenses and penalties should not be aggregated."

4.6 Additional information

"Communicate" and "give" need to be standardized and clarified. "General" is unnecessary and subjective.

Ongoing Communication to Members

5.1.2. Format

"Must be informed" is another nebulous term that needs to be standardized and clarified.

5.1.3 General content

Since many CAPs provide for payday-based contributions that are allocated to numerous different investment options, the reporting of transactions details on a routine statement basis can result in a many-paged statement, with each entry representing a relatively small amount. Whether this statement is supplied as a paper document or in electronic format, this imposes a significant administrative cost that is not typically built into the pricing of the plans. Moreover, industry experience indicates that, in general, both members and sponsors prefer summary reporting being the automatic mode with detailed transaction listings being available on request.

The life and health insurance industry therefore recommends that the inclusion of "transaction details" in the standard statement be in summary form.

The use of "should" is ambiguous and clarification is needed.

5.2.1 Other information available to CAP members

The reference to GICs should also include "and other fixed-term investments"; this will incorporate, for instance, annuities that are not exclusively valued by reference to an insurer's segregated fund.

5.2.4. Adding an investment option

The use of "must give" and "should" is ambiguous.

5.2.5. Removing of replacing an investment option

The tone of this section is inappropriately regulatory in nature given the document's intended status as Guidelines.

5.2.6 Changes in fees and expenses

"Significant changes" is subjective and requires clarification. Do such charges include only explicit transaction charges or also those charges that are embedded in asset-based administration fees, management expense ratios, etc.

5.2.8. Disclosure of relationships between CAP sponsors and service providers

This section (which appeared in the December 20, 2002 version) appears to have been dropped and not integrated elsewhere. Perceived conflicts of interest may still be relevant and require specific reference.

Maintaining a CAP

6.1.1 Monitoring service providers

It should be noted that lower than expected investment yields do not, necessarily, constitute unsatisfactory performance.

6.2.3 Action if there is unsatisfactory performance of investment options

See comment re 6.1.1.

The last two bullets appear to duplicate the same point, unless “alternative: is meant to mean “equivalent.”

6.5.1 Monitoring service providers who provide investment advice

The second paragraph implies a relationship between the advisor and the sponsor that may not, in fact, exist. Whether such a relationship exists or not, the real issue is that “The relationship between an advisor and each individual member is confidential, and no information relating to that relationship will be provided to the sponsor without the specific consent, in writing, of the individual to whom that information relates.”

Termination

8.2 Terminating a CAP Member

This is a personal pet peeve. While the member’s participation in the plan may be terminated, the member is not being terminated, unless his/her death is involved. Reference to the member’s “participation in the plan” would be preferable, even if common parlance is less precise.

AVIS PRÉSENTÉ

à la Commission des valeurs mobilières du Québec

Lignes directrices pour les régimes de capitalisation

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Août 2003

Présentation de la FADOQ

La *FADOQ - Mouvement des Aînés du Québec* est un regroupement volontaire de personnes âgées de 50 ans et plus dont l'objectif principal est de maintenir et d'améliorer la qualité de vie de ses membres et, par voie de conséquence, de l'ensemble des aînés québécois.

Aujourd'hui, la FADOQ est présente dans 17 régions du Québec et rassemble 280 000 personnes. Active dans le domaine du loisir, elle défend également les droits de ses membres dans des domaines aussi variés que ceux de la santé, du logement, des revenus, du transport, du vieillissement et de la violence. La FADOQ défend les droits de ses membres afin de leur offrir un terrain propice à leur épanouissement, quelque soit l'endroit où ils habitent. L'implication sociale de ses membres collabore aussi au mieux-être de la communauté et à l'équilibre de notre société.

La FADOQ a donc pris connaissance des lignes directrices avec l'objectif de maintenir la qualité de vie de ceux qui participeront aux différents régimes de capitalisation pouvant être offerts par un ou plusieurs promoteurs.

La FADOQ comprend des lignes directrices qu'elles tendent à responsabiliser autant le promoteur que le participant.

Responsabilités du promoteur et du participant

Dans un premier temps, les principales responsabilités d'un promoteur sont de fournir aux participants l'information et les outils nécessaires à la prise de décision en matière de placement. Le promoteur doit également présenter le régime aux participants et maintenir avec eux une communication constante.

Les participants ont la responsabilité de prendre les décisions de placement et d'utiliser à leur fin l'information et les outils mis à leur disposition. Ils peuvent également, dans certaines circonstances, décider du montant de leur cotisation au régime. Le participant assume l'essentiel du risque financier lié au placement.

La FADOQ constate, à la lecture des lignes directrices, que le Forum s'attend à ce que le promoteur possède les connaissances et les compétences nécessaires pour assumer les responsabilités décrites au document.

La FADOQ est d'avis que le promoteur devrait démontrer à une autorité compétente qu'il possède les qualifications et les compétences requises. Cette preuve pourrait être faite par l'obtention d'un permis à la suite d'un examen ou par l'obligation d'être membre d'une corporation professionnelle. Les résultats de cette inspection déterminera si le promoteur doit recourir à un fournisseur de service ou s'il agira sans supervision. La corporation professionnelle aura comme mandat de veiller à la protection du public en réglementant ses membres.

Options de placement

La FADOQ remarque que le promoteur n'est pas tenu de demander de l'aide d'un fournisseur de service lorsqu'il choisit les options de placement. La FADOQ considère que ces choix influencent grandement la nature du risque assumé par le participant. Il est donc important de s'assurer de la qualité de ces choix. La FADOQ considère qu'il est essentiel que le promoteur soit responsable de ses choix. En cas d'échec, la Commission des valeurs mobilières ou tout autre organisme de réglementation devrait pouvoir interdire au promoteur la possibilité d'offrir ses services au public.

La FADOQ croit que le marché des fonds de placement est un marché soumis aux aléas du marché. Les lignes directrices ne devraient jamais perdre de vue que le consommateur peut perdre une partie importante de ses économies lorsqu'il investit dans des fonds de placement. Nous sommes d'avis que les lignes directrices sous-évaluent les conséquences d'un mauvais choix d'option par le promoteur.

Par conséquent, le promoteur ne devrait pas pouvoir imposer des frais au participant qui transfère, souvent les économies d'une vie, d'un programme à un autre. Le transfert est la seule réponse, avec l'encaissement, à une aggravation du risque.

Administration et information

Bien que les lignes directrices se soucient de la protection des renseignements personnels détenus par le promoteur, l'absence d'un individu responsable de la protection des participants nous laisse pour le moins songeur. L'absence d'un *« ombudsman »* dont la tâche serait de veiller sur la protection des participants laisse entrevoir des problèmes de communication entre le promoteur et le participant. Il serait faux de croire que leurs relations seront toujours au beau fixe. La FADOQ croit que la création d'une personne responsable des relations avec les participants, dont la tâche ne serait pas liée à la « vente », pourrait avoir des conséquences bénéfiques sur l'évaluation du risque par les participants. La FADOQ entrevoit la possibilité que cette personne ait comme tâche de dissuader le participant d'investir dans un secteur particulièrement risqué. Cette personne pourrait se voir confier la responsabilité de régler les différends pouvant survenir de temps à autres avec le promoteur.

La FADOQ croit que l'objectif premier du promoteur est de servir les participants du régime. Cette prémisse étant écrite, la FADOQ est en désaccord avec la déclaration que le promoteur doit créer des outils d'aide à la prise de décision pour l'ensemble des participants. La FADOQ croit que le promoteur doit tenir compte de chacun des participants et tenter de les satisfaire individuellement.

La FADOQ rappelle que l'objectif d'un participant à un régime de capitalisation est la bonification de sa participation. Lorsque le participant échoue, il s'appauvrit. Le promoteur devrait tout tenter pour que le participant réussisse dans les limites de ses compétences. Lorsque le participant est un profane, il a, de notre avis, l'obligation d'en aviser le promoteur afin qu'il ne se place pas dans une situation qui le conduirait à la déroute.

Les outils d'information devraient donc être construits en fonction de permettre aux participants d'évaluer leur force et leur faiblesse avant de faire le choix du véhicule approprié à leurs capacités.

Le promoteur ou le fournisseur de service, le cas échéant, devrait fournir aux participants admissibles au régime de capitalisation avant qu'ils prennent une décision quelconque, une évaluation du risque associé au régime. Nous croyons que l'information sur la nature et les caractéristiques du régime est insuffisante pour assumer une décision pleine et entière.

En conclusion, la FADOQ prend bonne note des efforts mis en place par le *Forum conjoint des autorités de réglementation du marché financier* décrits dans les lignes directrices rédigées le 7 février 2003.

La FADOQ a comme mandat de maintenir et d'améliorer la qualité de vie des aînés et se préoccupe particulièrement de leur condition de vie.

Les régimes de capitalisation ont généralement pour but d'amasser de l'argent en vue de la retraite. Les régimes de capitalisation sont donc perçus comme étant une façon « payante » d'économiser et non pas associée à un facteur de risque. Nos expériences nous portent à croire que de nombreuses personnes ne mesurent pas les risques associés au placement de fonds dans les régimes de capitalisation. Dans les dernières années, plusieurs personnes ont perdu leurs économies lors de l'éclatement de la bulle technologique. Il est important de rappeler que dans les années trente un grand nombre de personnes ont vu leurs économies disparaître. Les risques associés aux placements sont présents et seront continuellement présents. Le promoteur devrait s'assurer que les risques associés au placement ne soient pas balayés sous le tapis.

Nous constatons que les lignes directrices font peu d'écho au facteur de risque et ne sensibilisent pas suffisamment le promoteur, ou le cas échéant, le fournisseur de service à informer les participants des risques associés à leurs placements.

La FADOQ souhaite que le Forum inclue la sensibilisation au facteur de risque comme étant un élément important dans le mandat d'information dévolu au promoteur ou au fournisseur de service.

LA FEDERATION CANADIENNE
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Montréal, le 7 octobre 2003

Monsieur Davin Hall
Chef des politiques (par intérim)
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Objet : Projet de lignes directrices pour les régimes de capitalisation

Monsieur,

La présente fait suite à la publication du projet de lignes directrices pour les régimes de capitalisation publié par Forum conjoint des autorités de réglementation du marché financier. Par la présente nous souhaitons vous faire part, au nom des PME du Québec, des commentaires de la Fédération canadienne de l'entreprise indépendante (FCEI).

Nous sommes l'association patronale qui défend les petites et moyennes entreprises d'ici et qui, par ses représentations auprès des gouvernements et des municipalités, leur permet de prospérer économiquement au bénéfice de l'ensemble des citoyens et citoyennes du Québec. Association sans but lucratif, la FCEI est non partisane et son financement provient uniquement à partir des cotisations de ses 105 000 membres au Canada dont 24 000 membres au Québec. Voilà pourquoi nous aimerions que lesdits commentaires soient pris en considération dans le cadre des consultations qui s'amorcent.

La FCEI est inquiète du contenu proposé des lignes directrices qui sont complexes, détaillées, ambiguës et contraignantes pour nos membres. Les lignes directrices sont peu adaptées à la réalité du fonctionnement des PME québécoises. D'une part, il faut prendre en considération que le volet épargne retraite est peu présent dans le contexte de la PME. La principale critique que nous avons sur le projet de *Lignes directrices* est qu'elles ne reposent pas sur un partage équitable de la responsabilité entre la PME, l'établissement financier et le participant. Finalement, elles imposeront des fonctions administratives trop lourdes et des coûts exorbitants pour les PME et ne

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tiennent pas compte de la spécificité des régimes de retraite simplifiés développés par les provinces.

Vous trouverez donc en annexe des présentes, des commentaires spécifiques sur les différents aspects de la réforme. Nous sommes convaincus que vous saurez identifier des pistes d'accommodement pour les PME du Québec qui, en 2002, ont sauvé l'économie du Québec!

Veuillez agréer, Monsieur, l'expression des mes sentiments les meilleurs.

Richard Fahey,
Vice-président Québec

c.c Monsieur Claude Maheu
Régie des rentes du Québec

Madame Ann Leduc
Commission des valeurs mobilières du Québec

p.j.

Les irritants du *Projet de lignes directrices pour les régimes de capitalisation* publié par le Forum conjoint des autorités de réglementation du marché financier

1. Contexte

Le Forum conjoint des autorités de réglementation du marché financier a publié en avril 2003 pour consultation un document intitulé *Projet de lignes directrices pour les régimes de capitalisation*. Ce document a pour objectifs de :

1. Définir les droits et obligations des promoteurs, fournisseurs de services et des participants à ces régimes.
2. Veiller à ce que les participants aient l'information pour faire des choix éclairés de placement.
3. Uniformiser les façons de faire dans ces régimes.

2. Les irritants contenus dans les lignes directrices pour les PME québécoises

Le document définit l'univers des régimes de capitalisation aux sections 1.1.2 et 2.1.1. Ces régimes couvrent la retraite, l'achat d'actions de l'employeur, les études, l'achat de maison, la rémunération avantageuse, etc.

La FCEI est inquiète du contenu proposé des lignes directrices qui sont complexes, détaillées, ambiguës et contraignantes pour nos membres. Les lignes directrices sont peu adaptées à la réalité du fonctionnement des PME québécoises pour les raisons suivantes :

- elles couvrent, outre le volet épargne retraite, un univers peu présent dans le contexte de la PME;
- elles imposent une responsabilité entière aux dirigeants de PME;
- elles ne reposent pas sur un partage équitable de la responsabilité entre la PME, l'établissement financier et le participant;
- elles imposeront des fonctions administratives trop lourdes et des coûts exorbitants pour les PME;
- elles ne tiennent pas compte de la spécificité des régimes de retraite simplifiés développés par les provinces.

3. Un univers non représentatif du contexte de la PME

Les PME regroupent 60 % des emplois au Québec et elles sont la principale source de création de nouveaux régimes collectifs. Selon les statistiques de la FCEI, un peu plus de 20 % de nos membres PME auraient un régime de retraite, soit entre 8 000 et 10 000. Parmi ces régimes, les 2/3 sont des régimes d'accumulation de capital.

L'autre volet des régimes de capitalisation que l'on trouve le plus souvent est le régime d'actionnariat avec seulement 2 % des PME. Les autres volets, comme les régimes d'épargne pour études ou d'épargne pour l'achat d'une maison et des régimes de rémunération avantageuse, sont rarement offerts dans un contexte de PME. Les seuls régimes collectifs qui trouvent vraiment application dans les PME québécoises sont les régimes qui permettent d'accumuler de l'épargne retraite pour leurs employés.

4. Une responsabilité entièrement dans les mains de la PME

Le Forum conjoint dit, à la section 1.2.1 de son document, que le « *promoteur doit veiller au respect des exigences juridiques applicables, y compris celles qui pourraient déborder la portée des présentes*. » C'est donc dire que toute la responsabilité est dans les mains de nos dirigeants de PME. Le document dit que le promoteur peut toutefois déléguer des fonctions à un fournisseur de services. Le recours à des fournisseurs de services ne libère pas pour autant la PME de sa responsabilité. Il y a confusion dans les lignes directrices sur ce point, en plus de ne pas préciser ce qui peut être délégué ou non.

La FCEI croit que si cette orientation était retenue au Québec, bien des PME qui ont des REER collectifs, des RPDB ou des régimes de retraite traditionnels ne voudraient pas supporter à elle seule l'entière responsabilité de ces régimes. On pourrait s'attendre à ce que plusieurs PME envisagent de mettre fin à leurs régimes ou se retirent ou encore fassent cadeau en fin d'année d'un montant à leurs employés pour qu'ils puissent cotiser à un REER individuel.

La FCEI croit comprendre du document de consultation que, si un litige se déclarait dans les régimes de capitalisation, ce sont les tribunaux qui devraient trancher à la lumière des lois actuelles en s'inspirant des lignes directrices. Or, c'est le promoteur qui assume la totalité de la responsabilité selon l'esprit des lignes directrices; les dirigeants des PME sont assurés d'être perdants. Comment voulez-vous alors encourager la mise en place de régimes d'épargne collectifs, notamment des régimes de retraite, si le dirigeant d'une PME peut, à tout moment, être rendu responsable de tout ce qui peut arriver dans le régime?

5. Le participant doit assumer sa part de responsabilité

Quant à la responsabilité des participants, le document précise à la section 1.3.3 que *Les participants ont la responsabilité de prendre des décisions de placement et d'utiliser, à cette fin, l'information et les outils qui sont mis à cette disposition*. La section 4.1.2 complète ce cadre de responsabilité en attribuant au participant l'obligation d'approfondir ses connaissances et de demander des conseils auprès d'une personne compétente. Nous sommes en accord avec ces lignes directrices, mais le Forum conjoint aurait dû poursuivre dans cette veine et établir clairement que le participant est responsable des rendements qu'il touche sur ses placements étant donné que ses rendements dépendent entièrement des choix qu'il fait. Dans la mesure où la PME assume correctement ses fonctions et que le fournisseur de services en fait autant, le participant devrait être tenu responsable de ses choix et des conséquences de ses choix (ses rendements).

Comment peut-on assurer la survie des régimes d'épargne collectifs et même la création de nouveaux régimes si le dirigeant d'une PME peut, à tout moment, être rendu responsable des rendements sur des fonds choisis par le participant lui-même? Dans bien des entreprises, ce sont les établissements financiers et leurs conseillers qui offrent les produits financiers et donnent des conseils aux participants. Le dirigeant de la PME ne peut prendre sur lui ce risque.

6. Des fonctions administratives lourdes et coûteuses

Les lignes directrices alourdiront les tâches administratives des PME, notamment dans les régimes de retraite. Le document du Forum conjoint confie aux PME des tâches nombreuses qu'elles ne pourront assumer puisque ces tâches demandent des ressources et des compétences qui sont non disponibles dans nos PME et par conséquent, trop coûteuses à mettre en place. Les lignes directrices sont si détaillées et complexes que le dirigeant de PME aura toute la peine du monde à se retrouver dans les obligations qui lui incomberont.

Nous pensons à la tâche de choisir les options de placement, à celle de la surveillance des fournisseurs, à celle de la vérification des outils d'aide à la prise d'une décision de placement, à celle de la surveillance des options de placement et des fonds de placement, à celle de la surveillance des conseillers, etc. Comment le Forum conjoint peut-il croire que nos PME ont les ressources financières et le personnel compétent pour pouvoir assumer toutes ces tâches? Ces fonctions devraient être confiées statutairement aux fournisseurs de services que sont les établissements financiers.

Il en est de même de toutes les fonctions touchant les informations sur les placements, les outils d'aide à la décision de placement, le conseil en placement, les options de transfert, les frais et pénalités, les relevés annuels, le rapport annuel sur les rendements, les avis lors d'un changement important, les documents pour les organismes de surveillance, etc. Les établissements financiers sont beaucoup mieux équipés que les PME pour assumer ces tâches efficacement et à bien moindres coûts parce qu'ils ont l'habitude de le faire.

Les enquêtes périodiques de la FCEI révèlent que l'une des principales préoccupations des dirigeants de PME est la lourdeur des exigences légales et bureaucratiques imposées par la réglementation. Nous savons aussi que ce sont les PME qui consacrent le plus de ressources financières par travailleur pour appliquer ces exigences.

Ce que le Forum conjoint propose comme lignes directrices c'est d'en ajouter. Il dit clairement à la section 1.2.1 que les « … *lignes directrices s'ajoutent aux exigences juridiques applicables aux régimes de capitalisation; elles ne les remplacent pas*…. ». Ces exigences auront pour effet de nous rendre encore moins concurrentiels lorsque viendra le temps pour une PME qui veut grandir d'explorer des marchés étrangers. Si le Forum conjoint croit simplifier l'administration de ces régimes par de telles lignes directrices, il se trompe.

7. La réalité des PME est mieux servie dans le modèle du régime de retraite simplifié que dans celui des lignes directrices

Le Québec dispose d'un instrument d'épargne collectif adapté au contexte des PME dont les lignes directrices auraient tout intérêt à s'en inspirer : le régime de retraite simplifié.

La FCEI constate que nulle part dans le document de consultation sur les lignes directrices, on ne fait état de cette particularité québécoise. Ce régime profite d'un cadre réglementaire allégé par rapport au régime de retraite traditionnel. Ce régime existe depuis 1994 pour lequel le gouvernement du Québec vient de publier un projet de règlement qui en assouplit encore grandement le fonctionnement et l'administration.

Dans le régime de retraite simplifié, le Québec a mis en place un partage statutaire des obligations entre l'employeur et les établissements financiers (assureurs, sociétés de fiducie). Le Forum conjoint aurait eu avantage à s'inspirer de ce régime pour uniformiser les façons de faire dans les régimes de capitalisation. Les fonctions de l'employeur se limitent à établir le régime, fixer les conditions d'adhésion, fixer sa cotisation et la verser à l'établissement financier, informer le participant de son admissibilité et lui fournir une description du régime, modifier le régime au besoin et le terminer. Toutes les fonctions d'administration (options offertes, information sur les fonds, relevé, etc.) et les documents à fournir à la Régie des rentes du Québec sont pris en charge par un établissement financier. Elles ne lui sont pas déléguées, elles doivent en assumer la responsabilité et cela est fixé par un règlement de la *Loi sur les régimes complémentaires de retraite*.

La FCEI croit qu'on aurait dû étendre ce partage de responsabilités à tous les régimes de retraite de capitalisation collectifs. Ce cadre a pour conséquence que la responsabilité du régime ne repose pas seulement dans les mains du dirigeant de la PME, mais elle devient partagée.

Le 3 septembre 2003

Madame Ann Leduc
Chef du service de la réglementation
Commission des valeurs mobilières du Québec
Tour de la Bourse, 22e étage
800, square Victoria
Montréal (Québec)
H4Z 1G3

Madame,

Vous trouverez, dans les quelques paragraphes qui suivent, les commentaires de la FTQ sur les « *Lignes directrices pour les régimes de capitalisation* ». La Fédération des travailleurs et travailleuses du Québec (FTQ) représente près d'un demi-million de travailleurs et de travailleuses des secteurs privé et public de l'économie. Notre implication en matière d'épargne pour la retraite est imposante et variée. Dans certains cas, nos syndicats négocient des régimes de retraite et, dans d'autres, ils en sont les promoteurs. La FTQ remercie la Commission des valeurs mobilières du Québec de l'avoir invitée à soumettre ses commentaires.

Bien que la réglementation souhaitée vise principalement à protéger les participants et les participantes aux différents régimes d'accumulation, il nous apparaît inapproprié de mettre sur le même pied des régimes qui relèvent selon nous beaucoup plus des relations du travail avec d'autres qui sont de l'ordre de l'accumulation individuelle. Étant donné notre approche en faveur de solutions collectives plutôt qu'individuelles, notre intervention s'adressera principalement à la conciliation entre la réglementation proposée et la *Loi sur les régimes complémentaires de retraite*. Selon nous, l'angle de la réglementation financière dans ce dossier empêche la reconnaissance des particularités de régimes relevant plus de la négociation collective que des marchés financiers.

Une réglementation de trop

Comme vous l'indiquez dans votre document, les *« présentes lignes directrices s'ajoutent aux exigences juridiques applicables aux régimes de capitalisation; elles ne les remplacent pas. Le promoteur doit veiller au respect des exigences juridiques applicables (…). »* Nous considérons que les lignes directrices pour les régimes à capitalisation constituent une réglementation de trop.

Nous ne sommes pas en présence d'un processus d'harmonisation par les autorités de réglementation du marché financier des différentes législations sous leur responsabilité. Il s'agit bel et bien d'une nouvelle réglementation. Les autorités gouvernementales demandent aux promoteurs des différents régimes de suivre et de se conformer à de nouvelles règles qui viennent s'ajouter aux règles actuelles. Si les autorités réglementaires sont si convaincues de la pertinence des règles proposées pour la protection des participantes et des participants, elles peuvent les inclure dans les législations respectives à chaque régime. Cette approche aurait comme avantage de permettre l'ajustement de la réglementation souhaitée au contexte dans lequel chacun des régimes fut créé.

Nous ne comprenons pas pourquoi les autorités réglementaires refilent aux promoteurs des régimes d'accumulation le travail qu'elles auraient dû accomplir elles-mêmes. L'ajout d'une nouvelle réglementation n'apporte selon nous qu'une certaine complexité à la gestion de la plupart de ces régimes, voire même de la confusion. Ainsi, les régimes complémentaires de retraite continueront d'être administrés en fonction de la *Loi sur les régimes complémentaires de retraite* et de la *Loi de l'impôt*, mais aussi en fonction de la nouvelle réglementation proposée qui, nous le supposons, serait adoptée par la Commission des valeurs mobilières du Québec. La CVMQ deviendrait alors un nouveau joueur dans la réglementation des régimes complémentaires de retraite; un nouveau partenaire (non invité) avec une optique tournée vers les marchés financiers dans ce qui était auparavant principalement du domaine des relations du travail.

Une réglementation en contradiction avec la *Loi sur les régimes complémentaires de retraite*

Dans le cadre de l'article 2 de votre document de consultation « *Établissement d'un régime de capitalisation* », section 2.1.2 « *Recours à des fournisseurs de services* », vous mentionnez que le « *promoteur doit déterminer s'il possède les connaissances et les compétences nécessaires pour assumer les responsabilités énoncées dans les présentes lignes directrices de même que pour veiller au respect de toutes les exigences juridiques applicables.* » Nous nous demandons comment interpréter et concilier cet énoncé avec ceux proposés dans la *Loi sur les régimes complémentaires de retraite* (Québec) aux articles 147 et 151. Ces articles indiquent que le régime de retraite est administré par un comité de retraite et non par le promoteur du régime et que les membres de ce comité « *doivent agir avec prudence, diligence et compétence (…) dans le meilleur intérêt des participants ou bénéficiaires* » et *« que les membres du comité de retraite qui ont ou devraient avoir (…) des connaissances et aptitudes utiles en l'occurrence, sont tenus de les mettre en œuvre dans l'administration du régime de retraite.* »

Nous sommes donc en présence de deux concepts totalement différents. Dans le cas de la réglementation, l'évaluation des compétences constitue un test absolu. « *Si le*

promoteur ne possède pas les connaissances et les compétences nécessaires pour assumer ses responsabilités, il doit fait appel à un fournisseur de services ». L'approche préconisée dans le cadre de la *Loi sur les régimes complémentaires de retraite* est très différente. Les membres du comité de retraite sont responsables de l'administration du régime de retraite et ils doivent « *agir comme le ferait en pareilles circonstances une personne raisonnable* ». L'utilisation de fournisseurs de services spécialisés est présentée comme une option disponible, dans le cadre d'une délégation, aux membres du comité de retraite et non comme une obligation de leur part en fonction d'un auto-examen de leur compétence.

Sans une adaptation appropriée, nous pouvons nous retrouver à arbitrer un différend entre un promoteur « incompétent » qui voudrait faire des affaires avec un fournisseur de services et un comité de retraite du Québec qui réclamerait son droit d'administrer le régime de retraite. Il nous apparaît clairement que la réglementation devrait, dans le cadre des régimes complémentaires de retraite, s'adresser au comité de retraite et non aux promoteurs du régime. Mieux encore, la nouvelle réglementation ne devrait pas viser les régimes complémentaires de retraite.

La tendance qu'a l'industrie financière d'insister sur la compétence « financière » des administrateurs des régimes va à l'encontre de la volonté des parties de confier aux personnes directement concernées la gestion de leur caisse de retraite.

Demander aux législateurs de modifier leurs différentes lois pour obtenir l'harmonisation qu'ils recherchent, constitue une bonne façon de régler ces contradictions. Nous le répétons, déléguer cette responsabilité aux promoteurs des régimes en les forçant à satisfaire une nouvelle réglementation ne constitue pas une solution viable et peut être source de confusion et de conflit.

Commentaires généraux sur la réglementation

Nous ne commenterons pas en détails le reste du document. Il constitue à notre avis un dédoublement des lois et règlements s'appliquant aux régimes complémentaires de retraite. Nous n'affirmons pas que le cadre réglementaire actuel protège parfaitement les participants et les participantes à un régime de retraite et encore moins ceux et celles qui participent à un régime à cotisations déterminées. Cependant, toute réglementation additionnelle doit, à notre avis, être incorporée à la loi RCR québécoise et aux législations comparables au Canada et dans les autres provinces. Cette approche permettrait d'obtenir l'harmonisation souhaitée entre les divers types de régimes sans pour autant créer pour les régimes une nouvelle autorité de réglementation.

Ces dernières années, nos membres ont subi les aléas des marchés financiers. Si ces années ont été très difficiles, elles ont eu le mérite de démontrer clairement le manque de protection et d'information pour les membres de régimes d'accumulation. Certaines des propositions faites dans les lignes directrices mériteraient d'être reprises dans la

réglementation des régimes complémentaires et certaines autres pourraient être portées un peu plus loin comme le devoir (et non l'option) de fournir un service conseil professionnel. Il nous apparaîtrait aussi pertinent de soumettre les RÉER collectifs à la *Loi sur les régimes complémentaires de retraite*. Ainsi, les participants et les participantes à un RÉER collectif pourraient profiter des protections liées à mise sur pied d'un comité de retraite (pour les personnes sous compétence québécoise), à la responsabilité fiduciaire de l'administrateur ou à l'information à laquelle ils ont droit.

De plus, bien que cette question n'ait pas été soulevée par le document de consultation, l'adoption d'une réglementation pourrait commander un processus de vérification de la conformité des régimes ou des administrateurs de ces régimes auxdits règlements. Les administrateurs des régimes complémentaires de retraite verraient leur tâche s'alourdir et se compliquer. Le nouvel organisme réglementaire devrait s'adjoindre du personnel, dont il faudra financer le coût, pour veiller à l'application de la nouvelle réglementation. En définitive, l'intervention d'un nouvel organisme de réglementation pourrait amener de nouveaux frais d'administration pour les régimes.

Conclusion

Nous tenons encore une fois à vous remercier de votre invitation à vous faire connaître nos commentaires. Nous partageons totalement votre objectif de protection des participantes et des participants aux régimes d'accumulation. Toutefois, nous nous prononçons clairement en faveur d'un renforcement des différentes réglementations qui s'appliquent déjà aux régimes d'accumulation. L'assujettissement de ces régimes à une nouvelle réglementation et de surveillance relève plutôt du dédoublement que d'une solution optimale pour les participants et les participantes.

N'hésitez pas à communiquer avec nous pour toutes les questions relatives à la présente et vous prions d'agréer, Madame, nos salutations distinguées.

Le président,

HENRI MASSÉ

HM-RB/fv
sepb-57

IFIC
THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
151 YONGE ST., 5TH FLOOR, TORONTO, ONTARIO, M5C 2W7 TEL 416 363-2158 FAX 416 861-9937

August 28, 2003

Mr. Davin Hall
Policy Manager (A) CAPSA Secretariat
c/o Joint Forum Project Office
17th Floor, Box 85, 5160 Yonge Street
North York, ON M2N 6L9

Dear Mr. Hall:

RE: CSA Notice 81-404 - Request for Comments on Joint Forum Guidelines for Capital Accumulation Plans - Proposed Guidelines for Capital Accumulation Plans Prepared by the Joint Forum of Financial Market Regulators

We are pleased to respond to the request for comments on the proposed guidelines for Capital Accumulation Plans ("CAPS") released by the Joint Forum of Financial Market Regulators on April 25, 2003, pursuant to CSA Notice 81-404 (the "CAP Guidelines").

The Investment Funds Institute of Canada ("IFIC") is the national association of the mutual fund industry representing mutual fund managers, distributors and service providers to the industry from the legal, accounting, and other professions. Currently, IFIC Members are responsible for managing nearly 100% of mutual fund assets under management in Canada. Many of our Members participate in the CAP market as distributors in connection with employee investments in CAPs and as providers of record-keeping and other services to CAPs.

In addition to the request for comments on the CAP Guidelines, we understand the Joint Forum has held a number of focus group sessions to obtain feedback from a cross section of CAP sponsors, service providers and plan members. The Joint Forum should be commended for its efforts to gain substantial input on the CAP Guidelines, as they will significantly impact the way capital accumulation plans are regulated across multiple industry sectors and regulatory regimes.

General Observations

The CAP Guidelines make significant strides in achieving their stated purposes, which include describing the rights and responsibilities of CAP sponsors, service providers and CAP members, ensuring that CAP members have enough information and assistance to make investment decisions and finally, ensuring that there is a similar regulatory result for CAP products and services regardless of the regulatory regime that applies to them. Overall, we find the CAP Guidelines to be fair and balanced.

Our comments on specific provisions of the CAP Guidelines are set out below.

Implementation Considerations

In the notice to the request for comments, the Joint Forum acknowledges that a number of issues will need to be addressed in the implementation phase. We understand from the proposal appended to the CAP Guidelines that in the securities sector the CSA is considering providing relief from prospectus and registration requirements based on the CAP Guidelines.

There are a number of options available to the CSA to implement the CAP Guidelines in existing rules or multilateral instruments. For instance, CAPs that comply with the CAP Guidelines might be exempted from the prospectus and registration requirements through OSC Rule 45-501 and Multilateral Instrument 45-103. Alternatively, in Ontario, additional provisions might be added to OSC Rule 32-503 - Registration and Prospectus Exemptions for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans or OSC Rule 45-503 Trades to Employees, Executives and Consultants and the equivalent rules in the other jurisdictions. We favour an implementation model that will create a uniform exemption for CAPs following the CAP Guidelines over an approach that will require amendments to multiple local rules.

In any case, we urge the Joint Forum to publish draft rules or rule amendments with the final guidelines to ensure the implementation is completed as expeditiously as possible.

Specific Comments

Financial Sophistication of CAP Members

The CAP Guidelines contemplate that CAPs sponsors will need to consider the financial sophistication of members when choosing investment options for the CAP and when deciding which investment decision-making tools and information are appropriate for CAP members. In order to assess the financial sophistication of members, some form of know your client information will have to be obtained, which is not consistent with the balance of the CAP Guidelines that do not specifically require the collection and assessment of know your client information. In our view, the other factors that a CAP sponsor must consider in choosing investment options (including diversification of the options available to plan members) and in making investment and decision-making tools available are sufficient to ensure appropriate selection of those items.

Selection of Investment Funds for CAPs

The provisions relating to the selection of investment funds raise two important issues for our Members. The CAP Guidelines say that investment funds offered in a CAP must comply with the IVIC investment rules if the investment fund is an insurance product, or

with the NI 81-102 investment rules if the fund is a mutual fund under securities law. Perhaps unintentionally, the result of these provisions is that a fund that is technically an insurance product (for example, a segregated fund wrapped around a mutual fund or funds), would have to comply with both NI 81-102 investment rules in the underlying investments and IVIC investment rules, since the investment fund distributed to the CAP member would be an insurance product. We believe this results in unnecessarily duplicative regulation and that it would be extremely difficult for plan sponsors and service providers to manage the products to ensure compliance with both regimes. We urge the Joint Forum to consider removing the last phrase in each sentence, so that the provision reads:

> "Investment funds offered in a capital accumulation plan must comply with:
> - The investment rules applicable to individual variable insurance contracts; or
> - The investment rules applicable to prospectus-qualified mutual funds."

This approach ensures that regardless of whether the investment fund is an insurance product or a mutual fund under securities law, an appropriate regime of investment restrictions and practices applies.

Section 2.2.2 also requires investment funds in a CAP that is a registered pension plan to comply with the investment rules under applicable pension benefits standards legislation. For reasons we have already outlined in a recent letter to CAPSA on the 10% concentration rule, we strongly believe that investment funds offered in registered pension plans that are subject to the investment rules and practices of N I 81-102 should not additionally be required to comply with the investment rules under pension benefits standard legislation. NI 81-102 sufficiently addresses concerns with over-concentration, liquidity and volatility through 10% tests that apply to concentration and to control, along with numerous other provisions relating to illiquid investments, derivatives and securities lending. As we stated in our letter to CAPSA, layering the pension benefits standards requirements over top of the NI 81-102 requirements is duplicative and extremely costly and inefficient to manage with no discernable added benefit to investors.

A copy of our letter to CAPSA dated July 4, 2003 is attached for your information.

Privacy Rights

We question the need for Item 3.6 - Privacy Rights, which requires consent of the CAP member for disclosure of personal information by a service provider to a CAP sponsor. The CAP Guidelines already require CAP sponsors to meet any relevant legal requirements. The parties involved in providing services to CAPS and the CAP sponsors are, or will be, governed by the provisions of the federal *Personal Information Protection and Electronic Documents Act* and in the case of securities registrants, by the provisions of National Instrument 33-102. This legislation adequately addresses the protection of privacy rights in connection with the collection and use of personal information. Unless

there is some other reason for including the privacy rights provisions, we believe it is sufficiently addressed elsewhere and should not be included.

Conclusion

We appreciate the opportunity to make these comments and would be pleased to discuss them further with the Joint Forum. Should there be an opportunity to discuss implementation issues in further detail, we welcome the chance to participate in those discussions. Please do not hesitate to contact Leslie Byberg, Senior Counsel, IFIC at (416) 363 2150 ext. 473 (lbyberg@ific.ca) if you have any questions.

Sincerely,

"ORIGINAL SIGNED BY JOHN MOUNTAIN"

John Mountain
Vice President, Regulation

Attachment

Comments Document requested by the Chair of the London Session on June 18, 2003

BY: Robert J. Lesperance, Chair
Windsor- Essex County Chapter of CARP (Canada's Association For The Fifty-Plus)
610 Juniper Court,
Tecumseh ON N8N 4C5
Tel: 519 735-1479
Email: boblesp@cogeco.ca

TO: Davin Hall, Policy Manager,
CAPSA Secretariat
5160 Yonge St., 17thth Floor, Box 85
North York ON M2n 6L9

Based on;
CAP Focus Group Session
London Session – Mixed June 18, 2003
University of Western Ontario, Stevenson-Lawson Building
Board Meeting Room, Room 330, Third Floor
1:00 p.m. – 3:30 p.m.
A total of 14 attendees

Chair = Nurez Jiwani
Policy Manager = Davin Hall

As an a participant, and I believe, the only one that represented only potential CAP members, I very much absorbed a great deal about why the proposed guidelines at this session were discussed and how they may affect Capital Accumulation Plans. It certainly appears that these plans are going to be a fact of life for more and more of the Sponsored pension plans in the future.

It was informative, fast moving with plenty of back and forth interaction among the participants. As a result of the comments I made on the documents I was sent prior to the session and given during the session I had a number of points/comments I wanted to make.

I was instructed to supply my comments/submission by email before August 31, 2003 to Davin Hall, Policy Manager, dahall@fsco.gov.on.ca.

The following are my comments are on the supplied documents ***and I will be looking for feedback***.
**********8

Item 1.2 Point # 2
Q = How does the Sponsor know member knows for sure they have the information and assistance they need to make investment decisions?
S (suggestion) = Give member a list of tools available, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 1.2.1 second paragraph
Q = what is the purpose of the Plan, Terms of the Plan?
S (suggestion) = Give member a copy of Plan (outline) and terms of Plan (outline), have them read listing, initial or sign a copy of the document that will be retained in Sponsor's file and they are given a copy for their files.

Item 2.1.1. First paragraph
Q = How is the Plan audited to determine it is consistent with it's terms?
S (suggestion) = Inform members annually how Plan was audited.

Item 2.1.3 second paragraph

Q = How do members know when sponsor delegates responsibilities to a service provider, that the CAP sponsor ensures that the applicable roles and responsibilities of the CAP sponsor service provider are carefully documented?
S = Have copies of documented responsibilities in Sponsor's office and /or Website

Item 2.2.3 third paragraph
Q = How does member know if a limit number of transfers are allowed and if a cost of these and extra cost if more are requested by members?
S = Give members list, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 3.1.1 first paragraph
Q = How does sponsor provide investment information and decision-making tools to assist members in making investment decision in the plan.
S = Supply a list of investment related information to member, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 3.4.2 Point # 8
Q = How does members know that if any complaints are filed against the advisor or their firm and any disciplinary actions taken (if known)?
S = Sponsors indicates to member that due diligence was made and this information is available in Sponsors office or on their Website, A copy should be available to member upon request.

Item 3.4.3 second paragraph
Q = given a choice, members would want advisors that are appropriately registered or licensed to be used.
S = only use advisors that are appropriately registered or licensed to be used unless there is none available.

Item 3.5 first paragraph
Q = How does member find out the their cost for investment advice?
S = S = Give member a list of costs on methods of advice available, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 4.1.2 Point # 3
Q = How are members to know they are to do these things?
S = Give member a list of what they are responsible for, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 4.2.3 Point # 10
Q = How will members know their short term and long-term options when it is concerning cash?
S = Give member a list of options and procedures, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 4.3.2
Q = How will members know what fees are for which service?
S = Sponsor makes these fees available to member on ***listing before action,*** have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 5.2.3
Q = How far in advance will members find out about significant changes in Investment options? How is a significant change defined?
S = Sponsor gives member a listing, have them read listing, initial or sign a copy of listing that will be retained in Sponsor's file and they are given a copy for their files.

Item 5.2.5 first paragraph
Q = Will member be informed why the option is removed and how far in advance will the sponsor notify the member?

S = each member should be notified of the change in writing, at a minimum those who are using the option should be notified in writing

Item 6.1.1
Q = How does member find out what criteria was used to select a service provider?
S = Supply service provider criteria to members

Item 6.2.1 second paragraph
Q = How do members find out the benchmarks being used to monitor Service providers by Sponsor of Plan?
S = Supply service provider monitoring benchmarks to it's members.

Section 7
Q = How much lead-time will members receive before changing the Purpose of a CAP?
S = Sponsor to notify plan members in writing of the change date in case they want to get out of the plan

CAP Comments Submission – Manulife Financial (Canadian Pension)

Section 1 – Introduction

1.1.1 Capital Accumulation Plan

MLI Comment: Is the intent that the proposed guidelines apply to ESOP's? Our position is that ESOP's should be exempt. ESOP's are not retirement savings vehicles in the traditional sense – they are typically offered by Employers as a means to enhance their relationship with their workforce.

Section 2 – Setting Up a CAP

2.2.1 Selecting Investment Funds

MLI Comment: the guidelines refer to "a range of investment options that is appropriate considering the purpose of the CAP". This wording is ambiguous and requires clarification/expansion.

2.2.2 Selecting Investment Funds

MLI Comment: Will this guideline force insurance companies to add a segment to their pooled funds at a cost? A guaranteed death benefit component within a segregated fund is typically addressed by insurance companies as part of their retail product offering. It becomes cumbersome and price sensitive to offer a death benefit guarantee within a group savings vehicle. Is it possible to distinguish between traditional CAP products and retail segregated funds?

Section 3 – Investment Information and Decision-Making Tools for CAP Members

3.1.3. What type of investment information and decision-making tools are necessary

MLI Comment: Very subjective – the Plan Sponsor cannot determine the computer literacy or financial sophistication of the members. Employee education is one of the most important measures of a retirement plan's success. There appear to be no specific recommendations around the effectiveness and accuracy of the tools being offered (i.e. interest rate assumptions have a significant effect on the outcome of retirement calculations and, if not reasonable, could sway a member's decisions).

3.4.1 General

MLI Comment: Need to address the current ambiguity around roles and accountabilities for the sponsor, the service provider etc.

Section 4 – Introducing the Capital Accumulation Plan to CAP Members

4.4 Description of fees, expenses and penalties

MLI Comment: We endorse disclosure of fees as a comprehensive, "bottom line" number, not as a breakdown of fee components

Section 6 – Maintaining a CAP

6.3.1. Monitoring of Records

MLI Comment: This requirement seems onerous on the plan sponsor. The intent of these guidelines is to put rigor around the investment element – this type of monitoring appears to infringe on evidence of a carrier's record-keeping ability. Record-keeping capabilities should be self-monitored by the carriers (most of whom have, at a minimum, comprehensive internal audit practices). Our recommendation is that the CAP focus remains on investments and that the monitoring is done via a centrally established regulating body who, on an annual basis reviews the carrier's capabilities and "certifies" CAP compliance.

General Comments

- We support including all plans, existing and new, when CAP is introduced. Our recommendation would be a common implementation date (i.e. Jan 1, 2005 or 12 months from the date final guidelines are published/adopted) with sufficient lead time to allow carriers and sponsors adequate time to address all guidelines
- There continues to be ambiguity around ongoing monitoring for CAP. Would a governing body be established to review and update the CAP Guidelines periodically in which the industry will follow?
- There are numerous sections which impose upon the sponsor a duty to "give" or "provide" members with certain information. Our proposal would be to change to 'make available'. A duty to give information may actually impose an obligation to ensure that the material is received by the individual. A duty to make information available may be more in line with practice.

August 28, 2003

Joint Forum of Financial Market Regulators
5160 Yonge Street
17th Floor, Box 85
North York, ON M2N 6L9

Subject:
Submission to the Joint Forum regarding the April 25, 2003 Proposed Guidelines for Capital Accumulation Plans

Dear Sir or Madam:

Mercer Human Resource Consulting and Mercer Investment Consulting are actively involved in consulting to sponsors of Capital Accumulation Plans ("CAPs"). We have established a specialised consulting area focusing on CAPs. Mercer thanks the Joint Forum for the opportunity to provide input on the guidelines for CAPs.

The proposed Guidelines for Capital Accumulation Plans ("Guidelines") will have a significant impact on our clients and on our business as consultants to plan sponsors. We welcome the opportunity to participate in this feedback process, and in the sessions conducted across Canada over the summer. We view these opportunities as key to the development of Guidelines which will have an increased chance of achieving the Joint Forum's objectives. The following are our general comments related to the most recent proposed Guidelines, as released on April 25, 2003.

- In general, we feel that the most recent Guidelines are written in a practical manner, and convey a positive message to plan sponsors. We agree with the Joint Forum's decision not to articulate how sponsors will meet the guidelines. Sponsors require flexibility to meet the standards in a manner consistent with their situation.

- We feel that the Guidelines broadly address the major issues that are involved in managing a capital accumulation plan.

- We are pleased to see the responsibilities of CAP sponsors, service providers *and CAP members* clearly identified although we believe the last sentence in 1.3.1. should be clarified. We agree that sponsors can delegate activities but not the responsibility for those activities, to service providers.

Comments on Proposed Guidelines

Our submission is comprised of two sections, the first dealing with some of the broader issues such as the application of the Guidelines and the second dealing with specific items in the Guidelines that may be unclear or that we feel could be improved upon.

General Issues

- One of our major concerns relates to the future legal use of these Guidelines. We understand that the harmonisation of regulatory structures is part of the upcoming implementation phase. However, we are unsure what the anticipated end result is with respect to how the Guidelines would be utilised in a legal setting. For example, it is unclear whether they intended to be best practices to which a sponsor may turn for guidance should they wish to achieve a soundly managed CAP plan, or whether they are intended to be akin to minimum standards that a sponsor must meet to discharge its obligations. Understanding the difference between these two thresholds would assist plan sponsors to determine the level of compliance they can reasonably be expected to achieve.

- Our view is that these Guidelines be treated as necessary and minimum requirements for managing a CAP. We feel they represent sound principles that should be followed by all CAP sponsors. If the Guidelines are advertised as best practices, we believe that plan sponsors may view them as the highest threshold that they could be expected to achieve and would then pick and choose among the Guidelines instead of making the effort to implement all of them. As noted earlier, sponsors require flexibility in how they will meet the guidelines.

- Generally, we believe that for those plans that are already well managed the implementation of these Guidelines should result in little increase in cost or workload. However, plans that are less well run and smaller plans without the same level of resources may face increased cost and effort. Therefore, we believe that the implementation phase should provide generous lead-time for sponsors to assess their practices and improve on those that are lacking. Sufficient time for implementation is particularly important if the view is taken that the Guidelines are a minimum threshold.

- As a result of the broad nature of many of the provisions, it would be very difficult for a sponsor to determine with some certainty whether they are in compliance or not. Given that many of the Guidelines use terminology such as “reasonable”, “prudent” and “appropriate”, it would be useful to provide clarification, including examples referencing actions that would meet these criteria. This concern is heightened by the fact that the primary means by which uncertainties will be resolved could well be through the judicial system, via civil litigation.

- Similar to the point above, where specific items are mentioned, those items should be clearly described, ideally with examples, so that sponsors can better determine what is intended. As an example, in *Item 3.3 – Investment decision-making tools* the Guidelines indicate that some of the tools CAP sponsors should consider providing include: “asset allocation models that reflect the different levels of expected risk and return associated with different investment options in the plan…” One interpretation of an asset allocation model could be something quite complex, using mathematical techniques to derive the optimal asset allocation among a given set of alternatives. The input required would include data that may be unavailable to the average CAP member. If a simpler model is intended, then this should be clarified.

- We believe that the definition of a CAP should include all capital accumulation plans regardless whether investment choice is offered (but not include stock plans). As the Guidelines stand, sponsors fearing the perceived additional burden or the potential for future litigation for non-compliance might take steps to circumvent the Guidelines. The current policy may encourage plan sponsors to modify their existing CAPs in order to fall outside the scope of the Guidelines. For example, sponsors may consider the removal of member investment option choice. A change from member choice to single option plans would be an unintended and potentially negative side effect to members.

- We believe that it should be an over-riding principle that the Guidelines must be easy to understand. However, we also believe that CAP sponsors’ execution of the Guidelines should result in member communications and information that is clear and easy to understand for members. This requirement is not explicit in the Guidelines. As an example, the requirement to provide certain levels of investment information might easily be met by distributing a prospectus to members. However, a prospectus may not be clear and easy to understand and may not be the best way to discharge this obligation.

- The Guidelines do not include reference to actions to provide guidance to members who are leaving the Plan through termination or retirement. We understand that it may not have been the intent to include the post accumulation phase. If this were a conscious exclusion, the introduction should clarify this point.

Specific Items and Suggested Improvements

- *Section 1.1.1. Capital Accumulation Plan.* This section should be modified to include all plans except stock purchase plans.

- *Section 1: Introduction, Item 1.3.1 Implications for CAP sponsors, service providers, and CAP members – Responsibilities of CAP sponsors.* This section contains the following statement: "The CAP sponsor may delegate its responsibilities to a service provider." This statement implies delegation of *responsibility*, rather than function or task. It is inconsistent with Item 6.1.1, which places an obligation on the sponsor to monitor service providers. The statement that the responsibilities of the CAP sponsor may be delegated could be interpreted that the sponsor no longer has to be concerned with those responsibilities, when in fact, they do, which is clearly stated in the duty to monitor in Item 6.1.1. We recommend changing the word "responsibilities" to "functions" or "execution of responsibilities".

- *Section 2.2.1. Selecting Investment Options.* This section should include a point that recognizes that the selection of GIC options should consider the creditworthiness of issuers of GIC's, rates and applicable Compcorp/CDIC coverage.

- *Section 2: Setting Up a CAP, Item 2.2.4 CAP members failing to make investment choices.* This section deals with establishing a policy to deal with members who fail to make investment choice. We recommend that where a member is assigned a default option, that the member receives notice on their statement that they are in "default mode". The notice should state that this was not an active choice on their part and it is their responsibility to make changes to the default position.

- *Section 3: Investment Information and Decision-Making Tools for CAP Members, Item 3.3 Investment decision-making tools.* We suggest that this section include the responsibility of the plan sponsor to provide guidance or information on the appropriate use of the tools. One concern we have is that sponsors will make the effort to provide various tools but members will not have the guidance with respect to the best way to use the tools. For example members might inadvertently use inappropriate assumptions, which would provide unreasonable results.

- *Section 4: Introducing the Capital Accumulation Plan to CAP Members, Item 2.3.1 – Transfer options – Information on transfer options*. This section discusses communication of a blackout period but does not deal with an appropriate length of time for such period. We recommend that this section clearly state that any blackout period or restrictions on a members' ability to manage funds should be kept to within industry standards and to a minimum, in terms of frequency and total time elapsed.

- *Section 5: Ongoing Communication to Members, Item 5.1.3 General content*. This section deals with the content of member statements. We suggest that member statements be linked to the presentation of investment information. We believe that members should receive co-ordinated communication between their statement and their investment performance report. With that in mind, it might be helpful to link the Guideline sections dealing with member statements, investment performance and access to additional information as we view these as one co-ordinated set of information for plan members. Additionally, if a statement displays investment returns then we believe that benchmark returns also be displayed.

- *Section 6: Maintaining a CAP, Item 6.3.1 Administration – Monitoring of Records*. This section imposes a positive obligation to monitor the administration of plan records. Where an external service provider performs administration, we believe that in addition to monitoring the maintenance of plan records, a sponsor should monitor the fees and competitiveness of the provider's offering on an ongoing basis. We recognise that Item 6.1.1 deals with the overall obligation to monitor service providers. However we believe that assessing fees/competitiveness of the offering is a very important step which many sponsors are not aware that they should be doing. Sponsors are under an obligation to manage the plan in a cost-effective manner. An explicit reference to this activity would highlight the obligation.

- *Section 6: Maintaining a CAP*. We are pleased with the amount of emphasis given to initial and on-going communication to members. However, in order to ensure that the communication to members continues to be effective and in line with the sponsor's objectives, we recommend including a specific reference to communication under this section. Specifically, we recommend modifying recommendation 6.4 to read "Member Communications and Decision-making Tools", and including (as 6.4.2) a requirement for the CAP sponsor to periodically review communication provided to CAP members to ensure that it remains relevant and in-keeping with the sponsor's communication objectives.

- We support the requirement that sponsors create a statement of investment policy that indicates investment options available under the Plan and identifies performance expectations. Current pension legislation requires the creation of a statement of investment policy and we think this is a good discipline for other CAPs.

We hope that the comments we have provided will be helpful in the ongoing process to establish and implement the final set of Guidelines. Once again, we appreciate the opportunity to provide our views. If you need further information or clarification, please contact me at 416-868-2127.

Sincerely,

Robert H. Stapleford

On behalf of Mercer Human Resource Consulting
and Mercer Investment Consulting

Le 5 septembre 2003

Madame Ann Leduc
Chef du service de la réglementation
Direction de la législation et de la réglementation
Commission des valeurs mobilières du Québec
Tour de la Bourse, 22e étage
800, square Victoria
Montréal (Québec)
H4Z 1G3

Objet : Commentaires sur les lignes directrices pour les régimes de capitalisation

Madame,

Notre firme suit avec intérêt les travaux du Forum conjoint des autorités de réglementation du marché financier (le Forum conjoint) depuis sa création en 1999. Nous avons lu avec attention le projet de lignes directrices pour les régimes d'accumulation daté du 7 février 2003.

Normandin Beaudry, Actuaires conseil inc. est une firme qui possède une expertise pancanadienne. Nous offrons un service de haute qualité en régime de retraite et d'épargne, en assurance collective ainsi qu'en gestion de risque et assurance générale.

Les travaux du Forum conjoint nous touchent directement alors nous tenons à vous faire part de nos observations. Celles-ci sont soulevées dans un contexte d'application des lignes directrices pour nos clients offrant un régime de capitalisation à leurs employés.

Commentaires

- Dans un premier temps, nous tenons à souligner notre accord sur l'approche proposée à ce deuxième projet de document. En effet, comme il avait été mentionné par plusieurs intervenants suite au premier projet de document sur le sujet, nous sommes d'avis que des lignes directrices pour les régimes de capitalisation sont plus souhaitables que des adaptations aux lois pertinentes.

  Enfin, nous tenons à mentionner que le projet de lignes directrices nous semble approprié et nos commentaires qui suivent, visent essentiellement à soulever des éléments qui nous semblent ambigus.

- Nous aimerions attirer votre attention sur un élément que nous jugeons important, soit la traduction en français de la version anglaise du document. Nous avons comparé la version originale anglaise du document avec la version française et l'utilisation de certains temps de verbe ne sont pas appropriés à notre avis.

  Par exemple, les paragraphes 3.2 et 3.3 débutent par la phrase suivante : « Le promoteur ***devrait*** fournir aux participants… ». Or, la version anglaise utilise cette approche : « The CAP sponsor ***must*** provide CAP members… ». L'utilisation du terme « devrait » en français nous semble moins contraignante que l'utilisation du terme « doit » qui nous apparaît une meilleure traduction de l'intention du Forum conjoint.

  Notre commentaire s'applique à plusieurs paragraphes du document.

- Il est possible que le Forum conjoint ait déjà pensé à inclure certains documents en annexe à celui sur les lignes directrices et nous croyons qu'il serait important de le faire. À titre d'exemple, le paragraphe 2.2.2 réfère « aux règles de placement applicables aux contrats individuels à capital variable » ainsi qu' « aux règles de placement prévues par la norme canadienne 81-102 ». Ces règles, ou un résumé de celles-ci, devraient à notre avis être annexées.

- 2.2.2 **Choix des fonds de placement**

  Le dernier alinéa de ce paragraphe fait état de la Loi sur les régimes complémentaires de retraite. Les lignes directrices seront applicables à travers le Canada et la version française de celle-ci sera consultée par des intervenants oeuvrant à l'extérieur du Québec. Nous croyons qu'une référence plus générale aux « législations en matière de régimes de retraite » serait plus appropriée.

- 2.2.3 **Transfert d'actif d'une option de placement à une autre**

  Le dernier alinéa de ce paragraphe permet au promoteur de « limiter le nombre de transferts par membre ou imposer des frais si la limite établie est dépassée ». Afin d'éviter les abus, nous sommes d'accord avec le principe qu'une limite puisse être imposée mais les lignes directrices devraient « suggérer » une limite raisonnable.

- 4.1.2 **Droits et obligations des participants**

  Le troisième élément de cette énumération se lit ainsi : « ils (participants) doivent approfondir **eux-mêmes** leur connaissance du régime en utilisant les documents, l'information et les outils mis à leur disposition ».

  Ainsi, les lignes directrices ne veulent pas imposer aux promoteurs une certaine obligation d'éducation des participants via des séminaires ou des présentations de groupe. Si le Forum conjoint prend l'avenue de produire un document contenant les lignes directrices à suivre par les intervenants des régimes de capitalisation, nous sommes étonnés qu'une exigence (même minimale) d'éducation ne soit par abordée.

- 5.1.3 **Contenu général**

  Nous sommes d'avis que le pourcentage des placements en contenu étranger (en raison des limites imposées par la Loi de l'impôt sur le revenu) devrait également être inclus au relevé de compte du participant.

- 6.4.1 **Vérification des outils d'aide à la décision**

  De façon similaire à notre commentaire concernant la limite du nombre de transferts (paragraphe 2.2.3), nous sommes d'avis que le Forum conjoint devrait suggérer une période maximale que le promoteur ne doit pas dépasser avant de revoir les différents outils disponibles aux participants.

Nous espérons que ces quelques commentaires aideront le Forum conjoint à finaliser les lignes directrices pour les régimes de capitalisation.

N'hésitez pas à communiquer avec Martin Cyrenne, f.s.a., f.i.c.a., au (514) 285-1122 pour toute question relative à nos commentaires.

En espérant le tout à votre entière satisfaction, nous vous prions d'agréer, Madame, l'expression de nos sentiments les meilleurs.

Les conseillers de Normandin Beaudry

From: Don Panchuk <DPanchuk@phn.com>
To: "'capsa-acor@fsco.gov.on.ca'" <capsa-acor@fsco.gov.on.ca>
Date: Tue, Aug 26, 2003 5:32 PM
Subject: 81-404 Capital Accumulation Plans - Comments on Draft dated April2003

Attention: Davin Hall, Policy Manager (A)
CAPSA Secretariat

Guidelines

2.2.1 end of first paragraph "limit the type and quality of investment options"... If the quality of an investment option is limited because of the
sponsor's choice of service provider, then it would appear the sponsor is liable right from the start, so perhaps this could be reworded.

3.4.2 fifth bullet "any real or perceived lack of independence of the advisor relative to other providers,....." Wouldn't this preclude an investment manager whose funds are being used by a CAP, from offering investment advise? Advise of this nature should be permitted. Putnam in the U. S. has indicated it will offer advise to members of 401K plans where they are the manager.

4.2.2 Attention must be brought to the risk of over-investing in employer securities. third bullet - at the end of ...."any material risks of investing in the security" add including the risk of having your employment and more than 10% your CAP savings invested in your employer

4.4 last paragraph - What is meant by "where appropriate", what conditions apply? Also, we feel strongly that there should be complete transparency regarding costs therefore fees, expenses and penalties should not be aggregated. Plan members should know what they are paying for each service. Service providers have been known to hide their exorbitant fee by aggregating it with other fees.

Implementation

We are supportive of the proposed implementation strategy for the guidelines
which will harmonize regulation among the sectors.

Don S. Panchuk CA
Vice President Administration & Regulatory Matters and Secretary
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please notify the sender.

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September 15, 2003

Davin Hall
Policy Manager (A)
CAPSA Secretariat
C/o Joint Forum Project Office
5160 Yonge St.
17th floor Box 85
North York ON M2N 6L9

Dear Mr. Hall:

Re: Proposed Guidelines for Capital Accumulation Plans

I am writing on behalf of the members of the Social Investment Organization, the national association for socially responsible investment. Our members include more than 400 staff and directors of financial institutions, asset management firms and fund companies, as well as financial advisors and investors. Our members are committed to the development of socially responsible investment, which is the application of social and environmental analysis to investment selection and management. Our members serve more than half a million Canadian depositors and investors.

With this letter, we are responding to your request for comments on proposed new guidelines on Capital Accumulation Plans.

First, let me commend the Joint Forum on working to address a major policy gap in this area. The proliferation of defined contribution pension plans, group RRSPs and other capital accumulation plans has created an urgent need for additional disclosure and transparency by CAP sponsors. As well, it is clear that CAP members need additional educational opportunities to make themselves aware of the particular features of their own CAPs, as well as other investment options available to them. Your proposed guidelines address an important need for plan disclosure and member education.

However, we believe that your guidelines fail to address an important need for additional investment disclosure related to social responsibility and environmental sustainability. It is clear that CAP members need a level of disclosure from their CAPs so that they can make an informed assessment of how their plans address social and environmental issues, if at all. With growing awareness of the connection between social responsibility, environmental sustainability and long-term shareholder return, it is becoming increasingly important for investors to be aware of the social and environmental investment policies of their retirement savings and other capital accumulation plans.

The Case for Social and Environmental Disclosure

We believe that social and environmental analysis is an integral part of a well-managed portfolio. There is a growing body of evidence showing that corporations with positive social and environmental records have superior stock performance. According to the most recent figures, the Domini Social Index, the world's oldest social responsibility stock index, has earned 10-year annualized returns of 11.2%, compared with 10.3% for the S&P 500, a comparable non-screened index. Other indexes have also significantly outperformed their conventional benchmarks. It is clear that companies with codes of conduct, sustainable environmental practices, equitable employee operations and other responsible policies enhance shareholder return over time.

In order to assess their investment options on social and environmental issues, investors must be given information on the extent to which their investment options take into consideration socially responsible investment (SRI) factors. As a result, numerous jurisdictions are recognizing the importance of social and environmental disclosure in regard to investment policies. Governments and securities commissions are coming to the view that SRI disclosure represents an important new form of consumer protection for investors.

In July 2000, the UK Pensions Act was amended to require trustees of occupational pension plans to disclose their policy on socially responsible investment as part of their Statement of Investment Principles (SIP). Before this amendment, pension fund trustees were under no obligation to inform their members of their SRI stance.

Amendments to the 2001 Australian Financial Services Reform Act stipulate that all products with an investment component – including pension funds and mutual funds -- must include disclosure of "the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention and realisation of the investment". More recently, the Australian Securities and Investments Commission (ASIC) released Practice Statement 175, which requires advisors providing personal financial advice to enquire whether environmental, social or ethical considerations are important to their clients.

Social investment disclosure by pension funds is quickly becoming the standard for public policy around the world. Along with the UK and Australia, similar disclosure regulations are in place in France and Germany. It is expected that this policy will soon become quite commonplace among countries of the Organization for Economic Development and Co-operation (OECD). As social investment disclosure regulation spreads around the world, we expect growing numbers of pension funds to disclose their social investment practices as this policy increasingly becomes the industry standard.

Yet Canadian securities administrators have failed to act on this important policy area.

This comes in spite of the fact that there is public support for such disclosure. According to a December 2001 Vector Research survey, a majority of Canadians, as pension plan members and beneficiaries, support pension plans that invest in socially responsible companies. The survey found 51% of all Canadians want their pension plans to invest in companies with a good record of social responsibility. Support for this view is greater amongst shareholders (54%), and even higher amongst wealthy shareholders (i.e. $100,000+) (59%).

Canada risks falling behind its OECD partners on this important policy initiative. Action by securities commissions and other financial regulators could help to establish disclosure rules to keep Canada current with international practice in this area. As well, such disclosure would help investors better assess their investment options from a social responsibility and sustainability viewpoint.

Recommendation

In the background paper to the Joint Forum report on the proposed guidelines, you state: "The mandate of the Joint Forum is to proactively facilitate and coordinate the development of harmonized, cross-sectoral and cross-jurisdictional solutions to financial services regulatory issues. Since its inception, the Joint Forum has focused on strengthening consumer protection through regulatory harmonization and enhanced consumer disclosure, and through coordinated and improved intermediary proficiency standards.

In the spirit of improving consumer protection through enhanced SRI disclosure, we offer the following recommendation for your proposed guidelines for Capital Accumulation Plans.

> **In Section 4.2.1 on Investment Funds, to ensure transparency and accountability, that investment funds available to CAP members disclose the extent (if at all) to which social, ethical and environmental (SEE) issues are taken into account in the selection retention and management of investments; and their policy (if any) relating to the exercise of rights (including voting rights) attaching to investments.**

This wording is drawn from the disclosure rules now governing pension plans in the UK, and is similar to other SRI disclosure rules in other jurisdictions. The rationale for this recommendation is to provide an additional level of consumer protection by making CAP members aware of the social and environmental investment policies of the investment funds available to them. By including this simple disclosure, CAP members will have significant additional information to assess the investment worthiness of their investment options.

Conclusion

By the Joint Forum's estimates, three million Canadians belong to more than 60,000 CAPs, and over 70% of these CAPs permit members to make investment choices. Given the importance of investor education and protection in relation to capital accumulation plans, it is essential that investors be provided with simple and clearly understood tools to properly assess their investment options. SRI disclosure is one of these tools.

By requiring CAPs to provide SRI disclosure on their investment options, the Joint Forum will enhance consumer protection and provide a higher level of investor education and awareness.

Sincerely,

Eugene Ellmen
Executive Director

Claude Garcia
President, Canadian Operations

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Davin Hall
Policy Manager (A)
CAPSA Secretariat
c/o Joint Forum Project Office
5160 Yonge Street
17th Floor, Box 85
North York ON M2N 6L9

August 29, 2003

Delivered via E-mail

RE: Proposed Guidelines for Capital Accumulation Plans

Dear Mr. Hall:

On behalf of Standard Life, I am pleased to submit our response to the invitation to comment on the proposed guidelines for CAPs released April 25th.

Standard Life is a major service provider to the CAP market in Canada. Our clients are found across Canada, in every jurisdiction. Our services encompass the design, documentation, compliance and maintenance of CAPs as well as the education of, and communication to, CAP members and the investment of CAP assets in a variety of funding instruments. We manage approximately $6 Billion of retirement assets on behalf of over 400,000 CAP members and are very familiar with the practical impact of the proposed guidelines.

Standard Life applauds the efforts of the Joint Forum to bring harmony, clarity and transparency to the regulation of CAPs. In particular, we welcome any progress on simplifying the confusing – and sometimes conflicting – rules that try to govern the investment of CAP assets. Standard Life is not alone in this view. It is with much pleasurable anticipation that many CAP sponsors, members and service providers look forward to the results of the Joint Forum's work. The goal of the Joint Forum is widely-endorsed: "to coordinate and harmonize the treatment of CAPs…"

It must be noted that the authority of the guidelines proposed by the Joint Forum does not derive from legislation - unless and until the competent law-making and rule-making bodies enact new regulations. In the interim, the guidelines will have whatever weight the community of sponsors, members, advisors and service providers give them. This, in turn, will depend on how well-attuned the proposals are to the reality of the industry: its goals, its needs and its practices.

In this regard, the guidelines must meet high standards of clarity in their wording and practicality in their application. As the process of consultation continues, we have the opportunity to elaborate and refine the proposals to meet the criteria of clarity and practicality. In some cases, the current proposals can create what we believe are unintended negative consequences. Fortunately, with the support of all industry players, these concerns can be addressed quickly and easily. We propose possible wording to remove any unintended impact on the health and vitality of CAPs.

This submission that follows will focus on a few issues of clarity and practicality.

We very much support this consultation process. It is through the industry and regulators working together that we will develop the mutual understanding which is the foundation of effective regulation. We applaud the efforts undertaken to this point and look forward to continuing to work together.

Yours truly,

Claude Garcia

President, Canadian Operations

Encl.

Introduction

This submission will focus on a few issues of clarity and practicality, attempting to answer the following questions:

1. Why do CAPs exist?
2. What is the problem with the regulation of CAPs?
3. What is wrong with Section 2.2.2?
4. How has the industry addressed the investment issue?
5. Why is this issue so easy to miss?
6. What are the consequences of the different interpretations?
7. How can we move forward?
8. What options do we have to fix Section 2.2.2?
9. What is wrong with Section 5.1.3?
10. What are the potential consequences of Section 5.1.3?
11. How can Section 5.1.3 be fixed?
12. Are the Guidelines as clear as they need to be?

Standard Life appreciates the opportunity to participate in this important consultation and we would be happy to expand on our comments as necessary.

1. Why do CAPs exist?

The goal of every CAP sponsor is to provide a benefit to the CAP's members – a benefit the sponsor hopes will be appreciated by the membership and will contribute to the sponsoring organization's success. It is also worth noting what the goal is ***not***. The goal of a CAP is not to treat members as consumers and try to generate profits from the sale of products to them.

2. What is the Problem with the regulation of CAPs?

The issue does not seem to be driven by consumer complaints or bad experience with existing CAPs. The heart of the problem lies in the fact that official rules were never written with CAPs in mind. The result is that there are no investment vehicles specifically designed to comply with the generic CAP rules – since such rules do not exist. Currently, the regulation of CAPs is neither harmonized across Canadian jurisdictions, nor across the insurance, pension and securities sectors within each jurisdiction. CAP sponsors and service providers have done their best to discern the spirit of the rules and apply them, however, the existence of confusing, overlapping and sometimes conflicting regulations is, to say the least, not an encouraging feature of the CAP environment.

Furthermore, it appears that the Joint Forum is not proposing to create any rules which would ***replace*** the existing patchwork, but simply add some guidelines on top. A good example of this is found in Section 2.2.2 of the proposed guidelines.

3. What is wrong with Section 2.2.2?

Section 2.2.2 addresses investment funds offered in a CAP. In its final paragraphs, it highlights the existence of three different sets of regulations that may apply to investment funds used in CAPs, as follows.

"Investment funds offered in a capital accumulation plan must comply with:

- the investment rules applicable to Individual Variable Insurance Contracts if the investment fund is an insurance product; or
- the investment rules under National Instrument 81-102 Mutual Funds if the investment fund is a mutual fund under securities law.

If investment funds are offered in a CAP that is a registered pension plan, the funds must comply with the investment rules under applicable pension benefits standards legislation."

For any guidelines to be effective, they must be clear. The underlying intent of proposed Section 2.2.2 is not obvious. Is the goal

- to uphold the *status quo* (three sets of regulations addressing the same issues), or is it
- to propose higher standards (applying rules where they do not apply today), or is it
- to propose that complying with any ***one*** of the IVIC rules ***or*** the mutual fund rules ***or*** the pension rules would be sufficient to satisfy the regulators?

Having exposed the draft to different audiences, we conclude that different readers will have widely differing interpretations. They will not all agree on the Joint Forum intentions in this area.

4. How has the industry addressed the investment issue?

In keeping with the goal of CAPs, sponsors and service providers always seek solutions which will maintain or improve the satisfaction of CAP members. In the 1990's investment conditions were changing and members began demanding more choices than the traditional GIC or the typical family of funds from one investment manager. In particular, members wanted to see a variety of fund options, including recognizable brand name mutual funds.

Sponsors and service providers responded by creating convenient and cost-effective arrangements that incorporated the diverse options desired. At that time, as today, the

regulatory framework was not favourable to such innovations. Nonetheless, the innovative packaging of group seg funds, mutual funds and institutional pooled funds into balanced portfolios respected the fundamental regulatory goals of diversification, liquidity and disclosure.

The success of this approach can be seen by the extent that CAP sponsors and members embraced the "new and improved" CAP pioneered by leading sponsors and service providers. Today, literally billions of dollars are invested by millions of Canadians in CAPs that conveniently offer CAP members a diversified selection of investment options. Members can build balanced portfolios by choosing among pooled, segregated and mutual funds in a single package. Sponsors operate their plans in a straightforward and practical manner without complaints about investment concentration or liquidity – and without concern for the arcane complexities of the competing regulatory regimes.

The secret of the success is that the industry has recognized the underlying commonality of the insurance, securities and pension regulations and upheld the goals of appropriate diversification and liquidity.

5. Why is this issue so easy to miss?

The regulation of investment funds is not the most simple aspect of the financial services industry. It is easy to draw wrong conclusions or misinterpret the application of the various rules. Indeed, it is not easy to draft wording which can guide readers through such a complex area. In order to appreciate the implications of the proposed wording in Section 2.2.2, it helps if the reader possesses an intimate knowledge of the three regulatory systems that could, depending on the circumstances, apply to the investment funds of a given CAP.

In fact, it is very easy for the essential problem of proposed Section 2.2.2 to be overlooked. Most who will read the consultation draft are aware of the general thrust of the investment provisions of the respective regulations: ensuring appropriate diversification and liquidity. To recognize its full implications, however, the reader must be conversant with the details of each set of regulations and how they are – or are not - applied.

Of course, there are experts in Canada – within the regulatory community and within industry – who specialize in the investment provisions applicable to Individual Variable Insurance Contracts (IVICs). There are experts in Canada who specialize in the investment provisions of securities legislation applicable to mutual funds. There are experts who specialize in Canadian pension legislation and what it has to say about investments.

Equally, there are experts who specialize in the group counterparts of IVICs and mutual funds: the institutional pooled funds, group segregated funds and private placement mutual funds.

Unfortunately, there are few people who possess expertise in all of these areas.

6. What are the consequences of the different interpretations?

We do not know which of these three interpretation (if any) is correct, so let's take each of them in turn, starting with maintaining the nominal *status quo*.

First Interpretation :Upholding the Nominal Status Quo

If the goal of the Joint Forum's draft is simply to remind readers that there are three regulatory regimes that could apply to the investment funds in their CAP, then we have described the problem – not any solution to it. We will have failed to meet the expectation that there is a way forward that offers harmony and clarity.

We will have given no comfort to those who have tried to assist their CAP members to diversify their holdings into the widest possible variety of types of funds despite regulations which are, at the very least, confusing in their application. Why is the *status quo* a problem?

As has been noted elsewhere, there are three sets of regulations that may apply to investments in a CAP. While the goals of the regulations may be common, each set has its own unique approach to achieving these goals. This reality makes it exceedingly difficult and prohibitively expensive for a single fund in a CAP to be managed in such a way that it simultaneously satisfies the different rules. This is not surprising since the rules we have were not drafted to apply to all CAPs.

The most obvious challenge is meeting the requirements of the diversification rules. The problem is not at the high level – all of the rules aim for the same result. The problem is in the details of the application. One set uses book value, another market value. One set measures concentration at the time of the transaction, another continuously. One set looks at the whole plan, another examines individual funds.

A closely-related issue to the problem of overlaps is the issue of gaps in regulations. What rules apply to the investment options of a Group RRSP funded by institutional pooled funds?

The ultimate consequence of entrenching the *status quo* will be continued confusion and uncertainty. Please see below for a description of the practical solutions the industry has brought forward to address this technical problem.

Second Interpretation: Increasing Regulation

The second possible interpretation is that the Joint Forum means to extend the current rules to apply where they have not been applied in the past.

The retirement industry in Canada encompasses both defined benefit and defined contribution pension plans. Many investment management firms have been created to cater to the needs of pension plan investors. Historically, the defined benefit portion of the market has been the larger segment and many investment funds have been designed without reference to the IVIC guidelines or mutual fund rules, but specifically to comply with pension standards. As defined contribution pension plans increased in popularity, many of these funds were made available to defined contribution pension plans. In addition, these same funds were offered under Group RRSPs and other CAPs.

These funds are not offered directly to the retail public. They are referred to as "institutional pooled funds" or "private placement mutual funds". The second interpretation of draft Section 2.2.2 suggests that they would have to comply with the rules applicable to mutual funds, once again raising the administrative nightmare of having to simultaneously satisfy competing sets of regulations.

Similarly, insurers have created group segregated funds to meet the needs of pension plans – and other CAPs. These funds follow pension standards and are not offered to the retail public, however, the draft wording suggests that they must comply with the IVIC guidelines drafted for retail products. A glaring example of the impossibility of meeting the layers of regulation would be offering access to employer stock through the mechanism of a segregated fund. Diversification goals can be met at the level of the plan (or account) but certainly not at the level of a fund which mainly invests in a single security. Again, we have the unworkable situation of trying to comply with differing regulations at the same time.

Finally, the potential exists for some funds offered in CAPs to be simultaneously subject to all three sets of rules! In their capacity as the primary record-keepers to the CAP marketplace (where the investment and benefit records are closely linked), insurers have created funds on funds and funds *of* funds. Canada's insurers have wrapped retail mutual funds inside segregated funds and created funds which combine the units of a number of component funds. A consistent interpretation of draft Section 2.2.2 would require that such funds, used in a pension plan, satisfy the IVIC guidelines and the pension standards while the underlying mutual fund or funds would meet the mutual fund requirements.

It should not be necessary to elaborate on how such a development would not be welcome news to CAP sponsors and service providers. What is the benefit of increasing the costs of compliance? What problem is being solved?

Third Interpretation: Upholding Commonality and Harmony

The third possible interpretation is more hopeful. Since all three sets of rules recognize the same key goals, it makes sense to uphold that commonality and accept that ***compliance with any one of the three is substantially the same***. The consequence would be a liberating triumph of common sense over legalism. Plan sponsors would be able to maintain their CAPs with confidence.

7. How can we move forward?

At this time, we merely ask that the regulators recognize the acceptability of the good-faith solutions put in place to serve the needs of CAP members.

More precisely, we ask the Joint Forum to formally agree with the conclusion of the 1999 study of the CCIR and CSA comparing the treatment of IVICs and mutual funds. That in-depth study stated that "there exist many similarities in the regulation of the products – in essence the goals of both regulation are similar". In view of this reality and the reality that a practical solution is already in place, we ask the Joint Forum to endorse the third interpretation and adopt the position that the investment provisions of all three regulatory regimes are sufficiently similar that, in the context of a CAP, compliance with any one of them is sufficient.

8. What options do we have to fix Section 2.2.2?

The Joint Forum has a number of possible ways to correct any misinterpretations of the current draft text. One solution is to simply remove the specific part of the section that gives rise to the problem; another is to re-word it slightly; and another option is to completely rewrite it. Each has its own pros and cons.

Option One: Removing Part of Section 2.2.2

Dropping this section addressing IVIC, mutual fund rules and pension legislation is the easiest approach. It would remove the possibility of misinterpreting the intent, but would not actively promote a new understanding of clarity and harmony.

Option Two: Slight Re-wording of Part of Section 2.2.2

A slight re-wording can clarify the Joint Forum's intentions, rendering the text as follows:

"Investment funds offered in a capital accumulation plan must comply with one of the following:

- the investment rules applicable to Individual Variable Insurance Contracts; or
- the investment rules under National Instrument 81-102 Mutual Funds; or
- the investment rules under pension benefits standards legislation."

This re-wording makes it clear that the Joint Forum accepts the commonality of the standards in each set of regulations, despite their technical differences.

Option Three: Further Re-wording of Part of Section 2.2.2

An even more proactive approach would be to expand the list of acceptable standards to include any other equivalent investment rules found in domestic or international regulations. This would allow the Guidelines to accommodate any future legislation aimed specifically at CAPs as well as any existing rules which currently apply to, say, US-based funds available in Canada.

Such a further re-wording would affirm the principle that prudent conduct does not depend on adhering to a set of rules that were never intended to cover CAPs. Lifting the burden of trying to comply with rules written for other circumstances (e.g., retail products, defined benefit pension plans), would be seen positively by CAP members, sponsors and service providers.

Suggested wording:

"Investment funds offered in a capital accumulation plan must comply with one of the following:

- the investment rules applicable to Individual Variable Insurance Contracts; or
- the investment rules under National Instrument 81-102 Mutual Funds; or
- the investment rules under pension benefits standards legislation; or
- the investment rules under any other equivalent domestic or international regulations."

9. What is wrong with Section 5.1.3?

Section 5.1.3 addresses the content of statements a CAP sponsor must provide. Transparency is a key theme of the CAP guidelines. A CAP member should always be able to obtain information which is pertinent to their account and needed in the management of that account. Accordingly, Standard Life fully supports the effort to ensure every member has access to information. This support, however, does not necessarily extend to directives which would serve to drive up costs while providing little or no benefit. For the guidelines to have real value, each one must be practical and cost-effective to implement.

We believe that Section 5.1.3 contains an example of a guideline which is both impractical and of little benefit.

- Transaction details – investment description: date of transaction, transaction type (eg. Interfund transfer), amount, unit value (if applicable), units purchased or withdrawn;"

In just these few words, the fifth bullet point of Section 5.1.3 proposes to require a sponsor to report to each member the details of every transaction occurring throughout the year. At first glance this does not sound like it would be an issue, however, an

examination of the volumes of fund level transactions common to modern CAPs will reveal the consequences of Section 5.1.3.

Most CAPs feature payroll deduction of contributions. Payroll frequency is typically every two weeks. Many CAPs require both employee and employer contributions to be invested on behalf of the member. Some CAPs allow for supplementary or additional voluntary contributions from the member. Record-keepers often set up separate accounts for each type of contribution, so members can manage each account independently from the others. Finally, as the Joint Forum knows very well, multiple investment options are offered to members so they can build their own balanced portfolios to meet their personal needs and preferences.

All of these factors multiply the number of transaction details kept in the record-keeping system. Having 26 pay dates, with three sources of contributions each invested in five funds results in 390 (26X3X5) lines of transaction details. Dumping out all of this data can create unwieldy reports. For this reason, service providers offer summaries, transaction confirmations, inquiry services and information on demand.

An example of an extract from a member statement which complies with the requirement for transaction details is attached. It runs to many, many pages and it is difficult to imagine that a CAP member who receives it would read every page. Nonetheless, in order to comply with the proposed guideline, the CAP sponsor would be required to have this type of statement produced and distributed for every member of the CAP.

10. What are the potential consequences of Section 5.1.3?

If such a statement is to be printed and mailed, it will result in higher printing and postage costs (to be passed on ultimately to the CAP members). If such a statement is to be electronically distributed, the CAP member would end up using his or her own precious ink and paper to render a hard copy – or scroll through 15 or more pages of numbers on a computer screen!

Aside from raising costs, the impact of this seemingly-innocuous requirement may also be seen in the level of diversification offered to CAP members. The higher the costs of adding investment options, the greater the tendency will be for CAPs to be designed with fewer investment options and less flexibility for the CAP member to manage his or her account(s) to suit their personal circumstances. This would be an ironic consequence of measures aimed at supporting and equipping members to take charge of managing their CAP accounts.

11. How can Section 5.1.3 be fixed?

The preferred alternative is to make this level of detail an option for those who desire to see it.

12. Are the Guidelines as clear as they need to be?

The heart of any guidelines must be the highest standards of clarity. Sponsors, members and service providers must be confident they understand the intent of the regulations. This confidence is founded on clarity – and a mutual understanding of the goals, needs, and practical reality of the CAP world.

It would seem evident by the questions raised in this submission that the current draft is subject multiple interpretations. If readers of the guidelines do not share an understanding of their meaning, their intent and their practical application, the guidelines will have the opposite of the desired effect, creating more confusion and uncertainty. This is of particular concern in view of the fact that the guidelines, once finalized, would have to stand on their own. There is no single, permanent, national regulator of CAPs to whom CAP sponsors, members and service providers can turn for authoritative interpretations of the wording of the guidelines. Unless the Joint Forum – or another authority – is prepared to take on such a role, the guidelines will have to speak for themselves, so the utmost in clarity is essential.

We strongly recommend that the Joint Forum Working Committee revisit and revise the entire text of the proposed guidelines to incorporate definitions of all terms and consistent usage of these terms. There should be no doubt as to the intent of the guidelines and the conclusions to be drawn from them. Standard Life will be pleased to continue its participation in the drafting and consultation process with the goal of ensuring a clear and positive result.

Conclusion

The work of the Joint Forum to create harmony, clarity and transparency has raised expectations throughout the CAP industry. In some quarters, the draft guidelines have also raised fears. It is precisely because CAP members, sponsors and service providers look to the Joint Forum for leadership and guidance that we treat each word in the proposed guidelines with such seriousness.

Given the importance of CAPs to the financial security of Canadian workers, we look forward to the continuing work of the Joint Forum and are grateful for its willingness to engage all stakeholders in finding the best way forward.

Extract from Sample Annual Statement to a CAP Member
to illustrate potential volume of required data

This extract shows the Summary of information for a typical member (pages 3 through 6) followed by the Transaction List (pages 7 through 21).



Sampletr.pdf

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August 29, 2003

To: Davin Hall, Policy Manager (A)
CAPSA Secretariat
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Comments on Proposed Guidelines for Capital Accumulation Plans

I welcome the opportunity to comment on proposed CAP guidelines from the point of view of a Member of one of these plans.

I write as a private investor with more than 20 years of investment experience in funds, individual equities and derivatives. Although not directly employed in the financial services industry, I have an MBA and finance is my hobby. Over the years I have completed several courses from the Canadian Securities Institute and this year I passed the Level III exam of the Chartered Financial Analyst program offered by AIMR.

My comments are divided into two parts:

1. Part I provides feedback around 4 recurring important themes:
    a. Standardized disclosure on fees and costs and their impact on investment returns
    b. Timeliness, quality, accuracy and completeness of Member Statements
    c. Member participation in CAP governance, oversight and regulatory changes
    d. Clear regulatory process to resolve Member complaints
2. Part II offers specific paragraph by paragraph amendments to the proposed guidelines that flow from the themes.

I welcome the opportunity to have provided my input and sincerely hope that the future will be better.

Respectfully submitted,

Tony Paine

Part I: Thematic Response to the Proposed Guidelines

My CAP Plan

I work for a large multi-national firm with a significant presence in Canada and status as one of the "Best 50 companies to work for". For reasons of personal employment security, I shall call my employer YYYY Canada. My employer offers a CAP managed by a major Canadian life insurer that I shall call LifeCo. If we contribute up to 3% of our salary to this CAP, then YYYY Canada will match it with a sliding scale amount that is approximately 2% of our salary. The plan has been in effect for a decade or so, so is now valued at about 50-100% of the salary of longer-term contributing employees and has become a significant financial asset for many that provides significant amounts of fees to LifeCo.

We are required to use LifeCo as the Service Provider in order to get the company matching contribution. This makes us economically captive to LifeCo and unable to switch providers unless we withdraw from the plan and lose two years of company contributions before we can join again.

LifeCo offers a semi-broad traditional array of investment products, including GICs and Seg Funds totaling 80 or so, with Investment Management Fees (IMFs) of 50-250 bp. However, some market segments such as emerging markets, income trusts, mortgages, ETFs, etc. are either not available or available only with fairly high fees. Although mutual funds might suit small monthly contributions, lower cost but unavailable ETFs could well be the preferred long-term vehicle once assets in a fund exceed about $3,000.

Employees make the majority of the CAP contributions, yet had no input that I know of in the design of the CAP, the selection of LifeCo, the investment products on offer, or the monitoring of LifeCo performance.

Specific Issues that Relate to the Proposed Guidelines

LifeCo has demonstrated some questionable business practices over the past few years that have been vigorously defended by senior management of LifeCo, their Ombudsman, and YYYY Canada senior managers. LifeCo claims these practices conform to all existing and proposed regulations for the industry – including the CAPSA proposals.

The objectionable business practices include:

1. Strong emphasis on Gross Return performance presentation

2. Partial fee disclosure – IMF not MER
3. False Member Statements
4. Disappearing Units

Gross Return performance presentations. The majority of the performance information about investment funds that we get from LifeCo is in terms of Gross Returns, especially in any and all marketing materials comparable to a prospectus, which comes with a complete absence of corresponding Net Returns for the same periods, and often lacks an IMF list. What little net return information we receive comes only in Member Statements and relates only to periods ending as of the statement date.

Partial fee disclosure. Instead of the all-in MER from a mutual fund, LifeCo occasionally gives us a list of Investment Management Fees (IMFs) that include only some of the costs. The IMF must understate the MER quite substantially because the Gross minus Net Return is 30-60 basis points higher than the IMF.

LifeCo claims it cannot easily calculate individual MERs because there are so many different IMF schedules for different clients. Nevertheless, LifeCo does manage to calculate a few Net Returns for the Member Statements. The impression is that LifeCo does not want its fee schedule to be directly comparable to mutual funds because the discrepancy between IMF and MER, in combination with Gross Return performance presentations, suits its marketing objectives.

False Member Statements. When a reporting period ends on a weekend, LifeCo deliberately reports the value at the end of the first trading day of the next month as the value at the end of the reporting period (e.g. Oct 1 values reported as Sep 30 values – for the Member assets and for the net fund return information). Since this is the only source of net fund information, Members trying to compute net returns over consecutive periods get inconsistent results.

Disappearing Units. When LifeCo reduced the management fees on a fund, it caused a variable number of units to disappear from every affected Member Account – with no record to the member. As a result, Member Statements from one period to the next were inconsistent and did not add up. After complaints, a general description of the cause was posted on a remote web site. Member records remain inconsistent and only those who notice the unit disappearance get an explanation.

This behaviour was excused by a CLHIO staffer, who said LifeCo "*is widely recognized in the industry as having the most antiquated computer systems in the industry*."

This is a test case. These issues with LifeCo questionable business practices relate specifically to the proposed CAP guidelines and offer a kind of test case to explore how well the CAPSA proposals will serve the needs of the CAP Members or whether the proposals might simply perpetuate existing practices.

Theme 1: Standardized disclosure on fees and costs and their impact on investment returns

Whenever investors or consumers are offered investment products, such as mutual funds, insurance segregated funds or capital appreciation plans that require them to make investment choices, it is absolutely critical to present information in a consistent manner across all the options. CAPs are far more likely to have unsophisticated investors who otherwise would not hold mutual funds – these people are not knowledgeable investors and should be treated to consistent information.

Recommendation. Here are four critical things that the proposed guidelines ignore, but which belong in the foundation for standardized disclosure:

- Fees should be translated into dollars and the impact of fees fully explained
- The all-in MER should be reported, not some convenient subset such as the IMF
- Tracking Error should be discussed and reported when Seg Funds invest in mutual funds
- Only Net Returns should reported and Gross Returns should be explicitly avoided

Interestingly, mutual funds and exchange traded funds (ETFs) already have to do this, so it should only be the life insurance industry that needs to bring its practices in line with standardized disclosure. Members compare informational material from a life insurance company to that from their mutual fund company – so the information must be consistent.

End lower disclosure standards for life insurance firms. Today, as our experience with LifeCo shows, the choice of an insurance Seg Fund Service Provider can result a significantly lower standard of disclosure than mutual funds and that would fail 81-102: partial disclosure of fees through IMF; no equivalent to mutual fund impact of fees; no information about tracking error when attempting to replicate the underlying mutual fund; sales material equivalent to a prospectus in exclusively gross return format, often without a fee schedule; fee schedule excludes some funds, comes out months later, possibly in a different medium (e.g. posted in a different website; not included in member statements or sales material, etc.). The aggregate effect of these practices is to significantly downplay the fees and expenses and effectively mislead the employee investor Members.

It is not acceptable that repackaging a mutual fund as a Seg Fund should decrease the quality of investor disclosure. This is not consistent with harmonization. The whole harmonization exercise will be a waste of time from the Member perspective if such broad discrepancies in communication between insurance firms and mutual funds are not resolved.

Fees in dollars. Fees need to be translated into dollars and their impact explicitly disclosed (similar to mutual funds today, to truly harmonize). Percentage fees on assets are too abstract and tend to under-represent the impact of fees, which is more like 10-40% of the expected long run return. Individual member statements should show the dollar amount of fees taken in the reporting periods and any historical period for which performance data is given.

MER not IMF. In the 21st Century, advances in computer technology should make this a relatively simple calculation, but, as LifeCo shows by digging in its heels, harmonization will not result without regulatory pressure.

Tracking Error. Investors who buy ETFs can learn what tracking error is and what impact it might have on their future investment returns. LifeCo packages mutual funds into Seg Funds that contain some cash and a number of units of the underlying mutual fund. Most of the disclosure about the Seg Fund utilizes the (gross) historical record of the mutual fund, including the majority of the performance information. Since the Seg Fund cannot exactly track the underlying mutual fund due to the presence of cash and/or timing differences on purchase and sale of Seg Fund and underlying mutual fund units, this gives rise to a difference in the performance of the Seg Fund and mutual fund. These differences can be large – more than 100 bp -- enough that the Net Return (after fees) in some Seg Funds can be higher than the Gross Return of the underlying mutual funds, for example.

Small Seg Funds or sloppy practices related to creating and redeeming units or maintaining a cash balance for LifeCo fees, can all contribute to tracking errors. Harmonization should dictate that all investments that have tracking error potential be required to disclose it in a consistent fashion.

Net Returns ONLY. There is a well-established mutual fund regulatory process that only NET Returns are reported to investors, and that these are reported only over standardized periods. This is a universal practice in many countries and jurisdictions with a well-established and lasting value protecting investors from sharp practices that mislead them into purchasing high fee mutual funds.

Surely, as regulators, you can appreciate that practices that would mislead investors in mutual funds would have the same or worse effect on investors in Seg Funds and CAP plans. CAP plan investors, are less sophisticated than mutual fund investors (who exercised the choice to invest). Therefore, the onus is on the regulators to see through insurance industry lobbying and protect investors by harmonizing in the most protective fashion by banning gross return performance presentations.

Standardized disclosure exists for lots of financial products. Just as there are standardized information disclosure requirements and terms for other financial products such as mortgage contracts or auto leases that are imposed by government regulation on lending institutions, there

ought to be (but isn't) the same level of standardized information disclosure among segregated fund and mutual fund investment options.

Harmonization should be fixing this rather than perpetuating the status quo.

Theme 2: Timeliness, quality, accuracy and completeness of Member Statements

Recommendation. The Guidelines need to be absolutely clear on some basic business practices around timeliness, quality and accuracy and completeness of Member Statements. Here are four additional critical things that the proposed guidelines ignore, but the Service Provider should be obligated to do:

- Provide clear, accurate and complete statements within 30 days of period end, and at least quarterly
- Report all transactions, unit purchases, consolidations, splits, etc
- Provide Management Expense Ratios, not a subset of the MER such as the Investment Management Fee (IMF) – see Theme 1
- If providing "investment education", then provide meaningful education about the impact of costs on investment returns

The LifeCo engaged in our CAP performs quite weakly on these dimensions of basic business practice and the Sponsor, YYYY Canada, thinks it's just fine that statements may have the wrong valuation date, that units disappear without a trace from one statement to the next due to unreported sub-fund transfers, that IMFs understate the apparent MER by as much as 30-60 basis points, and that LifeCo almost completely ignores education on the critical aspect of the costs of investing. This is not the quality standard CAPSA should be supporting.

Clear, accurate and complete. Clear means understandable, accurate means the dates and prices of valuations and transactions are correct, complete means that all the relevant investment details of a transaction or valuation are reported.

Several years ago LifeCo did not bother reporting the interest rate on a rolled-over GIC. It took several months of letter writing, focus groups, statement redesign, and phone calls to pursue the information after the arrival of each quarterly statement before this practice ended. Our CAP Members were stuck – we couldn't change Service Provider if we thought their "service" was substandard.

Business Ethics 101: a clear accurate and complete receipt – looks like it might need to be required by regulation before LifeCo will deliver.

Within 30 days of period end. Without a deadline, some of these statements can be delayed for quite a while and become jokingly far out of date. There is no reason CAP providers cannot meet the same schedules achieved by other financial service providers, and timeliness should be one of the criteria for selection of a Service Provider.

Report all transactions. With LifeCo, units can disappear without a trace. The Member has to notice that his books no longer balance and initiate an enquiry that takes 6 weeks to get an answer. If he doesn't like the Service Provider, he is not free to choose a better one.

Business Ethics 101 – full, accurate and complete – make it the law or Members will continue to be kept in the dark.

Quality Investment Education must include the impact of fees. This is a governance issue because delegating the investment education role to the Service Provider is fraught with huge conflicts of interest – especially in the matter of the impact of fees. The Member needs the lowest cost effective alternative, while the Service Provider wants to maximize their fee income. This is only partly addressed in Theme 1 under the consistency of disclosure.

A lot more needs to be done to define the minimal standards for "investor education" that CAP investors should get on the impact of fees – dollar amounts, fraction of expected return etc. This will be true whether the Service Provider or a third party does it.

Theme 3: Member participation in CAP governance, oversight and regulatory changes

The captive employee-contributing nature of CAPs requires a higher standard of governance on the Sponsor than other company-paid benefit plans. Our employee Members cannot change the provider selected by the employer, and are subject to economic coercion to maintain their participation in the CAP, regardless of whether they have lower cost or superior investment alternatives.

The big issues ignored in the proposed guidelines are:

- Sponsor conflicts of interest, paternalism and lack of investment expertise
- CAP Member participation in governance and oversight
- Addressing the presence of significantly lower cost alternatives to the CAP

- Delegating education to the Service Provider generates significant conflicts of interest
- CAP Members should have more input in the CAPSA harmonization process because the changes affect them the most

Sponsor conflicts of interest. It is important to realize that CAP Sponsors could have significant conflicts between their business interests with the Service Provider and the interests of the CAP Members. For example, my employer, YYYY Canada sells significant amounts of product and services to LifeCo, the Service Provider of our CAP. How can Members be sure that this business interest did not influence the original selection of the Service Provider (or the ongoing relationship), potentially to the detriment of the Members if the resulting CAP plan is more rigid (to increase assets, and hence fees), or if the management fees are high, or if the terms of the CAP force the Member to deal with the Service Provider?

Members can only hope to manage their employers' conflicts by participating in the design, governance, Service Provider selection and active monitoring of the CAP.

Sponsor lack of investment expertise. When Sponsors contract out all the management aspects of the CAP to the Service Provider, then who is minding the store? Sponsors don't have the investment expertise in house, and YYYY Canada wants to contract out as much as possible. CAP regulations should NOT assume the employer is some kind of sophisticated investor that is capable of protecting employees from sharp business practices employed in the investment provider industry. Rather, regulations should look through the Sponsor and assume that the average CAP investor is LESS sophisticated than the average mutual fund investor and needs greater protection.

Only the regulators and the employees themselves can genuinely look after employee interests. If the Sponsor provides all the contributions (as in our pension plan, for example) the Sponsor may be justified in calling the shots. However, the greater the employee contributions, the greater should be their control and influence over the management, structure and reporting decisions.

CAP Members should participate in governance and oversight. Despite our extensive contributions to our CAP, there is no employee representation in decision making. This is a recipe for bad governance and a model inconsistent with the mutual fund industry, where voting rights, the ability to change Service Provider, and standardized disclosure all help to protect the individual investor to some extent.

What if the CAP is a High Cost alternative for Members? One of the claimed advantages of CAPs is to concentrate capital so as to provide lower cost investment alternatives. This is somewhat of a myth especially for anyone with a modicum of investment savvy. Consider the following examples:

- The range of Effective MERs of funds offered in our CAP is 60-260 bp. The median of 110 bp is about half the public Canadian fund median, but about the same as the US public fund median, yet it still adds up to thousands of dollars to many participants over time.
- Directly held exchange traded funds (ETFs) outside the CAP have MERs as low as 0.17% -- less than a third of the least expensive index fund offered in the CAP and 15 times less expensive than the most expensive funds.
- Bond Fund Effective MERs in our CAP range from 80-180 bp. This is going to be a large chunk of the expected 10-year bond return of about 5%, and is 4-10 times more costly than direct bond ownership.
- Many investment classes are either not represented or represented with very high cost options in the 80+ funds offered by LifeCo, including, income trusts, emerging markets, foreign bonds, etc. Many of the offered funds are brand name funds associated with higher fees.

The investment savvy members in our CAP plan are stuck with the investment ignorant members, with both paying higher than needed fees for a limited range of investment products, while remaining economically coerced to stick with the Service Provider because we cannot switch.

If Members were given a role in governance, lower cost alternatives and the ability to opt out into locked-in accounts at other Service Providers, it could inject meaningful value into our CAP.

CAP Member input into CAPSA Harmonization proposals is needed. Have CAP Members been involved in the discussions to develop the proposed guidelines? Can these regulations help Members if they haven't had significant participation? The appearance is that a large tent is being defined by industry insider Sponsors and Service Providers that will fit every current firm and every current practice into one large house – good for the insiders who hate change; good for the regulators who can claim progress on harmonization to their political masters (who have a very weak grasp on the real issues); but bad for the public who is no better off because there is no real harmonization.

As a CAP Member, I can attest to a variety of questionable business practices that seem likely to continue unabated under the proposed regulatory regime, with the CAP Member no better off in terms of information quality or the ability to challenge or change Service Provider behavior.

Without meaningful CAP Member input, the current proposals are unlikely to have any significant harmonization effect among CAPs, mutual funds and Seg Funds, and therefore are unlikely to serve the public.

Theme 4: Clear regulatory process to resolve Member complaints

Not only are the proposed guidelines vague and subject to interpretation, but there is no process for quick dispute resolution by regulators.

Even supposing a good framework of guidelines arises from this exercise, there needs to be a process laid out for CAP Members to trigger regulatory review and independent third party assessment of conformance by slipshod Service Providers and/or ineffective Sponsors. Already CAP Members don't have a clear point of regulatory review (self regulation being demonstrably useless in the LifeCo case), and this document does not appear to clarify the situation.

Concluding Comments on Proposals

LifeCo maintains it complies with existing and proposed regulations, yet continues to provide service in the bottom decile of accuracy, completeness, and deceptiveness. If these proposals continue to provide a broad umbrella of protection of worst-case performance, it will be a missed opportunity for the Members of our plan.

Many of these proposals are too vague, so firms can argue almost any practice is compliant, fostering an "anything goes" mentality. Loose guidelines that may be intended to encourage "best practices" to evolve can also perpetuate "lowest common denominator" practices that hurt investors, so this CAP Member is urging CAPSA to firm up the guidelines to stamp out questionable practices.

Without significant strengthening, the current proposals are unlikely to have any significant harmonization effect among CAPs, mutual funds and Seg Funds, and therefore are unlikely to serve the public. The public needs clear guidelines not subject to interpretation or abuse, and a clear accessible process for quick dispute resolution by regulators.

Part II: Specific Proposed Amendments to Guidelines

1.3.1 Added Responsibilities of CAP Sponsors

The Sponsor should consider potential conflicts of interest between the interests of the CAP Members and the business interests between the Sponsor and the Service Provider.

The Sponsor should establish processes and procedures for meaningful Member input into the design, Service Provider selection, investment selection, Advisor selection, Member communication and education provisions of the CAP plan. A Member oversight committee is recommended when CAPs involve involuntary or semi-voluntary Member contributions.

The Sponsor should ensure that Members have a reasonable alternative to the selected Service Provider in the event the Service Provider is not appropriate for a subset of Members.

The Sponsor is responsible for monitoring the quality and lack of bias in marketing materials, and especially educational materials prepared by the Service Provider. The Sponsor should be especially careful about Service Provider conflicts of interest related to disclosures and education about the impact of fees and costs on investment performance.

2.1.3 Selecting Service Providers

This section is far too general to be of much use to CAP Members. The Service Provider should be obligated to:

- Provide clear, accurate and complete statements within 30 days of quarter end
- Report all transactions, unit purchases, consolidations, splits, etc
- Provide all-in Management Expense Ratios, not a subset of the MER such as the Investment Management Fee (IMF)
- If providing “investment education”, then provide meaningful education about the impact of costs on investment returns

For captive Members who are forced to make CAP contributions but have lower cost investment alternatives at other Service Providers, the Sponsor should allow the Member to choose a different Service Provider.

2.2.1 Selecting Investment Options

This section must include costs (management fees, expense ratios, loading and switching costs, etc.) as a critical factor when choosing investment options. Cost is not mentioned in the Draft section 2.2.1. Fees are included in 2.2.2, but this is too late in the selection cycle.

Not only does the CAP Sponsor have an obligation to ensure that novice investor Members are not bamboozled into paying excessive fees that compromise their long run return, but Sponsors also have an obligation to ensure that more investment-savvy Members have access to the same ultra low cost options such as ETFs that they would have outside the CAP. Failing to meet the test of providing the lowest cost investment options for the Members means Members are worse off being members of the CAP than they would be outside the CAP – defeating one of the purposes of the plans.

2.2.2 Selecting Investment Funds

As written, the draft proposal calls for investment funds to comply with IVIC or 81-102. This completely ignores one of the most important issues with the lack of harmonization between insurance products and mutual funds – their disclosure requirements are so different.

There may be a gap here because the CAP plan offered by my employer, YYYY Canada through LifeCo, does not offer an insurance component, so it is not an IVIC. It may be an animal outside either of these 2.2.2 definitions.

Any investment fund in a CAP should be called on to comply with a harmonized set of criteria that looks more like mutual fund disclosure in terms of net returns, MER, and impact of fees and costs.

2.3.1 Record Keeping

Record keeping should be of such information necessary to achieve the communication objectives of:

- Providing clear, accurate and complete statements within 30 days of quarter end
- Reporting all transactions, unit purchases, consolidations, splits, etc
- Providing all-in Management Expense Ratios (MER)
- Providing Net Returns

3.2 Investment Information

Fees and Costs and their impact on returns are critical information that should be provided.

4.2.1 Investment Funds

Has industry lobbying ensured that Fees and Costs do not explicitly appear in this most obvious of sections?. Unless the impact of Fees and Costs is taken seriously throughout these guidelines, there will be little net value to the CAP Members.

4.2.2 Other Investment Options

Fees and Costs and their impact on returns are ignored again.

4.3 Description of Fees, Expenses and Penalties

Fees are finally mentioned. From the point of view of harmonization, it is critical that insurance and mutual fund products be directly comparable -- the MER applicable to the Member is clearly disclosed. The IMF is incomplete disclosure. Sample calculations of the impact of fees that are comparable to what is used in the mutual fund industry should also be required.

5.1.3 General Content of Member Statements

There is nothing here that says the Member Statement has to be clear, accurate and complete or that all transactions, unit purchases, consolidations, splits etc. must be reported in a timely fashion. Does that mean that CAPSA agrees with LifeCo that Member Statements can have the wrong date/wrong value, or ignore unit consolidations and splits? Will LifeCo be able to continue these practices and claim conformance with 5.1.3 as proposed? If so, the proposal is too loose.

Rates of Return. All reported rates of return in all promotional material and member statements should be NET of all fees and expenses. The use of gross returns should be prohibited unless exactly the same information is available in the same place/same time/same format in terms of net return.

Impact of Fees. Member statements should show the aggregate amount of fees paid by the Member during the period expressed in dollars, and not just as percentages.

5.2.1 Other Information Available to CAP Members

The wording “details on fees and expenses …” is way too loose. It is time the insurance firms rose to the quality and types of disclosure required of mutual funds – harmonize as your mandate requires.

5.2.2 Report on Significant Changes in Investment Options

This needs to be tightened up by requiring these details to be available in a reasonable time frame of not longer than a few weeks. For example, LifeCo added a few new funds to our CAP plan 5 months ago (when it gave us gross return histories of the funds), but only now has LifeCo given us a link to a web page said to contain the new IMFs (the link doesn’t work yet), and it may be months before we get this information. Was this the schedule CAPSA had in mind for the activities required in this section? I hope not.

5.3.1 Frequency of Performance Reports

This really needs to have deadlines (e.g. 30 days after period end, and at least quarterly) to have much significance. Sometimes LifeCo gives us Annual Report information in July for periods ending 6 months earlier. That is not acceptable.

5.3.2 Report on Fund Performance

All investment performance information should be NET of fees and expenses. Mixing gross and net returns confuses investors and provides opportunities for Service Providers to mislead investors through selective reporting. Since Net Returns are a requirement for mutual funds, harmonization should result in the same standards for the insurance industry.

In addition, there needs to be a common definition of fees and expenses, and MER, which includes everything and is already required in the mutual fund industry should be the requirement. Insurance companies should not be allowed to report IMFs, which exclude certain management costs.

New Section 9: Clear Regulatory Process to Resolve Member Complaints

In addition to the eight sections proposed in the draft guidelines, CAPSA should have an ninth section that lays out the following:

- Procedures to be used by Members to resolve complaints
    - Actions required by the Service Provider to resolve complaints
    - Actions required by the Sponsor to resolve complaints
    - How & When the regulator should be approached for independent 3rd party review
    - What the appropriate regulator is
    - What regulatory criteria will apply in the review of a complaint

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Towers Perrin

October 1, 2003



Mr. Davin Hall
Policy Manager (A)
CAPSA Secretariat
c/o Joint Forum Project Office
5160 Yonge Street
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M2N 6L9

Dear Mr. Hall:

Towers Perrin has reviewed the Proposed Guidelines for Capital Accumulation Plans that were issued by the Joint Forum of Financial Market Regulators (the "Joint Forum") in April 2003. We support the efforts that have been made to clarify the responsibilities of members and sponsors of CAPs. We also commend the Joint Forum for following a consultative process that gave all interested stakeholders an opportunity to provide input, either directly or through industry associations, and for its responsiveness to the input it has received.

With respect to the proposed guidelines, Towers Perrin is concerned that they may be so prescriptive that they may discourage some plan sponsors from establishing or maintaining CAPs, particularly for non-registered plans. We actively participated in the Joint ACPM/PIAC Task Force that reviewed the proposed guidelines in great detail, and our specific concerns are reflected in the Task Force's submission.

Towers Perrin gives its full support to the submission that has been made by the Joint ACPM/PIAC Task Force. Accordingly, we will not be providing additional comments on the proposed guidelines at this time.

Sincerely,

Kevin J. Aselstine
Toronto Retirement Business Leader

KJA/lp

August 28, 2003

Davin Hall
Policy Manager (A)
CAPSA Secretariat
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M2N 6L9

Subject: Guidelines for Capital Accumulation Plans

I am writing on behalf of TransAlta Corporation, Canada's largest non-regulated electric generation and marketing company. TransAlta has approximately $9 billion in assets and operates in Canada, the U.S., Mexico and Australia. Our corporate office is located in Calgary.

We commend the Joint Forum of Financial Market Regulators for the efforts made to develop industry standards for the dissemination of information to CAP members. We particularly appreciate the feedback process including focus groups held in a number of cities, and the changes that have been made by the Joint Forum in response to feedback by interested parties.

There are a number of points made in the draft guidelines upon which we would like to comment:

Despite 29 pages of guidelines and responsibilities of plan sponsors, we do not have any confidence that having met the guidelines, we will be less at risk of legal action than we are currently. It will fall to the Courts to determine if what a plan sponsor believed to be "reasonable", "appropriate", "sufficient" satisfies each plan member. Our concern is that the large corporation would be the "loser" in front of a judge with little understanding of pension plans and with much sympathy to the plan member who claims he did not receive "sufficient" information. We would appreciate either more specific requirements or a principles-based approach to this issue.

We are unsure of the guidelines as they apply to terminated members. In Alberta, as you know, plan sponsors cannot force a terminated member from the plan. It is difficult enough to track these employees to provide them annual statements; having to provide them continual information about changes to the plan and plan investments will be onerous, if not impossible.

TransAlta, like many large plan sponsors, provides information to employees regarding their defined contribution plan design and investments. We provide face-to-face seminars, written information and projection tools. We believe these communication methods to be effective for various levels of education and financial sophistication, however we do not, nor do we believe plan sponsors should, assess the financial sophistication or computer literacy of our employees to ensure we are "educating" them. References to "education" should be excluded.

Certainly those corporations that have registered pension plans will continue to operate those plans. However plans that make membership and member contributions voluntary, such as group RRSPs, may be in jeopardy even by large plan sponsors. For example TransAlta's group RRSP was initially implemented to simply facilitate retirement savings. We offer payroll deduction, immediate tax deferral, skilled and varied investment managers and options and very low administration and management fees. If we must meet the guidelines suggested, we may find the cost of doing so prohibitive.

TransAlta and other large companies will continue to sponsor pension plans. We have a history of doing so and our pension plans are part of a competitive compensation package. Many companies transferred from defined benefit plans to defined contribution plans because of the ever-increasing regulatory burden and the financial risk of the DC plans. We are now in an environment where the administrative burden for DC plans is increasing and the risk of facing legal action despite our diligence and intentions is very real and overshadows the financial risk associated with a DB plan. Smaller companies may not feel this need to continue offering pension benefits. They well may be overwhelmed by the guidelines, the need to meet these standards and by the cost of doing so. They could avoid the financial burden of administration by simply increasing compensation and letting employees make their own retirement savings arrangements. This would be to the detriment of those employees and to the retirement system in Canada.

We look forward to the final report from the Joint Forum and the incorporation of the comments made through the feedback process.

Yours sincerely,

Shirley M. McIntyre
Director, Pensions

Joint Forum Working Committee on Capital Accumulation Plans

Sirs/Madams:

I am writing on behalf of the Co-operative Superannuation Society Pension Plan, a large ($2B), self-administered DC plan registered in Saskatchewan with approximately 29,000 members across Canada.

I would like to express concern on behalf of our plan with respect to section 2.2.3 of the CAP's Guidelines consultation paper issued in April 2003. This provision indicates that CAP members should have a reasonable opportunity to transfer their funds between investment options, but in any event should be permitted to transfer at least once per month.

In my opinion, setting one month as a minimum time limit may not be appropriate for all CAP's. Further, it may increase costs and reduce returns without providing any corresponding benefit to the CAP's member where the CAP has been established as a "buy & hold" vehicle in which to accumulate retirement savings.

I would draw your attention to an article published on page B9 of the Globe & Mail on July 4, 2003, in which the costs associated with "frequent trading" are discussed in the context of retail mutual funds. In this article it is reported that AGF is considering applying a 2% penalty on withdrawals where units are bought and resold within 90 days, with the amount of the penalty being applied to compensate remaining unit holders for the resulting transaction and administration costs that would otherwise be absorbed by the fund.

Although I realize that retail mutual funds and most DC pension plans permit daily trading, in my view this not only sends the wrong message to retirement savers but uselessly increases adminstration and transaction costs without providing any useful benefit to plan members. (I would submit that daily trading is provided in an attempt to limit sponsor/adminstrator liability rather than to meet the needs of plan members.)

I would urge you to consider changing section 2.2.3 so that it would permit more flexibility for plan sponsors and administrators. Wording similar to section 2.2.1 would be more appropriate such that the sponsor and or administrator would be required to provide prudent transfer options, given the purpose of the CAP, the number of investment options, the financial sophistication of members, the liquidity of the options, etc., etc.

If a specified minimum time limit is still felt to be required, I would encourage you to consider the "quarterly" limit provided in section 404(1)(c) of ERISSA and applicable to US 401 K plans, rather than the monthly limit currently proposed in your consultation paper.

Bill Turnbull, LL.B. PPAC
General Manager
CSS Pension Plan

THE UNIVERSITY OF BRITISH COLUMBIA

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August 28, 2003

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Dear Sir:

Proposed Guidelines for Capital Accumulation Plans

On behalf of the Trustees of the UBC Faculty Pension Plan, I am pleased to submit our response to the Joint Forum's Proposed Guidelines for Capital Accumulation Plans ("Guidelines").

A. About the UBC Faculty Pension Plan

The UBC Faculty Pension Plan ("FPP") provides pension benefits to the University of British Columbia faculty. As at June 30, 2003, the plan covered 2,579 active members, 312 retired members, 1,157 deferred members, and had assets of $893.4 million.

The UBC FPP is a trusteed plan consisting of four trustees appointed by the University and four trustees elected by the members. A staff of 11 administers the day-to-day operations of the plan.

The UBC FPP is substantially a defined contribution pension plan and is one of the largest such plans in Canada.

B. Some General Comments about the Proposed Guidelines

1. The proposed guidelines set out details of best practices in governing, managing, and operating a capital accumulation plan ("CAP"). We acknowledge the value of the Joint Forum preparing a document that describes best practices and believe a CAP that meets the proposed Guidelines will achieve the objectives as described in 1.2 of the document.
2. As the proposed Guidelines are very detailed, it may be construed that the practices described in the document are the only acceptable practices. We believe there may be other approaches to managing a CAP that achieve the objectives. In other words, the Guidelines should not be presented as being exclusive of all other sound practices.
3. In 1.2.1, the proposed Guidelines state, "These guidelines supplement any legal requirements applicable to capital accumulation plans. They do not replace any legislative requirements." We are concerned that the legislative requirements are already substantial and that the guidelines will simply add another layer of required compliance. If the proposed Guidelines are put into force, we believe that some of the legal requirements already applicable to CAPs can and should be relaxed, as the Guidelines will achieve the objectives

of that legislation. In particular, we believe that a CAP that meets the Guidelines should be exempt from securities legislation.

C. Comments about Specific Issues

We have comments about the following specific issues

1. Investment Options

We agree with the very high standards that the Guidelines contain for the selection of investment options (2.2.1 and 2.2.2), the disclosure of information about the investment options (4.2.1, 4.2.2, 4.2.3, 5.2.1 and 5.3.2) and the monitoring of the performance of investment options (6.2.2).

We believe the description in the draft Guidelines of allowed investment options is incomplete. The Guidelines state that investment options may be investment funds, employer securities, GICs, annuities, other securities, government savings bonds and cash. An investment fund, in turn, is described as a "mutual fund, pooled fund, segregated fund or similar pooled investment product." Given the exacting standards described in the proposed Guidelines for investment options, we suggest one of two approaches be taken with investment options in the Guidelines:

- the Guidelines **not** include a list of acceptable options and, **instead**, state that any investment option that meets the standards of the Guidelines will be acceptable, or
- the Guidelines include a full and complete list of **all** acceptable types of investment options

Because of their size, larger pension plans such as the FPP have the ability to create investment options that meet the high standards of the proposed Guidelines, but are not specifically described in the proposed Guidelines. For instance, larger pension plans may retain investment managers to manage assets in separately-managed accounts in accordance with the specific requirements of the plan. Such separately-managed accounts may be similar to those managed by the professional investment managers for their other accounts or pooled funds, but may have some differences because of the plan sponsor's Investment Policy requirements.

Larger plans also have the ability to create customized, low-risk multi-manager investment options. For instance, within each of the main asset classes, the FPP retains several investment managers with different investment management styles to invest on a separately-managed basis only in the portion of the investment market dictated by their specific mandate. We believe our investment options have lower risk than many of the third-party funds offered to smaller pension plans because of our ability to diversify by investment manager and by investment management style. Our balanced fund provides our members what members of other pension plans can only achieve by selecting at least a dozen different investment options. With our rigorous review process (that is similar to the process described in the draft Guidelines), we believe our investment options are safer than the investment options offered by third-party administrators. These types of investment options should be allowed.

The Proposed Strategy for Implementation of the Guidelines for Capital Accumulation Plans (at the back of the document) states, "in the securities sector, it is proposed that the CSA consider providing relief from prospectus and registration requirements based primarily on the guidelines." We agree. We would suggest further, however, that **pension plans** that adopt the Guidelines should be specifically exempted from securities legislation entirely.

2. Investment Advisors

Section 3.4.1 states, "To help CAP members with their investment decision-making in the plan, a CAP sponsor may choose to enter into an arrangement with a service provider or refer members to a service provider who can provide the members with advice about their investment decisions." Section 3.4.2 describes the process of selecting service providers to provide investment advice.

We believe sections 3.4.1 and 3.4.2 are incomplete. We acknowledge the value of investment advisors, but do not believe we are in a position, nor should any plan sponsor be put in a position, of having to select investment advisors for their members. The term "investment advisor" is not a

legally defined term and many individuals with a wide range of qualifications (or lack or qualifications) claim such a title. We believe the best assessment of investment advisor competency is from those individuals who have used the services of investment advisors. Accordingly, the FPP maintains letters of references on file from members who have used the services of specific investment advisors. In turn, the FPP administration will provide to members, on request, the names of investment advisors for whom the FPP administration has received at least five letters of recommendation. This approach has been highly successful and should be allowed under the Guidelines.

3. Decision-making Tools

In 1.3.1, the Guidelines state, "The CAP sponsor is responsible for setting up the plan, providing investment information and decision-making tools to CAP members…." Although our concern about this statement may appear to be one about terminology – in particular, the meaning of the term "decision-making tools" – we believe the Guidelines over-emphasize the value of such tools. Software characterized as a "decision-making tool" may often provide plan members with the ability to generate additional information, based on their own specific circumstances. Their use of the software may help them make decisions, but the software does not actually "make decisions" nor is it crucial to the decision-making process. As these "decision-making tools" often use economic and financial assumptions that, in light of recent economic and financial performance, may reasonably be questioned by members, the provision of such tools should not be a requirement.

D. Concluding Remarks

The Trustees of the FPP would like to thank the Joint Forum for allowing us the opportunity to respond to the draft Guidelines.

We believe CAPs should be administered with high standards and best practices, and acknowledge that the Joint Forum has published examples of these high standards in the proposed Guidelines.

We believe further that high standards of CAP operation should be balanced with administrative ease.

We hope to stay involved in the process of the development of the Guidelines and look forward to being kept up to date by the Joint Forum as it proceeds.

Yours truly,

UNIVERSITY OF BRITISH COLUMBIA FACULTY PENSION PLAN

Dr. Stan Hamilton

Chair of the Board of Trustees

SH/cn