

# Joint Forum of Financial Market Regulators

## Forum conjoint des autorités de réglementation du marché financier

NEWSLETTER

SPRING 2001

### CANADIAN ASSOCIATION OF PENSION SUPERVISORY AUTHORITIES

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Sheralyn Miller  
Superintendent of Pensions  
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Gail Armitage  
Superintendent of Pensions  
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David Wild  
Superintendent of Pensions  
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Chair  
British Columbia Securities  
Commission

Carmen Crépin  
Chair  
Quebec Securities Commission

Robert B. MacLellan  
Chair  
Nova Scotia Securities  
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Ontario Securities Commission

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## NEWS...

### FROM THE SPRING BUSINESS SESSIONS

This is the third newsletter published by the Joint Forum of Financial Market Regulators (Joint Forum) for the purpose of keeping interested stakeholders informed about cross-sectoral, cross-jurisdictional developments and initiatives taking place in Canada through the Joint Forum. This edition will focus on news from the spring meeting, held in Toronto on April 4, 2001.

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### Joint Forum Luncheon

*"Financial markets, partly due to deregulation and innovation, have come to play an increasingly central role in the efficiency with which our economies function. And they are playing this role on an increasingly global scale."*

This was among the timely messages delivered by Andrew Crockett, Chairman of the Financial Stability Forum and General Manager of the Bank for International Settlements, in his luncheon address to an audience that included members of the Joint Forum's constituent organizations -- the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR), and the Canadian Association of Pension Supervisory Authorities (CAPSA) -- and special guests.

Based in Basel, Switzerland, Mr. Crockett had travelled to Toronto from meetings in Mexico for this special luncheon, hosted by the Joint Forum on April 4.

According to Mr. Crockett, financial regulators are playing a growing role in efforts to strengthen the functioning of the international financial system. At the same time, the need to think about regulatory issues in an interdisciplinary way has become more pressing, because of factors such as:

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- the growing number of conglomerate structures, in which insurance, banking and perhaps other activities are combined in the same firm;
  - the relentless drive to economize on capital in all parts of the financial industry;
  - the exposures which all financial firms have to macro-economic and financial conditions; and
  - new financial instruments, which are blurring previously clear distinctions in the risk profiles of different types of financial institutions.

Mr. Crockett also discussed other areas of shared concern, such as the rapid evolution of e-finance, the need for high prudential standards in offshore centres, incentives to volatility in capital flows, and the role of highly leveraged institutions. In light of these and other issues, there is much to be gained, Mr. Crockett emphasized, by further intensification of cooperation across regulatory segments.

Mr. Crockett concluded his remarks by stating that part of the solution to the major challenges faced by financial supervisors and other authorities is a pooling of supervisory perspectives and a strengthening of the macro-prudential orientation in regulatory arrangements, supported and complemented by consistent policies on the part of other authorities. While this will not be easy, Mr. Crockett said that he is *“encouraged by the fact that supervisory cooperation, both across geographic boundaries and across market segments, has never been stronger.”*

Indeed, the Financial Stability Forum (not to be confused with Canada’s Joint Forum of Financial Market Regulators), which Mr. Crockett chairs, is an excellent example of this cooperation. Created in 1999 at the initiative of G7 finance ministers and central bank governors, the Financial Stability Forum’s mission is to strengthen international cooperation and coordination in financial market supervision and surveillance. The Financial Stability Forum meets regularly to assess issues and vulnerabilities affecting the global financial system, and to identify and oversee the actions needed to address them.

[The text of Mr. Crockett’s speech is available on the FSCO web site at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). Look under “Publications/Joint Forum Releases”.]

## **Jack Geller’s Contribution Recognized**

Jack Geller, Q.C., former Vice Chair of the Ontario Securities Commission, has been a key player on the international stage, through the International Organization of Securities Commissions (IOSCO) and other similar groups. On the occasion of the luncheon, provincial regulators from coast-to-coast had the opportunity to mark Mr. Geller’s retirement last fall and to pay tribute to his contribution as a founding member of Canada’s Joint Forum.

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In her remarks, Joint Forum Chair Dina Palozzi remarked on Mr. Geller's expertise and leadership. *"With his many years of experience in the financial services industry, Jack brought to the Joint Forum initiative an understanding of what needed to be done to respond to the changing marketplace. His strategic thinking helped the Joint Forum take the lead in shaping new systems to make the sector more effective and efficient, and to reduce the costs of regulation,"* she said.

Jack Geller continues to make a contribution to regulation as a part time member of the Ontario Securities Commission.

### **Joint Forum Sub-committees -- Key Contributors**

Before proceeding in this newsletter to discuss the matters that were on the agenda for the April 4 meeting, it is important to note that the strides made by the Joint Forum in fostering streamlined and harmonized the regulation of financial services have come about through the coordinated effort of literally dozens of staff members from securities, insurance and pension regulatory agencies, from coast-to-coast.

Working in sub-committees of the Joint Forum, often in consultation with the various regulated industries, these representatives conduct research and develop policy options for recommendation to the Joint Forum. Their task is sometimes daunting because they are, in most cases, breaking new ground as they work to develop effective solutions that can be implemented not just across the jurisdictions, but across the sectors as well. The efforts of these sub-committee members are recognized with gratitude by Joint Forum members.

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### **Joint Forum Task Force on Consumer Dispute Resolution**

Convergence in the financial services marketplace has led to an environment in which it is increasingly difficult to distinguish among the product offerings and services of banks, insurers, credit unions, investment dealers, etc.. One corollary is consumer confusion in determining how to access the appropriate process in the event of a complaint or dispute with a financial services provider. Indeed, in some instances there may be no process at all. In others, there are varying levels of assistance for resolving disputes. In yet others, consumers must use more than one process in a dispute that crosses jurisdictional lines.

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The Joint Forum has had this issue under study since the summer of 2000. We felt that if a harmonized approach to consumer dispute resolution could be developed, there would be clear benefits to consumers, financial services organizations and the regulatory community. Consumers would have access to the same level of independent and inexpensive service through a system that would be easily accessible, irrespective of the product purchased. Companies, particularly those operating across sectoral lines, would enjoy greater efficiencies in a number of ways, including costs and customer satisfaction. Regulators would be assured of a higher level of consumer protection.

Since the last issue of this newsletter, there have been a number of significant developments with the Joint Forum's dispute resolution initiative. Over the winter months, we established the Joint Forum Task Force on Consumer Dispute Resolution -- a cross-jurisdictional, cross-sectoral group with public and private sector representation.

The Task Force held its inaugural meeting on February 5, 2001, and met again on March 28 and, subsequent to the Joint Forum's spring meeting, on June 4.

At this stage, it would be premature to try to describe what an appropriate model might look like, since the mandate of the Task Force is complex, crossing as it does jurisdictions, sectors, and lines of responsibility. To date, Task Force members have probed the many issues related to consumer complaint management and dispute resolution in the financial services sector, and examined the various services currently in existence. They have also developed principles to underpin the assessment of existing and new processes. Future discussions will explore the feasibility of a collaborative framework that would make the same standard of dispute resolution service available to all financial services consumers.

As the work of the Task Force progresses, two groups will be established to ensure comprehensive consultation: a Consumer Consultation Group, to secure the views of consumer and public interest groups, and an Industry Consultation Group through which dialogue can be maintained with industry groups that are not represented on the Task Force.

In the meantime, given the significance of the Task Force's work, the Joint Forum has taken steps to ensure that the provincial ministers responsible for financial services are informed of the Task Force's creation and mandate.

Also, a major piece of research has been launched to survey and analyze the services currently available to financial services consumers through public and private sector organizations. Several outcomes are expected from this research, including a clearer understanding of gaps, duplications, and the extent to which levels of service vary. New and innovative approaches being used in other countries to accomplish harmonized consumer dispute resolution are also being examined for possible use by

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the Task Force as models for Canada. Preliminary results from this research are currently being assessed.

Quebec is not participating in the Task Force. However, provincial regulators in Quebec are undertaking a parallel review of dispute resolution for financial services providers under their jurisdiction and will share information with the Task Force as their work progresses.

The Task Force includes representation from:

- Association of Canadian Pension Management
- Canadian Bankers Association
- Credit Union Central of Canada
- Federal Department of Finance
- Canadian Life and Health Insurance Association
- Investment Dealers Association of Canada
- Insurance Bureau of Canada
- Mutual Fund Dealers Association.

The regulatory community is represented by Joint Forum members Doug Hyndman, Dina Palozzi, Sherallyn Miller, Winston Morris, Jim Hall, Howard Wetston and Lucie Granger, who also represents the Canadian Insurance Services Regulatory Organizations. Also on the Task Force is Jim Savary, Special Advisor on Financial Industry Affairs and Electronic Commerce Issues to the Consumers Association of Canada, and Harold MacKay, who chaired the Task Force on the Future of the Canadian Financial Services Sector. Mr. MacKay has been retained as a special advisor to the Task Force.

The Task Force is chaired by Doug Hyndman, Chair of the CSA and Chair of the British Columbia Securities Commission.

(At the outset, the intent was that the work of the Task Force should dovetail with the work being done at the federal level, through Bill C-8, to create a Canadian Financial Services Ombudsman (CFSO). It was therefore encouraging that during his testimony to the Senate Banking Committee at the end of May, the Honourable Jim Peterson, Secretary of State for International Financial Institutions, indicated his willingness to postpone implementation of the CFSO in order to give the Task Force's efforts a chance to bear fruit.)

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## **Regulatory Principles for Investment Disclosure in Capital Accumulation Plans**

A Working Committee of the Joint Forum has been focussed for the past year and a half on the public policy issues spawned by the dramatic growth in capital accumulation plans. Today, the market has grown to include over three million Canadians who have accumulated more than \$60 billion in over 40,000 of these plans.

For the purpose of this Joint Forum's project, the phrase "capital accumulation plans", or "CAPs", refers to investment vehicles that are established by employers, primarily to provide financial security for employees in their retirement.

The principal issue for regulators is that where capital accumulation plans provide investment choices to plan members, more investment risk shifts to the employees.

This poses a range of consumer protection questions that become more pressing in light of the primary purpose of these plans.

To date, the Joint Forum Working Committee has been looking at four types of CAPs:

- defined contribution pensions plans that make members responsible for selecting their own investment choices (as opposed to "traditional" defined contribution pension plans in which the administrator makes the investment decisions);
- group registered retirement savings plans provided to employees by employers;
- deferred profit sharing plans; and
- employee profit sharing plans.

The fundamental premise for the Joint Forum's work in this area is that it is necessary and appropriate to coordinate and harmonize the treatment of CAPs to give similar protection to investors in these different yet functionally similar products. Currently, the regulation of CAPs is neither harmonized across Canadian jurisdictions, nor across the insurance, pension and securities sectors within each jurisdiction. As a result, individual investors in CAPs receive varying degrees of regulatory protection, depending on the nature of their particular investment product and the regulatory framework that applies to it.

A major milestone in the project was reached on April 27, 2001, when the Joint Forum released for consultation a discussion paper titled *Proposed Regulatory Principles for Capital Accumulation Plans*.

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The recommendations in the discussion paper are designed to address two issues:

1. The need to ensure that members of CAPs have:
  - (i) similar regulatory protection when making similar types of investment decisions, regardless of the applicable legislative regime; and
  - (ii) the information and other tools they need to make informed investment decisions, where they are responsible for making those decisions.
2. The need for employers and administrators to have their duties and responsibilities with respect to CAPs, clearly defined and harmonized across jurisdictions and products.

Based on substantive analysis of the current regulatory models and principles found in pension, securities, and insurance regulation in Canada, and in the *Employee Retirement Income Security Act (ERISA)* in the United States, the Joint Forum paper sets out principles in four areas that could form the basis for a regulatory model for CAPs:

1. obligations with respect to the establishment and maintenance of a CAP;
2. a minimum level of disclosure for new CAP members and continuous disclosure;
3. CAP members may either rely on advice provided by a registered sales representative or advisor, or receive and rely upon appropriate investment information from a party that owes fiduciary duties to the members; and
4. the investment products or funds must comply with minimum standards (e.g., investment restrictions and practices, valuation/redemption, and fundamental changes).

Because the Working Committee has focussed on the development of these principles, the discussion paper does not set out to address precisely how the proposed principles might ultimately be implemented. The options could include:

- industry guidelines, developed in tandem with the Joint Forum;
- best practices guidelines, issued by the Joint Forum through its various member regulators;
- stand-alone model legislation developed for CAPs; or
- model regulation which could be adopted into regulations, rules or national policies under the applicable pension, securities and insurance regimes in each jurisdiction.

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The Working Committee that developed the consultation document for the Joint Forum is interested in receiving specific comments on other implementation options that could be used by all relevant regulators to create a harmonized regulatory regime.

It should be noted that although the recommended principles have been published in all jurisdictions, the regulatory framework ultimately chosen will have to take into consideration the differences between Common Law and the Civil Law applicable in Quebec. Therefore, regulators in Quebec are currently pursuing their own consultation plan about the recommended principles, in close parallel with other jurisdictions.

The consultation period closes on July 31, 2001. The Working Committee will meet later in the summer to review the commentary and to revise the proposed regulatory model. Revised regulatory principles will be forwarded to CAPSA, CCIR, CSA and the Joint Forum for discussion and approval during the course of the fall meetings of these groups.

The Joint Forum Working Committee on Investment Disclosure in Capital Accumulation Plans is chaired by Sherallyn Miller, Chair of CAPSA and Superintendent of Pensions for British Columbia.

[The Joint Forum's discussion paper, *Proposed Regulatory Principles for Capital Accumulation Plans*, can be found at the web sites of Joint Forum members (e.g., at the web site for the Financial Services Commission of Ontario at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)).]

## **Regulatory Harmonization of IVICs and Mutual Funds**

The Joint Forum has been a highly effective mechanism for regulators to discuss and find solutions to the regulation of two very similar products, segregated funds (IVICs) and mutual funds, that are subject to different regulatory rules and regimes.

In May 1999, the Joint Forum released a *Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds* which examined 100 features of these two products and their regulation. Subsequent to the release of this study, a working group of the Joint Forum identified 15 specific recommendations for harmonization.

Regulators, working closely with industry representatives, have achieved significant progress in developing and implementing the recommendations. Progress is being driven by the Joint Forum Sub-committee on IVICs and Mutual Funds, which includes representation from both the insurance and securities sectors. The Sub-committee's efforts are complemented by two working groups, one of which focusses on insurance issues and the other on securities issues.

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At the April Joint Forum meeting, the Sub-committee reported on the completion of the first year of its two-year work plan. Accomplishments include:

***Progress of the Joint Industry Working Group***

- A draft consumers' guide, designed to enhance consumer education and simplify product disclosure, has been developed and has gone forward for comment to CSA, CAPSA and CCIR. The intent is that it will be finalized by the fall of 2001 and included as part of a broader discussion paper on delivery requirements for point-of-sale disclosure documents.
- Recommendations have been developed for additional disclosure requirements to deal with risks in small or start-up funds.
- Recommendations have been developed to deal with the concerns that have been identified regarding the differing roles and responsibilities of industry participants. The Joint Forum has endorsed an approach that will see a concise description of roles and responsibilities included in the consumers' guide.

***Amendments to the Insurance Industry IVIC Guidelines***

- The recently completed amendments to the insurance industry's IVIC guidelines include: rights of policyholders where fundamental changes are proposed; relaxation of concentration restrictions for segregated funds tracking a specified index; calculation of management expense ratios and performance data of segregated funds; requirements for semi-annual financial statements; and minimum proficiency standards for portfolio managers.

In April the Joint Forum also approved the Sub-committee's work plan for the second year of this project. The work plan recommends that the Joint Forum and its constituent regulatory members concentrate on the following common initiatives during 2001 and 2002:

***Discussion Paper on Delivery Requirements for Point-of-Sale Disclosure Documents, including the Consumers' Guide***

- The development of a discussion paper for industry consultation on the practical concerns with the present regimes for delivery of point-of-sale disclosure documents, and possible alternatives or improvements. As noted, the discussion paper will also be a vehicle for seeking formal comment on the concept of the consumers' guide and on the recommendation that delivery of the guide to the consumer upon the opening of an account, be a requirement.

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## ***Sales Incentives and Practices***

- The Insurance Regulators Sub-committee will be working through the issues raised by sales incentives and practices in the distribution of segregated funds, and will coordinate its efforts with the Securities Sub-committee.

In addition to the above initiatives, the Insurance Regulators Sub-committee is consulting with a working group of the National Association of Insurance Commissioners, in the United States, that is developing proposals in the area of suitability.

The CSA has also identified as priorities for the next several years: (i) financial disclosure reforms and (ii) improved fund governance and regulation of fund managers. The CSA expects to release a concept paper dealing with a renewed framework for the regulation of mutual funds.

Co-ordination of these efforts will be achieved by the participation of the Co-chairs of the Joint Forum Sub-committee on IVICs and Mutual Funds. The Co-chairs are Grant Swanson, Director of Licensing and Enforcement for the Financial Services Commission of Ontario, and Rebecca Cowdery, Manager, Investment Funds Regulatory Reform.

## **Intermediary Proficiency and Licensing**

Across Canada today, licensing and proficiency standards for financial services intermediaries have grown into a patchwork system of regulation. To respond to this, the Joint Forum's goal is to ensure that consumers have the same level of protection by harmonizing and coordinating, to the extent possible, the laws and regulatory structures governing the distribution of all financial products.

This complex and far-reaching objective is being pursued in four sequential phases, with current efforts focussed on the development of a common code of conduct, or standard of practice, for all financial services intermediaries in Canada and certain employees of deposit-taking institutions, regardless of how they are regulated or what products they sell.

The draft code that has been developed is currently moving through various phases of refinement and approval, in preparation for industry consultation that will take place this summer. Conceptually, the new approach involves one generic, high level code that will complement other, more detailed standards created by other organizations.

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In April, the Joint Forum considered and endorsed an approach that would see three steps, over time, in the implementation of the code/standard of practice:

- the first step would be to obtain agreement among regulators themselves about what should be common principles;
- the second step would be to seek the agreement of industry associations on the principles and to obtain their voluntary endorsement; and
- the third step would be for regulators, over time, to implement rules and regulations, if necessary, to achieve these principles.

The Joint Forum Sub-committee on Practice Standards is chaired by Jim Hall, Superintendent of Insurance, Saskatchewan.

### **Joint Forum Structure**

In the short time since its inception, the Joint Forum has made solid and significant progress on a number of key initiatives. Moreover, the Forum has proved its value as a mechanism through which to facilitate cross-sectoral discussions and initiatives as new issues and opportunities have emerged.

Having achieved this strong base, members have been giving consideration to measures that will strengthen the Joint Forum's role so that it can continue to remain relevant, to enhance regulatory coordination and harmonization efforts, and to respond to new issues and opportunities. Joint Forum members devoted a full day to this issue at a strategic planning session, held in Toronto in March.

The discussion at this meeting enabled members to consider the long term directions and mandate for the Joint Forum, and to establish a number of matters related to governance. Also, key strategic priorities and projects were identified and these will form the basis for the strategic plan that is now being drafted. A draft of the plan will be sent to the Joint Forum's constituent organizations, CCIR, CAPSA and CSA, for review, comment and endorsement, before being tabled for approval at the Joint Forum's fall meeting.

As this strategic planning exercise moves forward, the Joint Forum would welcome any views and ideas stakeholders might have for new areas that should be considered under the general thrust of harmonization and coordination.

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## **Other Matters Discussed**

The Joint Forum's April 4 agenda also included discussion of:

- recent developments in financial regulatory structures, as governments seek to respond to the increased integration among financial services providers;
- proficiency requirements for financial planners; and
- the current priorities and projects of the CSA, CAPSA and CCIR.

## **Regulatory Structures – Recent Developments**

Quebec members of the Joint Forum described the announcement, in the April 2001 budget speech of the Quebec Minister of Finance, that a special task force will be created to study the oversight of Quebec's financial sector. The task force will make recommendations to the Minister of Finance, before the end of this year, on any changes that could be made to the monitoring structure currently in place in the financial sector. This step is intended to improve the structure's effectiveness, particularly with regard to monitoring the protection of consumers of financial goods and services, and to reduce the administrative and regulatory burden on the financial services industry, while promoting the preservation of Quebec's jurisdiction.

Ontario members of the Joint Forum gave an update on the proposed merger of the Financial Services Commission of Ontario and the Ontario Securities Commission, as announced by the Ontario Minister of Finance in his budget speech in May 2000. The intent is that the merged entity will provide strong consumer and investor protection and education across all financial sectors, while contributing to timely regulatory responses to the changing structures of the capital markets and financial services industries. (Shortly after the Joint Forum meeting, draft legislation to create the proposed new organization and to specify its regulatory responsibilities and power, was released for consultation by the Ontario Minister of Finance.)

## **Financial Planning Proficiency Standards**

As noted in earlier newsletters, insurance and securities regulators have, for some time, been considering how to adopt a common approach to standards for securities registrants and insurance licensees who hold themselves out to the public by any one of a number of titles that convey the concept of financial planning. Under the aegis of the Joint Forum and led by the Ontario Securities Commission, an intense, two-year effort has seen the development of a proposed standard. Currently, consultation with affected stakeholders is continuing with a view to seeing how the proposed standard

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might be adapted to accommodate the needs of various jurisdictions, thus providing a harmonized approach across Canada. (As noted in earlier editions of this newsletter, Quebec already has a regime for financial planning.)

In parallel, work is proceeding on the Financial Planning Proficiency Examination (FPPE) that will underpin the new proficiency standard and on the governance structure for the new regime, a feature of which is the creation of a sub-committee that will report annually to the Joint Forum on the financial planning standard.

The CSA Financial Planning Committee includes a number of insurance regulators and Insurance Council representatives and is chaired by Julia Dublin, Senior Counsel at the Ontario Securities Commission.

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As noted in earlier issues, our intent with this newsletter is to keep interested stakeholders abreast of the Joint Forum's initiatives and plans, and to foster an important and continuing dialogue among those with an interest in Canada's financial services sector.

Toward that end, we would be pleased to hear any views, comments or questions you might have about the role of the Joint Forum, and any suggestions you have for future collective initiatives. Your comments can be directed to any Joint Forum member or to Isabel Wegg at the Joint Forum office [(416) 590-7107; e-mail: [iwegg@fSCO.gov.on.ca](mailto:iwegg@fSCO.gov.on.ca)].

Electronic copies of this newsletter are available in English and French, in PDF format only, at the web site of the Financial Services Commission of Ontario at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). Look under "Publications/Joint Forum Releases".

The Joint Forum's summer conference call meeting will take place on July 18, 2001, and will be followed by the fall meeting in Halifax on October 15. We look forward to communicating with you again following the Halifax sessions.

*Ce bulletin est aussi disponible en français.*