

August 26, 2003

Mr. Davin Hall
Policy Manager (A)
CAPSA Secretariat
c/o Joint Forum Project Office
5160 Yonge Street
17th Floor, Box 85
North York, Ontario
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 manage any money or share in the revenue from the sale of investment products – our goal is 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 too 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 their own investment funds and/or manage 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 signing 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