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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  
17<sup>th</sup> Floor, Box 85  
Toronto, Ontario  
M2N 6L9

**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.

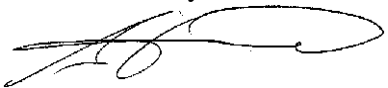
This requirement is intended to encourage plan members to take responsibility for their economic welfare but more proactive and practical guidance is needed to assist plan members to be self-reliant. For example, in 2001, we proposed that:

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](mailto:calutax@advocis.ca), 1.888.989.0858, or Ed Rothberg, General Counsel, Advocis, [erothberg@advocis.ca](mailto:erothberg@advocis.ca), 416.444.5251.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Steve Howard", with a large, stylized flourish at the end.

Steve Howard, CA