



THE INVESTMENT FUNDS INSTITUTE OF CANADA  
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

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August 28, 2003

Mr. Davin Hall  
Policy Manager (A) CAPSA Secretariat  
c/o Joint Forum Project Office  
17<sup>th</sup> 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**

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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.

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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

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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 NI 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

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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](mailto:lbyberg@ific.ca)) if you have any questions.

Sincerely,

"ORIGINAL SIGNED BY JOHN MOUNTAIN"

John Mountain  
Vice President, Regulation

Attachment