

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