August 29, 2003

BY E-MAIL

Mr. Davin Hall
Policy Manager (A)
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c/o Joint Forum Project Office
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RE: Comments on the *Proposed Strategy for implementation of the Guidelines for Capital Accumulation Plans* and *Proposed Guidelines for Capital Accumulation Plans*

Dear Sir:

Once again, Aon Consulting welcomes the opportunity it is being given to comment on proposed documentation prepared by the Joint Forum of Financial Market Regulators on Capital Accumulation Plans.

You will find attached a two part document which contains, in Part I, Aon Consulting comments on the *Proposed Strategy for implementation of the Guidelines for Capital Accumulation Plans* and, in Part II, comments on the *Proposed Guidelines for Capital Accumulation Plans*.

To provide comments on the proposed Strategy and Guidelines requires to look back on our submissions of October 31, 2001, to the Joint Forum on the *Proposed Regulatory Principles for Capital Accumulation Plans* ("Proposed Regulatory Principles"). We gladly noticed that a fair number of our submissions are now reflected in the Guidelines.

As a consulting firm, it has always been our concern to try to balance the employers' and employees' needs with respect to benefits. However, the responsibilities of other stakeholders (insurance companies, banks, trust companies and investment manages), are not clearly shown in the document, except through the delegation provisions. We are of the opinion that not all responsibilities should lie on the shoulders of the employers or the plan administrators but, there should be a multi-partied system where each party bears its own share of liability depending on its own expertise.

Our comments should be read in the light of the same concerns we initially raised with the Proposed Regulatory Principles, especially those concerns which do not seem to have been addressed in the Guidelines :

- **Flex modules**

  There remains no indication whether flexible contribution modules related to defined benefits plans where employees choose investments are targeted by the Guidelines

- **Trust companies, banks and brokers**

  It is still unknown to what extent the Guidelines would apply to trust companies, banks and brokers. There are needs to be only one normative rule applicable to all similar products whoever the provider or issuer might be.

- **Regulatory and legislative measures**

  We do not think the industry requires regulatory measures to support good governance practices. This can be achieve otherwise through voluntary base guidelines such as the ones proposed.

  In order to work, regulatory measures would require national regulatory harmonization. If consensus is not reached by all provinces and by the various government authorities within a same province (banks, insurance companies, pension plan, etc) it would force varying degrees of regulatory protection depending on the nature of the investment products and the regulation applicable to that product.

- **Safe harbour**

  There is no indication of a “safe habour” approach to the Guidelines. We strongly support legislative amendments to confer “safe harbour” protection to plan sponsors and employers who subscribe to and apply the Guidelines.

- **Better contractual provisions**

  Clearer understanding of plan sponsors, administrators, plan members and third parties responsibilities would also be achieved through more detailed agreements and contracts, not necessarily through guidelines.

- **Pre-approval of products**

  There are already some pre-approval requirements by government authorities for certain financial vehicules and products. If CAPs products were to be pre-approved, this would reduce employers' and plan sponsors' liability.

- **"Know your client" obligations**

  The proposed Guidelines raises the "know your client" requirement again especially with respect to financial monitoring of financial advisers and to communication to plan members. This standard of conduct is too burdensome for plan sponsors considering an also important part of CAPs has to do with personal financial, tax and estate planning of each members. This should not be the role of the plan sponsors but of the personal financial advisors whether their services are made available through the plan sponsor or personally chosen by the member. Monitoring of financial advisors should also take that element in consideration.

- **Communication means**

  The place of electronic and other sophisticated communication means is not addressed through the Guidelines. Communication being a major component of the Guidelines, whether new communication tools would meet the Guidelines requirements are not clear.

We look forward to further collaboration with the Joint Forum on this particular matter and should you need any additional information on our document, we invite you to contact us.

Yours truly,

Jean-François Gariépy, *FCIA, FSA*
Vice President

JFG/

Comments on the
Proposed Strategy for Implementation
of the Guidelines
for Capital Accumulation Plans

and

Comments on the
Proposed Guidelines for Capital Accumulation Plans

Submitted to the Joint Forum of Financial Market Regulators
by Aon Consulting

August 2003

PART I

Comments on the *Proposed Strategy for Implementation of the Guidelines for Capital Accumulation Plans*

It is our understanding that the Joint Forum agrees in principle that the guidelines should not result in additional regulation bur rather advocate a form of self regulation. We are surprised and concerned by the statement made in the Proposed Strategy which says : "These issues cannot be addressed by the guidelines alone, but must be addressed through further regulatory initiatives by the constituent members of the Joint Forum."

Also, we are wondering if the "regulatory initiatives" mentioned in the Proposed Strategy are exhaustive. Will there be other "regulatory initiatives" not mentioned in the document?

Assuming the initiatives are exhaustive, we have the following comments on the proposed strategy:

a) Relief from prospectus and registration requirements

This initiative would mainly affect banking institutions, trust companies and mutual fund companies who offer CAPs. We recognize that this might promote a level playing field which in turn might have an impact on the quality of products on the market and reduce prices. In the event that the quality of financial products remain at "high" standards and are consistently applied among all providers/agents, CAP members and sponsors would likely benefit from greater choice.

b) Incorporating the guidelines into the CLHIA standards structure

Not all insurance companies are members of the CLHIA. In Quebec, for example, some companies are provincially incorporated and have formed the Regroupement des assureurs du Québec. It is not clear whether the RAQ has been involved in the Joint Forum and whether it would bind its members to the guidelines. It would be important that the guidelines be endorsed by all insurers, regardless of their association.

c) Adoption of the guidelines by CAPSA for DC plans

It is not clear in what form the guidelines would be adopted by CAPSA members. Again, we are concerned about the consequence of integrating the Principles and the Guidelines into the regulation (or legislation) of each province. The goal of harmonization will be jeopardized.

i) Preferred strategy

Our preference would be that the guidelines be adopted as a best practice by the government authorities and not integrated in any legislation or regulation. More direct regulation on CAP sponsors will likely result in fewer CAPs. We also, in our previous

submission, advocated a “safe harbour” rule but it appears that the Joint Forum has rejected the idea.

Rather than implement additional legislative or regulatory burdens on CAP sponsors, we prefer self regulation by the industry. Once an acceptable “standard of care” has been developed, providers/agents will be subject to great market pressures to consistently adhere to the standards.

We believe that by allowing CAP sponsors to assign some of their duties to providers/agents who in turn would be required to provide consistent standards of care, then the goal of harmonization and providing CAP members with sound vehicles for retirement saving will be achieved.

If the Joint Forum decides not to favor this approach, we have the following comments depending on the approach that will be implemented:

ii) More regulations for DC plans

- Expected consequences

If DC plans were to be more regulated than they currently are, this could lead to greater administration burden and even lead to some plan sponsors moving towards Group RRSPs. In order to avoid this situation from happening, we would recommend that DC plans be imposed no more new regulations than Group RRSPs.

Or, looking at this from the opposite point of view, if the Joint Forum proposals generate new regulations for DC plans, we believe it would be unfair for group RRSPs to avoid such regulations and yet we doubt that there would be many parties in favour of new regulations for Group RRSPs.

- Proposed solution

We believe that a different way to deal with this problem might be to remove DC plans from the legislation governing DB plans and create a new set of legislation/regulations specifically designed for CAPs (including DC plans and Group RRSPs). This approach would be consistent with the Joint Forum’s views that these types of plans should be treated in a similar manner.

iii) Integration of the proposed guidelines in pension legislation

If, as the proposed strategy seems to imply, only the investment rules currently existing in pension legislation would be affected by these proposed measures and especially the 10 % rule. We think that changes to existing investment regulations may be a challenge. For example, Quebec changed its legislation with Bill 102 a couple of years ago to remove the 10 % rule except for securities issued by the employer or a company it controls. Unless the changes to the 10 % rule are similar to Quebec’s, it would be cumbersome to harmonize provincial regulations in that respect.

If, on the contrary, it is the intention of the Joint Forum and CAPSA members to integrate more details from the guidelines into their pension regulations, we suggest that only

general rules or principles be integrated and leave up to plan sponsors the details of their application in the administration of their CAPs.

d) Banks and Trust Companies

We wonder to what extent these institutions will be affected by the guidelines and principles. Is there a proposed strategy in order for the guidelines to equally apply to all CAPs whether they are provided by an insurance company, a bank or a trust company ?

As mentioned above, we believe it is important to avoid creating two categories of CAPs where one would be more regulated than the other. If not all CAP providers agree to apply the guidelines, we believe the harmonization efforts will remain in vain.

e) Group RRSPs

One should also keep in mind that Group RRSPs are only a “pooling” of individual RRSPs. Many employers or plan sponsors have put them in place as a supplement to an existing pension plan and solely for the purpose of offering employees an investment product with lower administrative costs. There is no underlying expectation of employer’s involvement or fiduciary duties attached to it.

With the Guidelines, this may all change with the consequence of forcing employers to withdraw from this type of benefit and to only offer access to individual RRSPs with no employer’s involvement whatsoever. Will this be as cost effective for employees as Group RRSPs? The problem won’t be solved and it will be just another way to go around the Guidelines. Who then will bear the responsability to apply the Guidelines ? Should then individual RRSPs offered to a group of persons be subject to the Guidelines ?

PART II

Comments on the *Proposed Guidelines for Capital Accumulation Plans*

COMMENTS ON THE *PROPOSED GUIDELINES FOR CAPITAL ACCUMULATION PLANS*

a) General comments

i) Flex Plans and Voluntary Contributions

These plans and contributions presumably are not targeted by the Guidelines, whether members are permitted or not to make investment decisions, and we are of the opinion that it would be preferable to clearly state this fact in the guidelines.

ii) CAPs where no investment decision is made by the members or where employees do not contribute.

Here as well, we would suggest a clear statement in the Guidelines whether these types of CAPs are subject or not to the Guidelines.

iii) Group RRSPs

Should Group RRSPs where no employer “contributions” are made be subject to the Guidelines? Such RRSPs are identical to individual RRSPs. Why should there be more requirements on Group RRSPs than on Individual RRSPs? To be fair, maybe individual RRSPs should be subject to the same requirements as Group RRSPs and the guidelines should also apply to financial institutions that provide individual RRSPs, although some adjustments might be necessary since those plans do not involve an employer.

iv) Investment choices

There are many references throughout the document pertaining to the number of investment choices without specifying what is a reasonable number. The Québec pension legislation provides for a minimum of three investment choices when plan members have to make investment decisions. These options should not only be diversified and involve varying degree of risk and expected return but also allow the creation of portfolios that are generally well-adapted to the needs of the members.

The Guidelines could provide in a similar manner. We do not think that a standard number of fund options should be included.

v) Minimum requirements

Sub-item 2.2.2, Section 3, and sub-items 4.1.2 , 4.2.1 and 6.2.1 only make sense under programs which offer sufficient investment fund options to meet proper diversification requirements, various degrees of risk tolerance, personal circumstances, investment

horizons and objectives. It seems somewhat inconsistent to call for proper delivery of information and investment planning tools without addressing in the first place what constitutes a minimum ensemble of funds to work with. It would be quite helpful to get from the Joint Forum any guidance to that effect.

vi) Repetitiveness

The guidelines, though quite comprehensive and well written, seem repetitive in contents. It might be preferable to reduce this repetitiveness. For example, rules on transfers can be found under section 3, item 4.3, sub-items 5.2.2 and 5.2.4.

vii) Use of “must” and “should”

The Guidelines use the terms “must” and “should” indistinctively. On a legal point of view, the word “should” can be interpreted differently depending on various factors and is a very tricky word as it is not clear whether it would mean "will/must" or "may". Therefore, for consistency and in order to avoid any confusion as to the imperative character of the Guidelines, it would be preferable to use “must” or “will”.

On the other hand, “must” and “will” may seem to impose too much on plan sponsors and may discourage sponsors and employers to subscribe to the Guidelines. Therefore, it might be best not to use either terms. Since Guidelines are not mandatory in nature, maybe the present tense of all verbs could be used without preceding them with the word "must".

Eg. In Section 4.1.2, instead of writing "The CAP sponsor **must also inform** CAP members that" we would write "The CAP sponsor **also informs** CAP members that".

viii) Lack of clear direction

The Guidelines do not always provide the CAP sponsor with clear direction and thus opens the opportunity of not meeting their fiduciary duties.

b) Specific Comments

1.2.1

According to this sub-item, the guidelines supplement existing legal requirements while in the Proposed Strategy, it is planned for some of the guidelines to be integrated into provincial legislation. The status of the guidelines seems to be ambiguous and we would like the Joint Forum to provide a clear statement on the purpose of the guidelines (see also comments on the Proposed Strategy).

1.3.1

In delegating the responsibilities to a service provider, we suggest that the contract between the parties clearly (i.e. explicitly versus implicitly) recognizes such. Section 2.1.3 indicates that the CAP sponsor must ensure that the applicable roles and responsibilities of the CAP sponsor and service provider are carefully documented. Would this be explicit enough for CAP sponsors to be held harmless?

Also, the English version of the Guidelines refers to “on going communication” to be provided to plan members while the French version refers to “maintenir une communication constante”. The obligation under the French version seems much more compelling. We think that the English version better describes the nature of the obligation and that the French version should be changed to “maintenir une communication régulière”.

2.2.1

The term “diversification” should be better defined (see the 5th bullet point)

2.2.3

The rules with respect to transfers among investment options should clearly differentiate between :

- conditions related to the number of transfers to be allowed (regardless of who pays the resulting fees) and

- conditions related to how many transfers are to be paid by the employer (free transfers) or to be paid by the plan members.

While we agree that transfers, regardless of who pays the resulting fees, should be permitted at least once per month, the plan should be entitled to provide certain resulting fees to be payable by plan members (either for each transfer or after a certain number of transfers).

Consequently, the last paragraph of the French version of sub-item 2.2.3 should be amended as follows ;

« Le promoteur peut par exemple limiter le nombre de transferts **sans frais pour le membre** ou imposer des frais si la limite établie est dépassée. »

We also think that the guidelines should provide the possibility to impose an overall limit per year, per member, paid by the employer, which could be as low as 12.

2.2.4

This Section states that any default options must be selected prudently and should be chosen using the same factors used when choosing the investment options. This could be taken to mean that a simple money market fund may not be sufficient as a default option considering risk/return profiles of each member. Greater direction/clarity is required by the Joint Forum.

2.3

It is important that the word “record” be defined. There is a distinction to be made between the “plan record” which contains the technical information about the plan and the investment options, the plan text, the correspondence between the plan sponsor and providers, resolutions of the Board and other related documents, and the “plan member’s record” which contains all personal information on the plan member.

In some cases, providers also can keep some of those “plan records” rather than the sponsor, so we have difficulties with imposing on the plan sponsor the obligation to correct any identified errors as they do not necessarily hold all parts of the records.

When there is a delegation of certain tasks to a third party, is responsibility delegated as well in order to provide the sponsor with a hold harmless protection?

2.3.2.

- If plan sponsors are to have the responsibility to establish and maintain a retention policy, providers should also have the same responsibility towards their own records.

-The French version requires that the retention policy specifies “the names of the persons who can have access to the documents (translation) ” while the English version refers to “who can have access to the documents”. The English version is less demanding than the French. If the intent is to show the name of the persons, it will be difficult to administer and update the retention policy with staff turnover. We suggest that only the title of the persons who have access be shown in the policy (this needs to be reflected in the French and English wording).

3.3

If a decision making tool is adopted, there are a few areas of additional concern that might be taken into account in the Guidelines.

- what are the underlying assumptions used to make projections;
- do you allow members to vary the assumptions;
- do you put limits on the ranges of assumptions (acceptable levels);
- should some assumptions be linked together so they are reasonable and consistent.

3.4

The concept of providing advice and guidance is a debate in itself. We suggest that there may be problems in ensuring consistency of advice and qualifications. The Joint Forum may need to review this section in concert with the various associations that provide accreditation to financial planners, etc.

3.5

- In the first paragraph of the French version, we should read “Le promoteur doit informer clairement les participants qui **paiera**”. The plan sponsor must inform plan members of who will “bear the cost” and not “inform those plan members who are paying the costs”.

- In the 2nd paragraph of the French version, reference is made to “renseignements de base” in respect of “Up front fees”. In both versions, we think that these two notions should be better defined. We are of the opinion that it should only refer to the fees in relation to the questionnaire to determine the investor’s profile of the plan member and to the information found at sub-item 3.1.4.

- When applicable, full disclosure on a commission basis should be required as well as how this can affect a CAP member’s savings.

3.6

This section may need to be enhanced to address privacy legislation requirements. Most service providers have been addressing this area in anticipation of the rules but there probably should be some explicit references.

4.1.2

- If plans for which employees do not make investment choices are subject to the guidelines, the 2nd and 4th items under this sub-item are not relevant.

- In the English version of the last paragraph of this sub-item, the verb used is conditional “ought to” while in the French version is present “doivent”. We think that the English version is more appropriate and it should not be an obligation for plan members to consult with an independent financial advisor.

- Bullet point 1 - It might be preferable to require disclosure of the sources of the information, where it can be found.

4.2.2

In the French version, it is the responsibility of the plan sponsor to provide information on employer’s securities. In the English version, it is not clear who has this responsibility and it should be changed to show who bears it.

Who is to provide this information? Should there be a specific reference to the prescribed limitations for registered pension plans?

4.2.3

The introductory sentence of the examples of other investment options (i.e. the second list) should be amended as follows :

“Examples of investment options other than **investment** funds and employer securities include :”

The French version would also have to be changed accordingly.

4.3.1

CAP members should be informed of the risks of transferring among investment options. When a suspension occurs, the duration of the suspension should also be communicated (this seems obvious but the Guidelines are not clear on this point).

4.4

This item only refers to fees paid by plan members. We think that it would be better to also communicate fees paid by the plan sponsor and providers so plan members can understand they are not the only ones to bear the costs of the plan.

Also, the obligation should apply not only to explicit but implicit fees as well, such as investment consultant fees.

If the plan sponsor or employer should also inform CAP member on what they can do to voice their disagreement with respect to fees/expenses.

5.1.1

Examples of acceptable forms of communication should be explicitly identified (e.g. written, electronic, web based, etc)

5.1.2

The Guidelines should provide the appropriate requirement for CAP sponsors to be able to confirm that their members have received an electronic statement. It would have to be clear that if a CAP sponsor cannot confirm such, a paper statement should be sent.

5.1.3

The last paragraph indicates it is not required to provide the rate of return for each plan member. We are not in agreement with this statement. We think it should be mandatory. However, instead of requiring that the statement describe the method used, it should only require to indicate where a plan member can get details on how it was calculated. This requirement would be quite cumbersome and we think that only requiring statements to "show the name of the person to contact for more information" should suffice.

The 3rd bullet point should be expanded to include the source of contributions and subtotals/totals (e.g. member required, member voluntary, employer, etc).
Personal returns and returns on each fund would be beneficial metrics for CAP members.

5.2.3

Fifth item on the list: To require the communication of **any** tax consequences is adding a heavy burden on the shoulders of the plan sponsor since these consequences can largely vary from one individual to another. It would be preferable to add "the main tax consequences **of a general nature**"

5.2.6

"Significant changes" should be defined. It might also be preferable to include employer expenses in this section.

5.3.1

5.1.3 and 5.3.1 are contradictory. Sub-item 5.1.3 indicates that "**If** a statement includes the calculation of a personal rate of return" where as sub-item 5.3.1 makes it mandatory to provide performance reports for each investment fund and member portfolio. We believe that it should be mandatory.

5.3.2

To require the performance report to show the method used to calculate the fund performance seems too much of a burden for the purpose of the guidelines. The guidelines should only require that reports indicate that explanations are available on demand and the name of the person that may be contacted.

The Guidelines should also include a description of the risk (i.e. volatility on each fund) and include a reference to the relative performance of each to fund to similar funds/managers with the same objectives and/or styles.

6.1.1

Monitoring advice will be difficult if not impossible. There might be a need to review how the Joint Forum could work with the associations that provide the accreditation for financial planners and look to those bodies to maintain minimum compliance standards.

6.1.2

Adding examples of "appropriate" actions would help sponsors who would need to take measures in case of unsatisfactory performance.

6.3.1

Consideration might be given to whether an explicit reference to privacy legislation is included.

In the second grouping of bullet points, should the word "and" be inserted after periodic audit?

6.5.1

Add a bullet to include a review with governing bodies of advisors or require some form of certification.

7

While the reasons for changing the purpose of a CAP should be well documented for corporate and liability purposes, we do think these reasons should be required to be explained in details to plan members. We agree the decision should be communicated but, here again, assessing the impact on plan members can be onerous and may expose the plan sponsor to additional liability for failing to have provided information that the sponsor considered too specific. Maybe the obligation to assess the consequences should be limited to the **general** impact.

It may also not be possible to communicate these changes “prior to taking effect” as required by the second paragraph (change of control, hostile takeover and mergers, etc), so we would like you to add wording allowing a reasonable delay.

8.2.1

The last sentence of that sub-item refers to information to the member’s designated beneficiary. In the case of DC plans, the beneficiary may not be the designated beneficiary but the spouse.

In other cases, the member may have omitted to designate a beneficiary and any benefit may be payable to the estate.

This last sentence should be changed as follows :

“(…) this information should be given to the person entitled to the death benefit, whether the member’s designated beneficiary or the spouse, provided that person can be identified at the time of termination.”