ATCO GROUP

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Davin Hall
Policy Manager
CAPSA Secretariat
c/o Joint Forum Project Office
5160 Yonge Street
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Dear Sir:

Re: Comments on the Proposed Guidelines for Capital Accumulation Plans

Thank you for the opportunity to comment on the proposed Guidelines for Capital Accumulation Plans and the proposed implementation strategy released in April 2003 by the Joint Forum of Financial Market Regulators. I appreciate the efforts made by the Joint Forum in seeking input on the proposed Guidelines and for providing opportunities to meet with representatives from the Joint Forum either individually or in group format.

The ATCO Group of Companies employs over 5,000 employees in Canada. ATCO Group provides a full range of benefits under a number of comprehensive benefits programs, and sponsors several Defined Benefit pension plans, Defined Contribution pension plans, and Group RRSPs. Over 2,000 employees are members of a Defined Contribution Pension Plan or Group RRSP.

The concerns of the ATCO Group of Companies with the proposed CAP Guidelines include:

? **Potential Fiduciary Liability Exposure.** The proposed Guidelines produce a significant extension of fiduciary-like responsibilities for CAP sponsors where no fiduciary duties currently exist under law. This is particularly the case for Group RRSPs and other savings plans which are not subject to minimum standards legislation.

  The Guidelines imply that plan sponsors would be protected if they complied with the Guidelines. However, the Guidelines only provide a framework for "prudent" administration and operation of CAPs in the best interest of members. They set out factors to be considered in a variety of administrative areas, using terms such as "prudent", "appropriate", "reasonable", "properly" and "sufficient" without guidance on the meaning of those terms.

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- **Monitoring Service Providers.** The extent to which a plan sponsor monitors a service provider needs to be clarified, along with how this is practically achieved, given that the resources and sophistication varies greatly from one plan sponsor to another.

- **Lack of "Safe Harbour" Provision**. If the Guidelines are adopted as drafted, the result may be a raising of standards to which CAP sponsors could be held, with a corresponding increase in the uncertainty of how to satisfy such standards. Accordingly, a due diligence defence from member lawsuits based on compliance with the Guidelines should be included in the Guidelines.

- **Increased Cost of Compliance.** The proposed Guidelines state that CAP sponsors may use service providers where the sponsor does not possess the necessary knowledge or skill to fulfill its obligations. However, the responsibility to monitor, evaluate and make decisions based on service providers' advice remains with the sponsor. With the increased obligation on sponsors resulting in a significant increase in work involved to comply with the Guidelines, use of service providers to meet those obligations could result in potentially significant cost increases to sponsors.

- **Information Versus Education.** The distinction between information versus education should be clarified. e.g. is there a hidden assumption that a plan sponsor would "test" the investment knowledge of its plan members?

- **Oppose Inclusion of "Member Preferences".** The provision and maintenance and continuation of a capital accumulation plan, including the design of the plan, and the selection, monitoring and terminating of investment managers lies with the plan sponsor. Accordingly, the preferences of plan members should not be required to be taken into consideration in deciding appropriate action in light of unsatisfactory performance by an investment option provider.

- **Shorten the Document**. A 29-page document is rather overwhelming. Consider shortening the document by consolidating some of the sections.

The increased complexity and potential risk for a CAP sponsor resulting from the principles and guidelines put forward by the Joint Forum may result in choosing to discontinue offering CAP plans to employees. Employers have specifically offered non-pension CAPs in order to avoid the cost and complexity of pension regulation.

Rather than harmonizing the rules applicable to CAPs, it is more likely that the Guidelines will result in increased complexity and more uncertainty as to the legal effect of the new rules. Employers may look to reallocate their scarce financial resources and employees could be faced with attempting to replicate such benefits with their own dollars (often after tax).

Increasing employees' cash compensation may ultimately be preferable to administering a CAP under the new Guidelines.

Again, thank you for the opportunity to comment on the proposed CAP Guidelines.

Yours sincerely,

Ms. Patricia A. Sihvon
Manager, Pensions & Benefits