

ACPM · ACARR

The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

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September 5, 2003

Dear Davin,

Re: Proposed Guidelines For Capital Accumulation Plans

The Joint ACPM/PIAC Task Force (the "Task Force") has reviewed the *Proposed Guidelines For Capital Accumulation Plans* issued April 2003. The Task Force commends the Joint Forum of Financial Market Regulators (the "Joint Forum") for their efforts in developing industry standards for the dissemination of information to the members of CAPs. In particular, we commend the collaborative and inclusive nature of this development process.

We have several overall observations, including some clarification questions. In addition, we have a number of suggested edits to the Guidelines. We have black lined a copy of the Guidelines so that you may see our suggested edits. For the sake of clarity, we will present our observations first, followed by our critical edits and other suggested edits. The order of the suggested edits will follow the order of the Guidelines.

Overall Observations

Our first observation is that the Proposed Guidelines are good. They have largely addressed industry concerns, and will provide a great deal of assistance to employers and administrators in an area where there have been few clearly articulated rules, standards or practices.

The development of any industry guidelines requires a delicate balancing between the desire for clarity and direction, on the one hand and over-regulation on the other.

The clarity and direction of the Guidelines are good. The Guidelines are sound, and generally reflect industry practices. We believe that the Guidelines, if followed properly, will provide a reasonable due diligence defence for employers/administrators against actions by members in the event of disappointing investment performance. The uniform approach across jurisdictions will also be beneficial to the industry. But we are concerned that there are very important areas of the Guidelines that remain unclear, despite the Joint Forum's best efforts. We refer to these in our conclusions below.

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As to over-regulation, we first recognize that there is no comprehensive study to properly assess the cost and the associated benefits to plan members of this regulatory effort. Thus, we are left to apply our extensive experience in assessing the impact of these Guidelines. While some arrangements for non-pension plans might comply with these standards, we believe that not all arrangements will currently so comply. Specifically, we believe it is inappropriate to assert that arrangements (including voluntary, non-contributory plans) currently meet the monitoring requirements included in these Guidelines. We feel it is our duty to bring these concerns to your attention as part of the feedback we committed to provide. In the end, only time will tell whether, on balance, certain plan sponsors will decide to terminate or not start a non-pension CAP because the benefit to members saving for their financial needs is not worth the associated costs and potentially increased liabilities for the plan sponsor. Only the marketplace will determine if these Guidelines will have a significant cost impact on non-pension arrangements.

As to the timing of implementation, we observe that, the application of the Guidelines to non-pension CAPs may take some time as employers must develop compliance procedures for the Guidelines for the first time. Further, although most pension plans or their providers on their behalf, comply with many aspects of the Guidelines, there are areas where compliance will take a little longer. We envision the need to adjust systems to collect and provide information broken down as required by the Guidelines (the collection of all plan expense information is one such area). We expect that implementation will also involve re-negotiation by employers and administrators of contracts with providers and advisors. Accordingly, we suggest that a reasonable time be given for the expectation of full compliance by the regulators. Again, we recognize that exemptions under securities legislation can only be given on conditions that are clear to both the regulator and the employer. We suggest that the expectations be of substantial compliance by the end of 2004, and full compliance by July, 2005.

Conclusions

While you will find many suggested edits below, the critical ones for the Task Force are shown first. If the Joint Forum can resolve these fundamental uncertainties, the Task Force supports the Guidelines.

We appreciate the Joint Forum's extensive consultation with the pension industry, which we believe was beneficial to all stakeholders. We suggest that the Joint Forum plan now to review industry experience with the Guidelines a year after the date of expected full implementation, certainly before any jurisdiction codifies the Guidelines into legislation or regulations. As we have said many times, we believe that guidelines are much preferable to legislation. Industry practices in respect of CAPs are evolving, and uniformity is very difficult to achieve through legislation.

Suggested Edits to the Guidelines

Critical Edits:

- A. It is not clear to the Task Force if a single investment choice CAP is subject to these Guidelines. We suggest that Item 1.1.1 provide clarity to this question. For example, would an employer stock purchase plan (where employer stock is the only option), be subject to a number of the requirements of the Guidelines (see, for example, Item 2.2.1 “*Factors a CAP sponsor should consider when choosing investment options*”). The Task Force also suggests that if it is the intention of the Joint Forum to include all types of CAPs in these Guidelines, this should be re-addressed with the industry as this is a departure from the original intent of these Guidelines;
- B. In the second paragraph of Item 1.2.1, remove the word “educational” before “tools”. While not universal, many in the industry believe that the word education implies the need for testing for knowledge. The Task Force is strongly against this concept, believing it will add undue burden on the plan sponsor and create an environment for unnecessary liability. We would hope that the Joint Forum would want to make this clear rather than leave this uncertain;
- C. Item 2.1.3 states that the CAP sponsor “prudently” select service providers “with regard to the best interests of the CAP members”. The Task Force has suggested removal of this phrase as we feel it creates a fiduciary responsibility. It was agreed that fiduciary responsibilities would be removed from these Guidelines;
- D. The Task Force has several issues with Item 2.2.2 “*Selecting investment funds*”. The Item as currently drafted is at marked variance to what was contained in the Revised Principles. The Revised Principles indicated that compliance by an investment fund with any one of the three investment regimes would qualify that fund as an eligible investment for a CAP. The three regimes in question were the IVIC rules, NI 81-102 or the federal pension benefits standards legislation. The Task Force agrees with this approach. The majority of the money currently invested in investment funds in CAPs is invested in institutional pooled funds that may or may not comply with the IVIC rules or NI 81-102 but would in all likelihood comply with the federal pension rules. The current language in Item 2.2.2 would have the effect of disqualifying such funds as investment options under CAPs thus forcing members out of those funds or forcing the respective managers to change the fund investment mix. In both cases, members of non-registered CAPs would be forced to realize taxable capital gains or losses and be forced to rebalance the majority of their holdings within the CAP.

The Task Force agrees that funds made available as investments under a pension plan must comply with the applicable federal or provincial pension investment rules. As a result, we see no need for the current construction of Item 2.2.2 and instead see only needless upheaval and cost for members. Our edits to this section ensure that compliance is necessary but not multi-jurisdictional;

- E. Item 3.1.4 refers to “distinct and identifiable groups of members within the plan” when determining the appropriate amount and type of investment information and decision-making tools to provide. The Task Force feels that only the entire membership should require consideration in these Guidelines. Plan Sponsors will be left trying to decide how thinly to slice the membership in order to provide information and tools;
- F. The fourth bullet of Item 4.1.2 states that plan members “ought” to obtain investment advice. We would suggest that same change as Item 3.7 (see #20 below).

Other Suggested Edits:

1. In the *Table of Contents*, the item “*Adding an investment option*” (5.2.4) has been included twice. Once removed, the subsequent numbering should be revised.
2. For consistency, the word “trade” should be added in front of “association” in Item 1.1.4.
3. The Guidelines state that they “represent existing industry practices” (Item 1.2). The Task Force suggests the addition of “generally”.
4. The Task Force has removed Item 3.6 and included a reference to privacy regulation in Item 1.2.1 as the issue of privacy goes beyond the information that is provided to an investment advisor. There are privacy issues with which the recordkeeper and the CAP sponsor must deal.
5. In addition, in Item 1.2.1, we have added reference to “other services” and the “nature of” the plan. We feel that this adds clarification to this point as there are other services available to CAP members and the nature of the plan will contribute to what services are offered to the members.
6. In addition, in Item 1.2.1, we have brought forward the concept of “plain and simple language” from the beginning of Section 4 as this was an overall goal for these Guidelines. By moving to the front of the Guidelines, we believe it will be incorporated into all aspects of member communications.
7. We have removed the first sentence of Item 1.3.1 as we do not feel it is necessary, given that what follows are descriptions of responsibilities for all parties involved.
8. The last sentence of Item 2.1.2 is not necessary as this concept has already been dealt with in Item 1.3.2.

9. In Item 2.2.1, the Task Force is concerned about the statement that the choice of a service provider “will define or limit the type and quality of investment options available to a plan.” We suggest removal of “and quality” as it implies substandard offerings.
10. The fourth bullet point in Item 2.2.1 should be eliminated. Determining the “financial sophistication of members” implies testing.
11. Continuing in Item 2.2.1, the Task Force suggests that the “degree of diversification, liquidity and the level of risk...” are also relevant to non-retirement savings plans. These are often offered by employers in the form of After Tax Savings Plans. We suggest the removal of this sentence.
12. The last paragraph of Item 2.2.1 is redundant in light of the content of Item 1.2.1.
13. In addition to the above, it should be noted that the CSA is proposing to eliminate NI 81-102 and replace it with a newly named Code. We would suggest that wording should be modified to the following “applicable to prospectus qualified mutual funds” so that subsequent or differently named legislation is included.
14. The Task Force suggests that the default option will be treated like any other investment options in terms of CAP sponsor selection. The last sentence of Item 2.2.4 is redundant.
15. In Item 2.3.1, it is stated that the CAP sponsor “should promptly correct any identified errors.” We have consolidated the two sentences.
16. We suggest the elimination of Item 3.1.2 as member responsibilities have already been outlined in Item 1.3.3. If elements are missing from Item 1.3.3 (that are contained in Item 3.1.2, we suggest that they be consolidated in Item 1.3.3.
17. In Item 3.1.3, the “financial sophistication of members” should be eliminated as criteria for determining the type of investment information and decision-making tools necessary for the same reason that we suggested removing from Item 2.2.1.
18. We have added “to members” in Item 3.4.2 for clarification purposes.
19. Item 3.5 indicates that “up-front or lump sum fees should not be charged to members for basic investment information or decision-making tools”. The Task Force understands why the Guidelines contain this, but feel that prescribing to plan sponsors how costs can be distributed is prohibitive. The overall costs of the administration of CAPs contain fees for this information and these tools. Prohibiting plan sponsors from passing on these costs could inhibit them from offering CAPs. We would suggest that language that we have included in the blacklined copy of the Guidelines.
20. The Task Force suggests that CAP sponsors caution members that they “should consider” obtaining additional independent investment advice (Item 3.7)
21. Section 4 refers to the use of “plain and simple language”. This was one of the overriding principles in the Revised Principles. We feel this is better addresses in a general paragraph such as Item 1.3.1 so that it is seen to apply to all of the Guidelines.
22. The third bullet of Item 4.1.1 refers to “investment choice responsibilities”. We are not sure what this means. It seems redundant in light of the list of member responsibilities.

23. The fourth bullet of Item 4.1.1 indicates that the names of all service providers should be communicated to plan members. Should this include service providers such as the name of the consultant utilized by the plan sponsor? What about the name of the legal counsel? What value would this information provide to the plan member? We suggest adding “with whom CAP members interact” in order to clarify the disclosure requirements.
24. In Item 4.2.1, the fifth bullet requires a “;” at the end of the point; in the sixth bullet “and” should be removed from the end of the point and added at the end of the seventh bullet.
25. There is a possibility that legislation will require providing the names of the underlying managers in a fund of funds structure. If this is not required, we suggest the removal of the seventh bullet in Item 4.2.1.
26. The first sentence of Item 4.2.3 should be situated at the front of Section 4.2. It is an overall philosophy that should govern what information is provided to plan members.
27. Item 4.3.1 contains extensive information about what a plan sponsor must provide to a member in order to make a transfer from one investment option to another. These seem excessive in terms of the amount of the detail. The Task Force suggests removal of the first two points as these are obvious. In addition, we suggest that the CAP sponsor should advise members of the duration of the suspension.
28. The use of the term “commissions” in Item 4.4, first bullet point, could be interpreted as communicating brokerage commissions incurred by investment managers in the normal course of running the fund. We suggest changing commissions to “costs”.
29. In Item 5.1.3, transaction details should be moved to Item 5.2.1 and a transaction summary made part of Item 5.1.3.
30. In Item 5.3.2, the Task Force suggests that this is the responsibility of the oversight group for investment options.
31. The Task Force suggests that “or resources” be added after “...the necessary knowledge and skills” in Item 6.2.1.
32. Item 6.2.1 states that the performance of the investment option should be reviewed in relation to the purpose of the CAP. The Task Force suggests that more appropriate language would be “objective of the investment option” as the purpose of the CAP has nothing to do with the performance of the option.
33. Item 6.2.3, bullet three should be deleted. It is the plan sponsor’s responsibility to select/monitor/de-select investment options. Taking into account “any preferences voluntarily indicated by members” may put a CAP sponsor in the position of accommodating the wishes of a very few vocal CAP members. Criteria for the selection of investment options has been outlined in Item 2.2.1. If an option remains available to members, it is implied that the option is suitable and meeting all requirements.

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34. It is not necessary to include “clearly” in Section 7.
35. Item 8.2 is redundant in light of Item 1.3.1.
36. In the final sentence of Item 8.2.1, “or personal representative” should be added after “...designated beneficiary.”

Both the ACPM and PIAC again thank you for the opportunity to be involved in this initiative. We look forward to working with the Joint Forum and CAPSA in respect to other issues that are of concern to the industry and to pension regulators.

Sincerely,

ORIGINAL SIGNED BY:

Priscilla Healy
Chair, Advocacy and Government Relations Committee, ACPM
Co-Chair, Joint ACPM/PIAC Task Force

ORIGINAL SIGNED BY:

Paul Litner
Co-Chair, Joint ACPM/PIAC Task Force

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General Manager, PIAC

**PROPOSED GUIDELINES
FOR
CAPITAL ACCUMULATION PLANS**

April 2003

Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

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David Wild
Chair of the Joint Forum
Chair, Financial Services Commission, and
Superintendent of Pensions
Saskatchewan

Gail Armitage
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Alberta

Bryan Davies
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Jeffrey A. Bear
Chief Executive Officer
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BUREAU DES SERVICES FINANCIERS

Louise Champoux-Paillé
President

April 25, 2003

Dear Stakeholders:

Re: Proposed Guidelines for Capital Accumulation Plans

We are pleased to announce that, with the approval of the Canadian Association of Pension Supervisory Authorities (CAPSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Securities Administrators (CSA), the Joint Forum of Financial Market Regulators (Joint Forum) has released for comment proposed *Guidelines for Capital Accumulation Plans* and a proposed strategy for implementation of the guidelines. You can obtain a copy of the proposed guidelines from the websites of CAPSA (www.capsa-acor.org), and CCIR (www.ccir-ccrra.org), or the websites of the members of the CSA. Paper copies are available upon request.

The Joint Forum Working Committee on Capital Accumulation Plans (CAPs) has been working with an industry task force since July of 2002 to develop these guidelines. The guidelines are based on the *Revised Principles for Investment Disclosure in Capital Accumulation Plans*, which were approved by the Joint Forum in April, 2002. The purpose of the guidelines is to:

- describe the rights and responsibilities of CAP sponsors, service providers and CAP members;
- ensure that CAP members have the information and assistance that they need to make investment decisions in a capital accumulation plan; and
- ensure that there is a similar regulatory result for all CAP products and services regardless of the regulatory regime that applies to them.

We are aware of a number of issues that need to be addressed in a subsequent implementation phase to ensure that there is a similar regulatory result for all CAP products and services regardless of the regulatory regime that applies to them. As such, the Joint Forum has developed a proposed strategy for implementation of the guidelines.

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Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

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The Joint Forum would appreciate comments from stakeholders on the proposed guidelines and the proposed strategy for implementation of the guidelines. We would particularly like to receive comments from CAP sponsors, service providers and CAP members about how these guidelines would work for their plans. Quebec is pursuing its own consultation on the proposed guidelines in close parallel with the other jurisdictions. All submissions made to the Joint Forum will be published and will not be kept confidential. Please send your comments on the guidelines to:

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The deadline for submitting your comments is August 31, 2003. Electronic submissions would be preferred.

Sincerely,

David Wild
Chair, Joint Forum of
Financial Market Regulators
Chair, Saskatchewan Financial Services Commission,
Superintendent of Pensions, Saskatchewan

Enclosures: Guidelines for Capital Accumulation Plans
Proposed Strategy for Implementation of the Guidelines for Capital
Accumulation Plans

Guidelines for Capital Accumulation Plans

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Section 1: Introduction

Item 1.1 - Definitions

1.1.1 Capital Accumulation Plan

In these guidelines, a capital accumulation plan (CAP or plan), is an investment or savings plan established by an employer, trade union, trade association or any combination, for the benefit of its employees or members that permits the employees or members to make investment decisions.

1.1.2 CAP sponsors

In these guidelines, employers, trade unions, trade associations or combinations of these entities that establish CAPs are referred to as “CAP sponsors”. If a CAP is a registered pension plan, many of the responsibilities of the CAP sponsor described in these guidelines are those of a pension plan administrator. In such cases, these guidelines should be interpreted considering the different roles of employers and pension plan administrators under applicable pension benefits standards legislation.

1.1.3 Service providers

In these guidelines, service providers include any provider of services or advice required by the CAP sponsor in the design, establishment and operation of a CAP.

1.1.4 CAP members

In these guidelines, “CAP members” are individuals who have assets in a CAP. This can include active or terminated employees, trade union or trade association members, and their spouses.

Item 1.2 –The purpose of the guidelines

These guidelines reflect the expectations of regulators, generally represent existing industry practices, and are intended to support the continuous improvement and development of industry practices.

The purpose of these guidelines is to:

- describe the rights and responsibilities of CAP sponsors, service providers and CAP members;
- ensure that CAP members have the information and assistance that they need to make investment decisions in a capital accumulation plan; and
- ensure that there is a similar regulatory result for all CAP products and services regardless of the regulatory regime that applies to them.

1.2.1 Application of the guidelines

These guidelines supplement any legal requirements applicable to capital accumulation plans. They do not replace any legislative requirements. CAP sponsors are responsible for meeting any relevant legal requirements, including any requirements that may extend beyond the scope of these guidelines, such as privacy regulation.

These guidelines apply to all capital accumulation plans. However, the investment options, ~~and educational~~ tools and other services chosen may vary depending on the nature and purpose of the plan. When establishing a capital accumulation plan, the CAP sponsor must clearly define the purpose of the plan. The purpose must be consistent with the terms of the plan. The CAP sponsor must also clearly communicate in plain and simple language the purpose of the plan to CAP members and explain how it can affect how the plan operates (eg. the ability to access assets).

Item 1.3 - Implications for CAP sponsors, service providers, and CAP members

1.3.1 Responsibilities of CAP sponsors

~~When an employer, trade union, trade association or any combination decides to establish a capital accumulation plan, they assume certain responsibilities as CAP sponsor.~~

The CAP sponsor is responsible for setting up the plan, providing investment information and decision-making tools to CAP members as well as introducing the plan and providing on-going communication to members. The CAP sponsor is responsible for maintaining the plan and also has responsibilities upon termination of the plan.

The CAP sponsor may delegate its responsibilities to a service provider.

1.3.2 Responsibilities of service providers

To the extent that the responsibilities of a CAP sponsor are delegated to a service provider, the service provider is responsible for following these guidelines and any applicable legal requirements.

1.3.3 Responsibilities of CAP members

CAP members are responsible for making investment decisions and using the information and tools made available to assist them in making those decisions. The members may also be responsible for determining how much they will contribute to a CAP.

Section 2: Setting Up a CAP

Item 2.1 - General

2.1.1 Defining the purpose of a CAP

CAP sponsors must clearly define and document why a capital accumulation plan is being established. The purpose of the plan must be consistent with its terms and what CAP members are told.

CAPs may be established to assist members to achieve any outcome selected by the CAP sponsor. Some of the purposes for which a capital accumulation plan may be established are:

- retirement savings;
- tax efficient compensation;
- employer stock purchase;
- profit sharing; and
- savings for other financial goals such as education, home purchase, etc.

2.1.2 Deciding whether to use service providers

The CAP sponsor must decide if it has the necessary knowledge and skills to carry out the responsibilities set out in these guidelines as well as all relevant legal requirements. The CAP sponsor must also decide whether and how service providers should be used. Where the CAP sponsor does not have the necessary knowledge and skills to carry out its responsibilities, service providers should be used.

Service providers must have the appropriate level of knowledge and skills to perform the tasks delegated and to provide any advice requested by the CAP sponsor.

~~They must also comply with these guidelines and any relevant legal requirements.~~

2.1.3 Selecting service providers

The CAP sponsor must prudently select any service provider ~~s it engages with regard to the best interests of the CAP members.~~

Where the CAP sponsor delegates responsibilities to a service provider, the CAP sponsor must ensure that the applicable roles and responsibilities of the CAP sponsor and service provider are carefully documented.

Item 2.2 - Investment options

2.2.1 Selecting investment options

The CAP sponsor should ensure that the plan offers a range of investment options that is appropriate considering the purpose of the CAP. In some cases, the choice of a service provider will define or limit the type ~~and quality~~ of investment options available to a plan.

The CAP sponsor must prudently select investment options. A service provider may assist in the selection of investment options or the CAP sponsor may delegate the selection of investment options entirely to a service provider.

When selecting investment options, the CAP sponsor must consider whether it is able to monitor the investment options on an on-going basis. A service provider may be used to help do the monitoring.

Factors a CAP sponsor should consider when choosing investment options, include:

- the purpose of the CAP;
- the appropriate number and selection of investment options;
- the diversity and demographics of CAP members;
- ~~the financial sophistication of members;~~
- the degree of diversification among the investment options available to members;
- the liquidity of the investment options; and
- the level of risk associated with the investment options.

~~The degree of diversification, liquidity and the level of risk associated with investment options are particularly relevant for capital accumulation plans that are established for retirement purposes.~~

~~The investment options for CAPs may be limited by legislation. CAP sponsors must comply with relevant legislative requirements when choosing investment options.~~

2.2.2 Selecting investment funds

For the purpose of these guidelines, an investment fund means a mutual fund, pooled fund, segregated fund or similar pooled investment product.

If investment options chosen by the CAP sponsor are investment funds, the following factors should be also taken into account:

- the attributes of the investment funds such as the investment objective, investment strategies, investment risks, the manager(s), historical performance, and fees; and
- whether the investment funds selected provide CAP members with options that are diversified in their styles and objectives.

Investment funds offered in a capital accumulation plan must comply with:

- the investment rules applicable to Individual Variable Insurance Contracts if the investment fund is an insurance product; ~~or~~
- the investment rules applicable to prospectus qualified mutual funds under National Instrument 81-102 Mutual Funds, if the investment fund is a mutual fund under securities law; or
- ~~If investment funds are offered in a CAP that is a registered pension plan, the funds must comply with~~ the investment rules under applicable pension benefits standards legislation.

2.2.3 Transfers among investment options

CAP members should be allowed reasonable opportunities to transfer between the investment options in the plan. The members must have an opportunity to transfer among options at least once a month.

CAP sponsors can restrict the number of transfers a member can make. Restrictions might be appropriate to limit costs borne by the CAP sponsor or collectively by all members for transfers by individual members.

Restrictions may include limiting the number of transfers by members or imposing fees if the established limit is exceeded.

2.2.4 CAP members failing to make investment choices

The CAP sponsor must establish a policy that outlines what happens if a CAP member does not make an investment choice. This may involve setting a default option to be applied if a member does not make an investment choice within a given period of time.

The policy must be communicated to the member before any action is taken under the policy. If the policy includes imposing a default option, the CAP sponsor must inform the member how the funds will be invested until the member communicates their investment choice.

~~Any default options chosen by the CAP sponsor must be selected prudently, and should be chosen using the same factors used when choosing the investment options generally.~~

Item 2.3 - Administration

2.3.1 Record keeping

The records of a capital accumulation plan must be properly prepared and maintained either internally or through a service provider, including the prompt correction of any identified errors. ~~CAP sponsors should promptly correct any identified errors.~~

2.3.2 Retaining documents

The CAP sponsor should ensure that decisions about establishing and maintaining the plan and information about how those decisions are made are properly documented and that the documents are retained.

The CAP sponsor should establish a document retention policy. It should include:

- a description of the types of documents to be retained;
- how long various types of documents should be retained; and
- who can access the documents.

Section 3: Investment Information and Decision-Making Tools for CAP Members

Item 3.1 - General

3.1.1 Purpose of investment information and decision-making tools

The CAP sponsor must provide investment information and decision-making tools that will assist a CAP member in making investment decisions in the plan.

~~3.1.2 CAP member investment decisions~~

~~CAP members will have to make a number of investment decisions once they join a capital accumulation plan, including:~~

- ~~• how much to contribute (where the member can choose);~~
- ~~• how much they should contribute to any particular investment option; and~~
- ~~• whether an investment in a particular option should be moved to another option.~~

3.1.23 What type of investment information and decision-making tools are necessary

To decide which types of information and decision-making tools are appropriate for CAP members, the CAP sponsor should consider:

- the purpose of the plan (eg. members of a retirement plan should be provided information and tools that focus on retirement planning);
- what types of decisions members must make;
- the location, diversity and demographics of the members;
- ~~• the financial sophistication of the members; and~~
- the members' computer literacy and access to computers.

3.1.4 Targeting investment information and decision-making tools

The CAP sponsor does not have to target investment information and decision-making tools to the specific needs of each CAP member. The CAP sponsor can determine the appropriate amount and type of investment information and decision-making tools to provide by considering the ~~entire~~ membership in general ~~or distinct and identifiable groups of members within the plan.~~

Item 3.2 – Investment Information

~~The CAP sponsor must provide CAP members with investment information that could assist the members make investment decisions within the plan.~~

Types of information CAP sponsors should consider providing include:

- information about how investment funds work;
- information about investing in securities (eg. equities, bonds);
- information regarding the relative level of expected risk and return associated with different investment options;
- glossaries explaining terms used in the investment industry; and
- product guides, explaining specific features and benefits associated with products used within the CAP.

Item 3.3 - Investment decision-making tools

The CAP sponsor must provide CAP members with investment decision-making tools that could assist the members make investment decisions within the plan.

Types of 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;
- if applicable, retirement planning tools to help members estimate the amount of income they may need in retirement;
- calculators and projection tools to help members:
 - project the value of their current account balances at a future date using rate of return assumptions;
 - project the value of any future periodic contributions to the plan to estimate how much their accumulated contributions may be worth at a future date; and
 - calculate total and/or additional contribution amounts, so members can estimate appropriate total and/or additional periodic contributions they should consider to achieve a specific capital or income target in the future; and
- investor profile questionnaires to allow a member to self-assess their tolerance to risk, taking into account factors such as investment experience, time horizons and personal goals and preferences.

Item 3.4 – Investment advice

3.4.1 General

To help CAP members with their investment decision-making in the plan, a CAP sponsor may choose to enter into an arrangement with a service provider or refer the members to a service provider who can provide the members with advice about their investment decisions.

3.4.2 Selecting service providers to provide investment advice

If the CAP sponsor chooses to enter into an arrangement with a service provider or refer CAP members to a service provider who will provide investment advice to the members, the CAP sponsor must prudently select the service provider. The CAP sponsor can also get advice about who to select, or use a service provider to select the individuals or firms to provide investment advice.

Factors for the CAP sponsor to consider when selecting service providers to provide investment advice to members include:

- professional training;
- experience;
- specialization in the types of investment options in the plan;
- the advisor's understanding of employee benefits, pension legislation and other related rules;
- any real or perceived lack of independence of the advisor relative to other service providers, the CAP sponsor and its members;
- consistency of service offered in all geographical areas in which members reside;
- quality, level and continuity of services offered; and
- any complaints filed against the advisor or their firm and any disciplinary actions taken (if known).

3.4.3 Qualifications for service providers who provide investment advice

A service provider who provides investment advice should have the appropriate knowledge, skills and professional qualifications or designations to provide the advice required by CAP members.

In some jurisdictions there are legal requirements that must be met before a person can provide investment advice. Advisors that are appropriately registered or licensed must be used where required by law.

Item 3.5 - Fees related to investment information, decision-making tools or advice

The CAP sponsor must ~~clearly~~ inform CAP members ~~who will bear of the~~ costs associated with accessing or using any investment information, decision-making tools or investment advice ~~services~~ provided by the CAP sponsor ~~(or the service provider)~~.

~~Up front or lump sum fees should not be charged to members for basic investment information or decision-making tools because those fees or charges may discourage members from using the information or tools. Costs associated with basic investment information or decision-making tools should be structured so that there is no disincentive for members to utilize them.~~

~~Item 3.6— Privacy rights~~

~~Any personal information a service provider may get from a CAP member when providing investment advice must not be given to or accessed by the CAP sponsor unless the member consents in writing.~~

Item 3.~~6~~7 - Independent investment advice

Information, decision-making tools and guidance provided by the CAP sponsor need not address the entire financial circumstances and planning needs of the CAP member. Accordingly, the CAP sponsor should caution the members that they ~~should~~ should ~~consider~~ ought to ~~obtain~~ ing additional independent investment advice.

Section 4: Introducing the Capital Accumulation Plan to CAP Members

When an individual becomes eligible to enroll in a capital accumulation plan, the CAP sponsor must clearly communicate ~~in plain and simple language~~ the purpose of the plan, explain how the plan operates, and provide the information outlined in this section.

Item 4.1 - General

4.1.1 Information on the nature and features of the CAP

The CAP sponsor must give CAP members current information on the nature and features of the plan including:

- contribution levels (if applicable);
- investment options; and
- ~~investment choice responsibilities; and~~
- names of service providers with whom CAP members interact, if applicable.

4.1.2 Outlining the rights and responsibilities of CAP members

The CAP sponsor must also inform CAP members that they:

- have the right to access information about the nature and features of the plan;
- 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
- should ~~ought consider to~~ obtaining investment advice from an appropriately qualified individual in addition to using any information or tools the CAP sponsor may provide.

4.1.3 Making investment choices

CAP members must be informed how they can choose investments in the plan, how those choices can be changed and how long it will take for an investment choice to be implemented.

Item 4.2 – Investment options

CAP members must be given sufficient detail about investment options so they can make an informed investment decision.

4.2.1 Investment funds

For each investment fund that is an investment option, the CAP sponsor must provide CAP members at least the following information:

- the name of the investment fund;
- names of all investment management companies responsible for day-to-day investment management of fund assets;
- the fund’s investment objective;
- the types of investments the fund may hold;
- any material risks of investing in the fund~~:-~~;
- how members can obtain information about fund holdings; ~~and~~
- if the fund is structured as a fund of funds, names of the underlying funds; ~~and~~
- whether the fund is considered foreign property and if so, the implications for members.

4.2.2 Employer securities

When securities of the employer or a related party of the employer are included as an investment option in the plan, at least the following information must be provided to CAP members:

- name of the issuer and the security;
- relationship between issuer and employer - if the issuer of the security is different from the employer of the CAP members, describe the relationship between the issuer and the employer;
- any material risks of investing in the security; and
- whether the security is considered foreign property and if so, the implications for members.

4.2.3 Other investment options

~~For each other investment option offered, the CAP sponsor must provide CAP members at least the following information: CAP members must be given sufficient detail about other investment options so they can make an informed investment decision. This information should include:~~

- the name of the investment;
- the type of investment;
- the investment objective;
- any material risks; and
- whether the option is considered foreign property and if so, the implications for members.

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

- guaranteed investment certificates (GICs);
- annuity contracts;
- other securities;
- government savings bonds; and
- cash.

Item 4.3 - Transfer options

4.3.1 Information on transfer options

The CAP sponsor must provide CAP members with information about how to make transfers among investment options. This information should include:

- any forms that are required and where they must be sent;
- whether there are other methods available for making transfers (for example, on the website provided by a service provider);
- any restrictions on the number of transfers between options a member is permitted to make within a given period, including any maximum limit after which a fee would be applied; and
- a description of possible situations where transfer options may be suspended.

Examples of situations where the CAP sponsor may temporarily suspend transfers are where:

- investment options are being changed by the CAP sponsor;
- a service provider is being changed by the CAP sponsor; or
- there are changes at the existing service provider (eg. introduction of new systems).

The CAP sponsor should communicate the reason why transfers will be suspended before the suspension occurs. When known, the CAP sponsor should inform members of the duration of the suspension.

4.3.2 Transfer fees

Any fees for transferring between investment options (including penalties, book and market value adjustments, tax consequences) should be clearly outlined.

Item 4.4 – Description of fees, expenses and penalties

CAP members must receive a description and the amount of all fees, expenses and penalties relating to the plan that are to be paid by the members, including but not limited to:

- any ~~costs commissions~~ that must be paid when investments are bought or sold;
- investment fund management fees;
- investment fund operating expenses (eg. audit, legal and custodial fees, cost of financial statements and other reports or filings, taxes, transfer agency fees, pricing and bookkeeping fees)
- record keeping fees;
- transfer fees;
- account fees;
- fees for services provided by service providers; and
- fees for investment advice, decision-making tools or financial planning.

Where appropriate, these fees, expenses and penalties may be disclosed on an aggregate basis, provided the nature of the fees, expenses and penalties is disclosed. Where fees, expenses and penalties are incurred by members by virtue of member choices (eg. transfer fees, additional investment information or tools, etc), fees, expenses and penalties should not be aggregated.

Item 4.5 – Policy regarding CAP members failing to make investment choices

The CAP sponsor must communicate to CAP members the policy established under item 2.2.4, including the following information:

- a description of the policy; and
- a description of the default option (where applicable).

Item 4.6 – Additional information

The CAP sponsor must communicate to CAP members how they can access additional information related to the plan and give them a general description of the type of information that is available.

Section 5: Ongoing Communication to Members

Item 5.1 – Member Statements

5.1.1 Frequency

CAP members must receive a statement of their CAP account at least annually.

5.1.2 Format

CAP members must be informed that they can request a paper copy of their statement if the statement is normally provided in another format.

5.1.3 General content

The member statement should include:

- static information (which may vary depending on plan type) – such as: member name, date joined CAP, date of birth, province of employment, beneficiary;
- summary of investments - listing of the investments by option type (eg. investment funds, other securities, GICs);
- investment activity - the opening balance, contributions, net change in the value of the investments and closing balance;
- investment funds – name of fund, number of units, value of unit, total investment value, per cent of total investments;
- summary of transactions:
- ~~transaction details— investment description: date of transaction, transaction type (eg. interfund transfer), amount, unit value (if applicable), units purchased or withdrawn;~~
- how to get specific information on each investment option;
- how to get information about fees and expenses;
- how to get information on transfer options; and
- how to get other information.

If a statement includes the calculation of a personal rate of return for CAP members, the method used to produce the calculation should be described along with information about where the members can get a more detailed explanation of the calculation, if it is not shown on the statement. It should also be distinguished from any rate of return for an investment option (eg. investment fund rate of return) disclosed in the statement.

Item 5.2 – Access to Information

5.2.1 Other information available to CAP members

If not included in the member statement, the following information should be made available to CAP members upon request:

- details on investment funds – where to get fund holdings, financial statements and continuous disclosure information for each investment fund;
- details on GICs such as term of investment, date of maturity, interest rate, current book value plus accrued interest;
- details on each other investment option (see item 4.2);
- contribution details - option description, percentage of contribution to be allocated to option, type of contribution (member voluntary, member required, employer, transfer in);
- transaction details - investment description: date of transaction, transaction type (eg. interfund transfer), amount, unit value (if applicable), units purchased or withdrawn; and
- details on fees and expenses (see item 4.4).

5.2.2 Transfer options

Information on transfer options should be made available to CAP members upon request.

In the event of a freeze on transfer rights, the restrictions should be disclosed in advance of the freeze period unless the freeze was due to unforeseen circumstances.

Changes to the method of making transfers between investment options or the cost associated with such transfers should be communicated to the members.

In the event of a change in available investment options, the manner in which assets will be allocated to new investment options if there is a change in options, service providers or participation, must be communicated to the members.

5.2.3 Report on significant changes in investment options

The CAP sponsor should give notice to the CAP members when there are significant changes in investment options. The notice should include:

- the effective date of the change;
- a brief description of the change and the reasons for the change;

- how the change could impact the member's holdings in the plan (eg. if the change impacts the level of risk of an investment option, this should be described);
- details of any penalties or special transaction fees that may apply to the change;
- a summary of any tax consequences that may arise as a result of the change;
- where to get more detailed information about the change;
- details on what the members must do (if action is required), and the consequences of not taking action; and
- a reminder to the members to evaluate the impact of the change on their current holdings in the plan.

Significant changes in investment options include:

- changes to the nature or operation of existing investment options;
- adding investment options;
- removing or replacing investment options;
- changes in fees and expenses; or
- change in service provider.

5.2.4 Adding an investment option

If an investment option is added, the CAP sponsor must give CAP members the information listed in item 4.2 and the information about transfer options in item 4.3. The members should also be informed of the date the new investment option will be available.

5.2.5 Removing or replacing an investment option

If an investment option is removed, the CAP sponsor must inform CAP members what must be done with their investment in that option. Information on any deadlines for member action and how assets will be allocated to new investment options in the event no action is taken by the member, must also be provided.

If an investment option is replaced, information about the impact of liquidating one investment option and re-investing in a replacement investment option must be provided, (eg, market-value adjustments, early withdrawal penalties, tax consequences, transaction fees, etc.).

5.2.6 Changes in fees and expenses

The CAP sponsor should provide information about significant changes to the expected or actual level of fees and expenses associated with an investment option or ongoing administration and record keeping that are paid by CAP members.

Item 5.3 - Performance reports for investment funds

5.3.1 Frequency

Performance reports for each investment fund and the member portfolio, where applicable, should be provided to the CAP member at least annually.

5.3.2 Report on investment fund performance

The following information should be included in the report on investment performance for each investment fund:

- name of the investment fund for which performance is being reported;
- name and description of the benchmark for the investment fund (for example, the S&P/TSX Composite Index for a Canadian Equity Fund). If the benchmark is a composite of several indices, this should be explained;
- corresponding returns for the benchmarks;
- performance should typically include at least 1, 3, 5 and 10 year performance information, if available;
- if the investment performance is gross or net of investment management fees and fund expenses;
- the method used to calculate the fund performance return calculation should be identified along with directions on where to find a more detailed explanation of the calculation; and
- ~~where available, disclosure of any significant non-adherence to the investment process of any investment fund and reasons; and~~
- a statement indicating that past performance is no indication of future performance.

Section 6: Maintaining a CAP

Item 6.1 – Service providers

6.1.1 Monitoring service providers

The CAP sponsor must prudently monitor all service providers who provide services or advice related to a capital accumulation plan. The criteria used to select the service provider should be considered when monitoring a service provider.

6.1.2 Action if there is unsatisfactory performance by a service provider

Where the CAP sponsor concludes that the performance of a service provider is unsatisfactory, appropriate action must be taken to address the unsatisfactory performance.

Item 6.2 - Investment options

6.2.1 Monitoring investment options

The CAP sponsor must monitor each of the investment options in the plan. Where the CAP sponsor does not have the necessary knowledge and skills or resources to monitor investment options service providers should be used.

The performance of the investment option should be reviewed in relation to the objective of the investment option~~purpose of the CAP~~, and the established standards and benchmarks selected by the CAP sponsor for the type of investment option. The CAP sponsor may choose to get advice from service providers about selecting benchmarks and assessing performance against those benchmarks.

6.2.2 Monitoring investment funds

Where the investment options chosen by the CAP sponsor include investment funds, the CAP sponsor should also consider the following factors when monitoring the investment manager and fund performance:

- the firm's adherence to its stated investment process, associated style (where applicable) and internal controls for compliance with the established investment policy and philosophy;
- performance relative to the established benchmark for the fund and where appropriate other funds with the same objectives and styles;
- organizational stability, strength and continuity of key personnel; and
- timeliness and quality of reporting.

6.2.3 Action if there is unsatisfactory performance of investment options

The CAP sponsor must take appropriate action where the performance of a selected investment option is unsatisfactory.

When deciding on what action may be appropriate as a result of unsatisfactory performance, the CAP sponsor should consider:

- the length of time performance has been unsatisfactory;
- any other deficiencies in how the investment option operates;
- ~~any preferences voluntarily indicated by members;~~
- the effect taking such action would have on the members (eg. whether there would be tax consequences);
- remaining investment options available in the CAP; and
- the availability of alternative investment options.

Item 6.3 – Administration

6.3.1 Monitoring of records

The CAP sponsor should monitor how well the plan's records are maintained.

If the records are maintained internally, quality may be monitored by:

- reviewing CAP members' complaints about the records; and
- periodic audit; or
- review by a service provider.

If a service provider maintains the records, quality may be monitored by:

- reviewing the members' complaints about the records; and
- periodic audit;
- requiring an annual certification regarding the appropriateness of the controls, processes and systems employed; or
- review by an unrelated service provider.

Item 6.4 – Decision making-tools

6.4.1 Reviewing decision-making tools

The CAP sponsor must periodically review any decision-making tools provided to CAP members or that the members are encouraged to use to ensure that they remain relevant to the type of plan and are appropriate for the members (see item 3.1.3).

Item 6.5– Investment advice

6.5.1 Monitoring service providers who provide investment advice

Where applicable, a CAP sponsor must monitor the performance of advisors the CAP sponsor has an arrangement with or to whom the CAP sponsor has referred CAP members.

Because the advisor’s primary relationship is with each member, it will not be possible or practical for the CAP sponsor to directly monitor the quality of the advice being provided.

The CAP sponsor should monitor the advisor using:

- the criteria used to select the advisor;
- any complaints arising from the members; and
- any complaints arising from the CAP sponsor or other service providers employed by the CAP sponsor.

Section 7: Changing the Purpose of a CAP

If the CAP sponsor decides to modify the purpose of a capital accumulation plan, the modified terms of the plan must be consistent with the modified purpose of the CAP.

The decision to change the purpose of the plan and the modified purpose of the plan must be documented and the decision and the impact that the decision will have on CAP members must be ~~clearly~~ communicated to the members prior to taking effect. |

Section 8: Termination

Item 8.1 – Terminating a CAP

~~The termination of a CAP must be done in accordance with the terms of the plan and any relevant legal requirements.~~

8.1.1 Communicating the termination of a plan to CAP members

If a capital accumulation plan is terminated, the CAP sponsor should promptly provide information to CAP members regarding:

- the options available to each member;
- any actions that are required in respect of their options;
- any deadlines for member action;
- the manner in which assets will be liquidated or distributed;
- any default options that may apply if no action is taken; and
- the impact termination of the plan will have on each investment option (eg. the tax consequences, any market value adjustments, early withdrawal penalties or associated fees).

Item 8.2 – Terminating a CAP Member

~~The termination of a CAP member must be done in accordance with the terms of the plan and any relevant legislative requirements.~~

8.2.1 Communicating to CAP members on termination

If a CAP member terminates from a plan (eg. because of termination of employment, retirement or death), the CAP sponsor must promptly provide information about:

- the options available to the member;
- any actions the member must take;
- any deadlines for member action;
- any default options that may be applied if no action is taken; and

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- the impact that the termination of plan membership will have on each investment option (eg. the tax consequences, any market value adjustments, early withdrawal penalties or associated fees).

In the event that a CAP member terminates because of death, this information should be given to the member's designated beneficiary or personal representative.

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Proposed Strategy for Implementation of the Guidelines for Capital Accumulation Plans

The proposed *Guidelines for Capital Accumulation Plans* issued for comment by the Joint Forum of Financial Market Regulators (Joint Forum) reflect the expectations of regulators, represent existing industry practices, and are intended to support the continuous improvement and development of industry practices related to Capital Accumulation Plans (CAPs).

While it is the expressed desire of the Joint Forum that the guidelines should not result in additional regulation, throughout the process of developing the guidelines, regulators and stakeholders have identified issues related to regulatory harmonization. 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: the Canadian Association of Pension Supervisory Authorities (CAPSA); the Canadian Council of Insurance Regulators (CCIR); and the Canadian Securities Administrators (CSA). The regulatory initiatives are needed to ensure that there is a similar regulatory result for all CAP products and services regardless of the regulatory regime that applies to them. As such, the Joint Forum is developing a strategy that will address implementation issues that have been identified through the process of developing the guidelines.

The direction that is being considered for the implementation of the guidelines requires action in the securities, pension and insurance sectors. The proposed strategy for implementing the guidelines is as follows:

- In the securities sector, it is proposed that the CSA consider providing relief from prospectus and registration requirements based primarily on the guidelines.
- In the insurance sector, CCIR representatives have initiated discussions with the Canadian Life and Health Insurance Association (CLHIA) about incorporating the guidelines, once approved, into the CLHIA standards structure in order to encourage adoption of the guidelines by CAP sponsors using insurance products and services.
- In the pension sector, it is proposed that CAPSA adopt the guidelines for member directed defined contribution pension plans. CAPSA has also advanced proposals through a consultation process on proposed recommendations for changes to the investment rules under the Pension Benefits Standards Act (Canada) that would facilitate the implementation of the guidelines. The proposed recommendations can be found in the consultation paper *Investment Rules for Pension Plans – Issues*

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related to the application of the 10 percent concentration rule on CAPSA's website: www.capsa-acor.org. In those jurisdictions that have not adopted the federal investment rules and in jurisdictions where changes to the federal investment rules do not automatically result in changes to the jurisdiction's investment rules, changes to existing investment regulations may also be required.

The Joint Forum invites comments on whether the proposed strategy outlined above will effectively address the implementation issues that have been identified so that a similar regulatory result can be achieved for all CAP products and services. The Joint Forum also invites submissions on additional implementation issues that need to be addressed.