

# ACPM · ACARR

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

April 20, 2004

Mr. John Stevenson  
Secretary  
Ontario Securities Commission  
20 Queen St. W.  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario  
M5H 3S8

Dear Sirs/Mesdames:

## **Re: Ontario Securities Commission - Fair Dealing Model Concept Paper**

The ACPM represents private and public sector pension plan sponsors, administrators and related stakeholders. The ACPM's 750 members across Canada represent plans with total assets of \$300 billion and over three million plan members.

The ACPM's mission is to promote the health and growth of Canada's retirement income system by championing the following principles:

- clarity in pension legislation, regulation and arrangements;
- good governance and administration; and
- balanced consideration of stakeholder interests.

The ACPM has reviewed the proposal published by the Ontario Securities Commission (OSC) and entitled the Fair Dealing Model Concept Paper (the "Model"). In general, the ACPM endorses the initiatives within the Model to bring transparency and clarity to both the nature of the relationship between a member of the public and a financial intermediary, if any, and, the information to be provided to the said client or prospective client. In fact, these same principles underly the recently developed, draft Guidelines for Capital Accumulation Plans of the Joint Forum of Financial Market Regulators, in which the ACPM had much input.

That said, we see some difficulties in applying the Model to the Capital Accumulation Plan (CAP) environment. To begin, a significant number of CAPs are currently structured without a formal role for an investment advisor. An advisor may be engaged by individual plan members but the plan sponsor plays no part in this selection or in the on-going operation of the relationship. In that sense, the structure of the CAP most closely resembles the 'self-managed' approach as described in the Model. The other two types of relationship would rarely apply or if they do so, would apply only to certain aspects of the CAP.

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While there is some similarity to the the operation of many CAPs with the 'self managed relationship', it the hope and expectation of the ACPM that, given the significant time and effort expended by the various stakeholders in developing the draft CAP Guidelines, those Guidelines will govern the responsibilities of the various stakeholders in the CAP, with the possible exception of the advisor engaged by the individual member as discussed below. Indeed, as was discussed at length with the Joint Forum during the development of the CAP Guidelines, the delivery of anything resembling the Model's expectations of an advisor's obligations in the group plan context would be prohibitively expensive and likely result in the destruction of the CAP. As a result, we would strongly appreciate a formal statement from the OSC making clear that the Model is not applicable to CAPs. It should be noted that in a situation in which a plan sponsor engages an advisor to provide investment advice to the plan members, the CAP Guidelines require that the sponsor make clear the role of the advisor, prudently select the advisor and monitor his/her activities.

In those situations in which an advisor is engaged by an individual plan member, it must be remembered that the member's assets within the CAP form only part, and usually small part at that, of the member's overall financial situation. As a result, the relationship quickly falls outside of the realm of the CAP, or indeed any employment relationship vis a vis the plan sponsor, and becomes something more akin to the relationship that a member of the public has with his/her advisor. Again this points to a peripheral role for the Model to the CAP arrangement. That said, any licensed advisor would need to apply the Model to the relationship and thus the plan member would enjoy the benefits, outside of the CAP context.

The ACPM endorses the principles of fair dealing and transparency in financial transactions. In that sense we commend the OSC for its proposal. We note that the proposal currently has the support of just one jurisdiction which is clearly problematic. The ACPM strongly endorses uniformity in securities regulation and urges the OSC to coordinate this initiative with the uniformity initiatives currently under consideration by the Canadian Securities Administrators.

Yours truly,

The Association of Canadian Pension Management

(ORIGINAL SIGNED BY):

Michael Beswick  
Chair, Advocacy and Government Relations Committee

cc: Mr. Davin Hall, CAPSA Secretariat  
Mr. Stephen Bigsby, ACPM