

Chapter 6

Request for Comments

6.1.1 CSA Notice 81-404 - Request for Comment on Joint Forum Guidelines for Capital Accumulation Plans - Proposed Guidelines for Capital Accumulation Plans prepared by the Joint Forum of Financial Market Regulators

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.

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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Request for Comments

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

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Guidelines for Capital Accumulation Plans Backgrounder

- The Joint Forum of Financial Market Regulators' (Joint Forum) was established in January 1999 by the Canadian Securities Administrators (CSA), the Canadian Council Of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA), as a mechanism for addressing issues of common interest arising from the growing integration of the financial services sector.
- The mandate of the Joint Forum is to pro-actively facilitate and coordinate the development of harmonized, cross-sectoral and cross-jurisdictional solutions to financial services regulatory issues. Since its inception, the Joint Forum has focussed on strengthening consumer protection through regulatory harmonization and enhanced consumer disclosure, and through co-ordinated and improved intermediary proficiency standards.
- The Joint Forum is chaired by David Wild, Chair of the Saskatchewan Financial Services Commission and Superintendent of Pensions
- The Joint Forum Working Committee on Capital Accumulation Plans was established in 1999 to examine the adequacy of investment information and assistance provided to members of capital accumulation plans where members are able to make investment choices.
- Three million Canadians belong to over 60,000 CAPs. Over seventy per cent of these plans allow members to make investment choices.
- In April 2001, the Joint Forum released for consultation a discussion paper entitled *Proposed Regulatory Principles for Capital Accumulation Plans*.
- In response, 44 submissions were received from stakeholders across Canada. Based on the responses revised principles were developed and approved by CAPSA, CCIR, the CSA and the Joint Forum in April 2002.
- An industry task force, drawn from the membership of insurance, pension and securities industry stakeholder associations as well as employer, consumer, labour and retiree groups, was assembled to assist the committee in developing detailed guidelines based on the revised principles.
- CAPSA, CCIR, the CSA and the Joint Forum approved the guidelines for consultation on April 2, 2003.

**PROPOSED GUIDELINES
FOR
CAPITAL ACCUMULATION PLANS**

April 2003

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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 association members, and their spouses.

Item 1.2 – The purpose of the guidelines

These guidelines reflect the expectations of regulators, 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.

These guidelines apply to all capital accumulation plans. However, the investment options and educational tools chosen may vary depending on the 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 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 providers 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 under National Instrument 81-102 Mutual Funds, if the investment fund is a mutual fund under securities law.

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. 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.

3.1.3 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 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 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 costs associated with accessing or using any investment information, decision-making tools or investment advice provided by the CAP sponsor.

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.

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 3.7 - 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 ought to obtain 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;
- investment choice responsibilities; and
- names of service providers 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
- ought to obtain 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

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;
- 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

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.

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 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;
- 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); 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;
- 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 to monitor investment options service providers should be used.

The performance of the investment option should be reviewed in relation to the 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
- 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.

**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 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.