

CSA NOTICE 81-405**NOTICE AND REQUEST FOR COMMENT****Proposed exemptions for certain capital accumulation plans****May 28, 2004****Introduction and background**

We, the members of the Canadian Securities Administrators (CSA or we), are publishing for comment a proposed registration and prospectus exemption for certain capital accumulation plans (the proposed exemption). This proposed exemption will implement certain parts of the Guidelines for Capital Accumulation Plans (the guidelines), which were developed by the Joint Forum of Financial Market Regulators (the Joint Forum), and approved for publication by the CSA, the Canadian Council of Insurance Regulators (CCIR), and the Canadian Association of Pension Supervisory Authorities (CAPSA).

The guidelines apply to tax assisted capital accumulation plans such as defined contribution pension plans where plan members make investment choices, and group registered retirement savings plans.

Together with the Joint Forum, in April 2001 the CSA published for comment *Proposed Regulatory Principles for Capital Accumulation Plans* (the principles). The Joint Forum received 44 submissions. Following on from these principles, the Joint Forum developed the detailed guidelines describing standards for operating certain capital accumulation plans. Together with the Joint Forum, we published *Proposed Guidelines for Capital Accumulation Plans* for comment in April 2003, and received 26 written submissions. The Joint Forum also held 12 focus group sessions with 126 plan sponsors, service providers and plan members attending, to obtain further comments about the guidelines.

After considering the comments, and making a number of changes to the guidelines, the Joint Forum has today published the final guidelines, which were approved for publication by the CSA, CCIR, and CAPSA. The regulators expect that plan sponsors, and service providers would follow the guidelines by December 2005. A copy of the guidelines can be found on the websites of CAPSA (www.capsa-acor.org), CCIR (www.ccir-ccra.org) and the Joint Forum (www.jointforum.ca) websites, and the websites of certain securities regulators including British Columbia, Ontario, Alberta, Saskatchewan and Québec.

Securities laws implications

In most provinces, existing securities laws require a plan member to receive investment advice from a person registered to trade under securities legislation, and to receive a prospectus in

connection with the distribution of many different securities, such as mutual funds, that the member could acquire through participating in a plan.

The guidelines address many of the regulatory concerns that the CSA has about how plan members can get adequate information and tools to help them make informed investment decisions. We believe it is appropriate to provide certain dealer registration and prospectus exemptions for trades in mutual funds that occur in tax-assisted capital accumulation plans, provided that there is compliance with the parts of the guidelines that substitute for receiving advice from a registrant, and prospectus disclosure.

Form of the proposed exemption

In most provinces, we expect to adopt the proposed exemption in the form of a blanket exemption from the dealer registration and the prospectus requirements for certain trades in mutual fund securities. In Ontario, the conditions described in this proposed exemption will form the basis of a staff notice. That staff notice will set out the circumstances in which Ontario staff expects they could recommend that the securities regulator grant discretionary relief to a person who applied.

The CSA is working on a harmonized national exemptions rule, which it expects to publish some time this year. We are contemplating that at some point this proposed exemption might be incorporated into that proposed national instrument.

Summary of the proposed exemption

The proposed exemption would:

- apply only to mutual fund securities
- harmonize the treatment of mutual funds and segregated funds as investments within a capital accumulation plan
- ensure that plan members receive information that is appropriate for them, about the mutual funds they can acquire through the plan
- require plan sponsors (or someone they have contracted with to provide this service) to provide certain information, tools and documents to plan members to enable informed decision making
- exempt mutual funds from the prospectus requirements for mutual funds sold to members of certain capital accumulation plans, provided that the funds comply with certain investment restrictions
- remove existing barriers to trading mutual fund securities with members of capital accumulation plans where there is no valid regulatory reason for doing so.

Related securities legislation

In some CSA jurisdictions, such as Nova Scotia and Saskatchewan, the information and documents that members may receive under the proposed exemption to enable them to make informed decisions, may constitute an offering memorandum as defined in the securities legislation of those jurisdictions. That definition includes a document that provides information concerning the business and affairs of an issuer and has been prepared to assist purchasers to make an investment decision where the securities are sold in reliance on a prospectus exemption.

In Nova Scotia, the definition does not include documents whose content is prescribed by statute or a regulation. If the plan sponsor provides members with the mutual fund's prospectus or a prescribed form of offering memorandum to satisfy the requirements in the proposed exemption, these documents would not likely constitute an offering memorandum as defined in Nova Scotia's securities legislation.

In addition, some provinces, such as Saskatchewan, have filing requirements for these documents.

If the documentation that a plan sponsor provides is an offering memorandum, the documentation must include a statement that describes:

- the statutory rights of rescission or damages for a misrepresentation that are available under that legislation, and
- the time limits within which a member must commence an action to enforce these rights.

In addition, certain jurisdictions, such as Alberta and Ontario have existing rules for capital accumulation plans. The Alberta Securities Commission (ASC) expects to repeal its existing rule and replace it with the proposed exemption. The Ontario Securities Commission expects to retain its existing exemption.

Specific questions of the ASC concerning its existing exemption for capital accumulation plans

As mentioned above the ASC is proposing to repeal its current exemption for capital accumulation plans namely, sections 68 and 123 of the ASC Rules (General) and ASC Policy 5.5 *Capital Accumulation Plans*. Under this exemption a capital accumulation plan must consist of an "approved security". An approved security is a security of the employer or an affiliate of the employer, a security identified as exempt security under the *Securities Act* (Alberta) or a security that at the time of purchase is permitted to be purchased by a registered insurance company or trust company.

The ASC invites comments from those who have made use of the Alberta exemption as to whether the replacement of the proposed exemption would constitute an improvement or could give rise to concern.

Specific questions of the CSA concerning the proposed exemption for certain capital accumulation plans

1. Sub-paragraph 2.1(d) of the proposed exemption requires that the plan sponsor provide an explanation to members about any fees or costs associated with making an investment decision. The guidelines provide in the textbox in section 4.4 that a sponsor can, where appropriate, aggregate fees and expenses when reporting to members.

The CSA invite comments on whether plan sponsors should be able to aggregate fees when reporting to plan members. If the answer is yes, under what circumstances.

2. Staff in Québec have concerns about the impact of the proposed exemption on the protection generally afforded to investors under securities legislation. For example, the Québec *Securities Act* provides for different types of recourse that normally flow from the dealer registration and prospectus requirements under the Act. This includes recourse in damages for misrepresentation in a prospectus. This recourse, in certain cases, may no longer be applicable for members that acquired mutual fund securities through a capital accumulation plan. In these circumstances, members would only be able to rely on the general recourses available under the *Civil Code of Québec*.

In addition, members of a capital accumulation plan that acquire securities under the proposed prospectus exemption would not have certain other rights, such as the right of withdrawal from a purchase of securities pursuant to a prospectus.

Finally, other mechanisms that investors may use when there are issues of dealer misconduct such as mediation and investor protection funds, in some instances may also not be available to members of capital accumulation plans.

The CSA would welcome comments on these specific investor protection issues.

Request for comments

We welcome your comments on the proposed exemption.

Please submit your comments in writing on or before July 30, 2004. If you are not sending your comments by email, also forward a diskette containing the submissions (in Windows format, Word).

Address your submission to the following CSA member commissions:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Deliver your comments **only** to the address that follows. Your comments will be forwarded to the remaining CSA member jurisdictions.

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and to

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Autorité des marchés financiers
800, square Victoria, 22nd floor
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e-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Questions

Please refer your questions to any of:

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The text of the proposed exemption and the distribution report follows or can be found elsewhere on a CSA member website.