ACPM/PIAC Task Force on Defined Contribution Plan Regulation

# Proposed Regulatory Principles for Capital Accumulation Plans (Discussion Paper)

Submission to the Joint Forum of Financial Market Regulators' Working Committee on Investment Disclosure Capital Accumulation Plans

ACPM
The Association of Canadian Pension Management

Pension Investment Association of Canada

October 2001

October 19, 2001

Ms. Sherallyn Miller
Superintendent of Pensions
Pension Standards Branch
Ministry of Skills, Training and Labour
360 West Georgia Street, Suite 870
Vancouver, B.C. V6B 6B2

Dear Ms. Miller:

***Proposed Regulatory Principles For Capital Accumulation Plans* – Report of the Joint Forum of Financial Market Regulators**

The ACPM/PIAC Joint DC Task Force (the "Task Force") is pleased to enclose its submission to the Joint Forum of Financial Market Regulators' Working Committee on Investment Disclosure in Capital Accumulation Plans (the "Joint Forum"), in response to the Joint Forum's Discussion Paper entitled "Proposed Regulatory Principles for Capital Accumulation Plans" (the "Report"). Thank you for the opportunity to comment on the Report.

**Who We Are**

The Task Force was formed by the Association of Canadian Pension Management (ACPM) and the Pension Investment Association of Canada (PIAC) in 2000 and previously made a submission to the Joint Forum dated August 31, 2000, entitled *"Report on Defined Contribution Plan Regulation"*. Details of who we are are found in the report proper.

The objective of the Task Force, is to provide a considered, thoughtful and broad-based position, with respect to Capital Accumulation Plans ("CAPs"), that fairly represents all stakeholder interests in the CAP industry. CAP stakeholders include: plan sponsors/employers, plan members, plan administrators and CAP providers, among others.

The Task Force is comprised of members of the ACPM and PIAC with a broad range of industry experience. Please refer to the attached Submission for a complete list of Task Force members. This Submission is based on their collective experience as stakeholders in the CAP industry regulated by pension, insurance and securities regimes.

**The Report**

We commend the efforts of the Joint Forum to develop principles and rules in respect of CAPs, particularly in view of the growth of CAPs and the lack of clarity of stakeholder obligations in respect of CAPs under current legislation.

Our previous submission to the Joint Forum is evidence of our interest in the area on behalf of our respective members and all stakeholders in the CAP industry. The efforts of the Joint Forum in dealing with such CAP issues are particularly welcome as we hope that uniformity in new regulation across Canada will be more likely.

While the Task Force endorses the efforts of the Joint Forum, we do have many comments to make about the specific proposals in the Report. However, before these specific proposals can be developed, we believe that there is

a need to come to an understanding of certain fundamental principles applicable to the CAP regulatory framework. These principles can be summarized as follows:

1. The CAP regulatory framework must recognize and accommodate the CAP promise. The CAP promise is to provide a cost effective and convenient vehicle for the accumulation of savings for financial needs, focussing on but not necessarily limited to retirement. The CAP promise is **not** to ensure the financial security of members in their retirement.

2. There must be better recognition of the distinct roles of the employer as Plan Sponsor and as Administrator in relation to a CAP. Currently the Report blurs the distinction between these roles which causes confusion and was the source of many objections to statements/recommendations in the Report.

3. The CAP regulatory framework must acknowledge both member responsibilities and Administrator responsibilities under a CAP. In the Report, the Joint Forum refused to provide a "safe harbour" for employers and Administrators as is found under ERISA. The Task Force believes we should move beyond the debate of the merits of ERISA-type safe harbours and focus on the key issue – a recognition and understanding that CAP members must take responsibility for their investment decisions, risk tolerances etc. Accordingly there should be an appropriate and reasonable limit to employer/Administrator liability with regard to the results of member investment decisions.

4. We question the need for a mandatory Know Your Client (KYC) rule and mandatory investment advice for all CAPs. It is our belief that predominant industry practices with respect to investment education and disclosure are more than adequate.

5. The regulatory framework for CAPs should create a "level playing field" by harmonizing pension, securities and insurance regulatory regimes without adding to the regulatory burden on CAPs. If rules are properly harmonized compliance with one regime should obviate the need for compliance with additional requirements of other regimes.

The above principles, plus other specific comments on the Report, are discussed in greater detail in our Submission.

Although we may disagree with some of the statements and recommendations made in the Report, we wish to recognize the efforts of the Joint Forum in preparing the Report and, in particular, in making the process for developing regulatory principles for CAPs an open forum to ensure a rational and fair result for all concerned. This is an important matter that needs broad discussion and debate.

The Task Force would welcome the opportunity to work with the Joint Forum in further developments on this important initiative or clarification of anything within this Submission.

Respectfully submitted on behalf of the Task Force

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## Introduction

The ACPM/PIAC Joint DC Task Force (the "Task Force") has prepared this submission to the Joint Forum of Financial Market Regulators' Working Committee on Investment Disclosure in Capital Accumulation Plans (the "Joint Forum"), in response to the Joint Forum's Discussion Paper entitled "Proposed Regulatory Principles for Capital Accumulation Plans" (the "Report").

### Who We Are

The Task Force was formed by the ACPM and PIAC in 2000 and previously made a submission to the Joint Forum dated August 31, 2000, entitled *"Report on Defined Contribution Plan Regulation"*.

The objective of the Task Force, both in its prior submission and in the enclosed submission, is to provide a considered, thoughtful and broad-based position with respect to Capital Accumulation Plans ("CAPs"), that fairly represents all stakeholder interests in the CAP industry. CAP Stakeholders include: plan sponsors, plan members, plan administrators and CAP providers, among others.

The Task Force is comprised of senior members of the ACPM and PIAC. Please refer to Appendix "B" of this Submission for a complete list of Task Force members. This response reflects the collective experience of the Task Force members as stakeholders in the CAP industry regulated by pension, insurance and securities regimes.

The Association of Canadian Pension Management's (ACPM) mission is *"to promote the growth and health 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 Pension Investment Association of Canada (PIAC) is the representative organization for pension funds in Canada in matters relating to investment. PIAC presently represents 138 Canadian pension funds that manage over $500 billion in assets for the benefit of more than eight million Canadian beneficiaries. PIAC's mission is *"to promote the financial security of pension fund beneficiaries though sound investment policy and practices"*.

## Executive Summary

Our comments on the Report stem from the Task Force members' beliefs and understandings about the nature of CAPs, what they are and how they should be regulated. We believe that the Joint Forum and the Task Force (and for that matter the CAP industry) need to come to an understanding as to certain fundamental principles applicable to the regulatory framework for CAPs before the Report can be more fully developed. These principles can be summarized as follows:

1. The CAP regulatory framework must recognize and accommodate the CAP promise. The CAP promise is to provide a cost effective and convenient vehicle for the accumulation of savings for financial needs,

focussing on but not necessarily limited to retirement. The CAP promise is **not** to ensure the financial security of Members in their retirement.

2. There must be better recognition of the distinct roles of the employer as Plan Sponsor and as Administrator in relation to a CAP. Currently the Report blurs the distinction between these roles which causes confusion and was the source of many objections to statements/recommendations in the Report.

3. The CAP regulatory framework must acknowledge both Member responsibilities and Administrator responsibilities under a CAP. In the Report, the Joint Forum refused to provide a "safe harbour" for employers and Administrators as is found under ERISA. The Task Force believes we should move beyond the debate of the merits of ERISA-type safe harbours and focus on the key issue – a recognition and understanding that CAP Members must take responsibility for their investment decisions, risk tolerances etc. Accordingly there should be an appropriate and reasonable limit to employer/Administrator liability with regard to the results of Member investment decisions.

4. We question the need for a mandatory Know Your Client (KYC) rule and mandatory investment advice for all CAPs. It is our belief that predominant industry practices with respect to investment education and disclosure are more than adequate.

5. The regulatory framework for CAPs should create a "level playing field" by harmonizing pension, securities and insurance regulatory regimes without adding to the regulatory burden on CAPs. If rules are properly harmonized compliance with one regime should obviate the need for compliance with additional requirements of other regimes.

With respect to the questions raised by the Joint Forum, we believe that the statements made in the Report about the existing regulatory environment are for the most part accurate with some points of clarification required, as described in further detail in this Submission.

With respect to the proposed regulatory principles and their appropriateness and adequacy to address the needs of CAP Members, Administrators, employers and regulators, we have a number of detailed comments, highlights of which are as follows:

- The Report needs to distinguish more clearly between an Administrator's duties and an employer's duties as Plan Sponsor.

- We agree that the Items listed under *Initial Disclosure* and *Continuous Disclosure* are properly the responsibility of the Administrator, but certain items require clarification and elaboration.

- The Report needs to better acknowledge predominant industry practices in meeting the Administrator's duties with respect to investment disclosure.

- The Administrator's "investment monitoring" responsibilities should extend only to the CAP as a whole, not to suitability of investments for individual Members.

With respect to implementation, we believe that the best method of implementing the finalized regulatory principles for CAPs would be accomplished through the development of harmonized best practice guidelines.

Working with the representatives from the CAP industry, the goal of a joint industry/regulator solution would be to clarify and standardize requirements for CAPs through best practice guidelines.

We are reluctant to encourage further regulations for this industry (other than necessary conforming amendments to legislation and any necessary changes to clarify the exemptions available under securities laws) believing that sufficient regulatory infrastructure already exists and believe that communication of best practices through the industry is a better starting point which should be followed by regulation only if unsuccessful.

## Fundamental Principles Applicable to CAPs

In order to better explain our response to the Report, we thought it important to articulate, at the outset, a number of fundamental principles that we believe should apply to the regulatory framework for CAPs. Understanding these principles will help to explain many of the points of departure and differing viewpoints between the statements and recommendations of the Report and those made in this Submission.

In the Report, the Joint Forum asked for feedback on (i) the accuracy of statements made in the Report, (ii) the adequacy of the proposed regulatory principles (iii) the best means of implementing the proposed regulatory principles, and (iv) the anticipated costs of implementing the proposed regulatory principles. Our response to these four questions and our more specific comments on the contents of the Report are set forth in Part D of this Submission.

We believe that unless the Joint Forum and the Task Force are able to reach a common understanding of the fundamental principles underlying CAPs, it would be virtually impossible to develop a mutually acceptable industry/regulatory solution to the proper regulatory principles for CAPs. In this regard, we believe that there are five fundamental principles underlying the regulatory framework for CAPs:

1. Understanding the CAP promise;
2. Recognizing the different roles (and duties) of the Administrator and the employer under a CAP;
3. Recognizing both Member and Administrator responsibilities under a CAP;
4. Obviating the need to impose the "know your client" rule and investment advice on all CAPs; and
5. Ensuring a "level playing field" among insurance, securities and pension regulatory regimes.

We have addressed each of these principles separately below.

### 1. Understanding the CAP Promise

First and foremost, any rules developed for CAPs must be consistent with the benefits promised under the CAP. Since CAPs are voluntary arrangements for employers, effective regulation of CAPs should enhance the chances of delivering the promised benefits, it should not change (increase or decrease) the amount or nature of the benefits promised.

The Report attempts to articulate the CAP promise by stating that CAP's are *"primarily intended to ensure the financial security of members in their retirement"*. This promise is a defined benefit pension promise (and we believe it even overstates that promise), **not** the CAP promise.

We articulate the CAP promise as follows:

> *"As a part of an employee's total compensation, to provide a cost-effective and convenient vehicle for the accumulation of savings for financial needs, focussing on but not necessarily limited to retirement."*

The provision of CAPs and other retirement benefits is typically an employer decision, where such plans are but one part of the total compensation employment offering to employees. The result has been that there is great variety in the number and type of retirement/savings plans made available to employees (CAPs being one type). Given that CAPS are discretionary, not mandatory, and given this variety of possible retirement/savings plan arrangements, we think it is most useful to understand CAPs and the CAP promise as being part of a continuum of retirement/savings plans.

We have attached as Appendix "A", a chart that displays this continuum. The continuum ranges from defined benefit ("DB") arrangements at one end (provided for completeness only as a DB plan is not a CAP arrangement), where the level of retirement income is defined, all the way to cash arrangements which are invested in retail products at the other end. In these "cash arrangements", the employer's involvement is limited to paying the employee compensation for investment, or depositing the money to an account of the employee's choice (discount or full service and tax-deferred or non-tax-deferred).

Between these two ends of the continuum lie CAPs which range from those where the employer directs the entire investment program and delivers an accumulated balance at retirement, through a variety of employee investment choice arrangements that can offer a set of investment choices selected by the employer/sponsor, to unlimited investment choice arrangements.[1] We refer to these in Appendix "A" as "Employer Directed DC Plans", "Selected Option DC or Savings Plans", and "Window Savings Plans" respectively. Selected Option DC Plans can offer three or four investment options, a dozen or so, or even 30 to 50 options selected by the employer/sponsor or their agent. Contributions can be employer-only, employee-only or employer-employee, and where employee contributions may be mandatory or voluntary. The diversity of options among CAPs alone is apparent.

We offer the following observations as to this continuum of retirement/savings plans:

- The choice of which, if any, arrangement along this continuum an employer chooses to make available to its employees depends on a whole range of factors, including labour negotiations, work force demographics, competitive pressures, culture, taxation, and the total compensation and benefits philosophy of the owners and/or management.
- Member cost is highest in cash arrangements due to the higher management-expense ratios of retail products. Without the group purchasing power of an employer, higher costs reduce the ultimate level of retirement income to members.
- The Administrator's investment responsibilities under a CAP (if a set of options is provided as part of the plan design determined by the employer) include: providing a reasonable range of investment options; prudent management of these options; and provision of reasonable investment information to assist Members in their investment decision-making responsibilities.

1 In our view, employer Direct DC Plans should also be considered as CAPs, although for the balance of this Submission we shall use the term "CAPs" to refer only to DC plans allowing investment selection by Members, which is comparable to the definition of CAPs used in the Report.

- The Members' investment responsibilities under a CAP include: educating themselves by reading all the information provided by the employer, Administrator or CAP Providers; augmenting this information (depending on their investment knowledge); determining their asset allocation (the biggest determinant of ultimate retirement balances); choosing the funds appropriate for them; and monitoring their investments to ensure they continue to meet their individual risk and return investment objectives that are unique to each members' risk tolerance and lifestyle objectives.
- In the current "group" market (which is very competitive), in a large majority of cases CAP Providers ensure that Members receive overall information on plan design and how the plan works, investment disclosure, profiles of the investment options, articulation of what decisions are required by members, decision-making tools, and performance commentaries.

We strongly encourage the Joint Forum to review and consider this continuum. This continuum is useful to understand the CAP promise and how it differs from the benefit promise under other types of retirement/savings plans.

We stress throughout this Submission that if the regulatory burden of offering CAPs becomes too onerous or unclear, employers will move to arrangements on this continuum that will minimize or clarify the burden. We see this as a factor in the choice of Group RRSPs over DC pension plans. Certainly small employers, who offer the bulk of the Group RRSPs, are not in a position to bear an increased cost and liability burden.

We believe that there is a high value on strengthening the retirement income system by encouraging the growth of low cost group plans, including CAPs Plan members save with the lower cost of group arrangements. Certainty in the obligations of employers and Administrators will strengthen the system; lack of clarity and/or the addition of costly obligations will weaken it.

## 2. Recognizing the Different Roles (and Duties) of the Administrator and the Employer/Sponsor under a CAP

In our view, the Report in some instances fails to properly recognize the different roles and responsibilities of various CAP Stakeholders. We have attempted to articulate some of the differences in roles and responsibilities, as any proposals for the regulation of CAPs must take these into account.

We use the term "Administrator" to refer to the entity with the legal responsibility for the administration (not the design) of the CAP. For example, in the case of RPPs, the entity legally responsible for plan administration and compliance is the Administrator, who is often also the employer. However, the legal responsibility of an Administrator is separate and distinct from the role an employer plays in its capacity as plan sponsor responsible for the plan design.

We use the term "employer" to refer to the employer in its capacity as Plan Sponsor throughout this Submission and the term "Plan Sponsor" has a corresponding meaning.

CAPs are usually offered through insurers, trust companies or securities dealers. The insurer, trust company or securities dealer as the case may be, is referred to herein as the "CAP Provider".

The Report makes references to fiduciary duties of employers and Administrators to employees and CAP Members throughout. We are concerned about the accuracy of those references and wish to clarify them. For example:

- The Report states that the Administrator has an overriding fiduciary duty **to the plan members** with respect to the administration of the plan and investment of the fund. In law, however, the Administrator has a fiduciary duty to all CAP Stakeholders (which includes the employer).

- The legal duty of the Administrator under pension legislation is a statutory duty of care, not a fiduciary duty. Fiduciary duties arise at common law and are fact specific – whether or not a fiduciary duty exists depends on facts such as the relationship of the parties and their reasonable expectations.

- With regard to non-RPP CAPs, there is no legislation and no certainty under common law as to the duty of employers, and we have serious concerns with the Joint Forum's simple assumption of that a fiduciary duty exists in all cases and in all circumstances. If there is such a duty, it is a common law duty and therefore will differ somewhat from the legislated duty of Administrators under pension legislation. We hope that some clarity to resolve this uncertainty will be an integral part of any final report of the Joint Forum.

- There is ample case law supporting the proposition that the employer/employee relationship is not *per se* fiduciary. Nor does an employer have any fiduciary duty with respect to the establishment or maintenance of a DC Plan (or any other CAP). If it did, it could never make an adverse amendment, could never terminate a plan, and would always have to give the maximum contribution under a CAP because the employer would have a duty to act in the best interests of the plan members. This is clearly not the case and pension legislation and jurisprudence (both Canadian and American) recognizes the dual role of the employer as Administrator and as Plan Sponsor, and recognizes the employer's ability to act in its own self-interest in areas such as plan design and plan amendments.

- There is no clarity in the law as to the duty of an agent of the employer/Administrator except in pension legislation, where the agents have the same standard of care as the Administrator. This duty is even more unclear in the case of non-RPP CAPs where the employer does nothing more than establish the plan and remit contributions.

- The assumption in the Report appears to be that the employer is always the Administrator. This is not always the case. For example, with respect to group RRSPs the employer is seldom more than the agent of the employees in establishing the plan and it appears more likely that the CAP Provider is the Administrator.

We believe the state of the law as to fiduciary duty or standard of care as it applies to CAP Providers, employers (as Plan Sponsors), Administrators and their agents should be considered carefully before assumptions are made and obligations imposed on the basis of those assumptions. In short, the Report would benefit from greater clarity in this area.

In our view, the role of the Administrator should be to:

- Select and monitor the CAP Provider and other service providers to the CAP.

- Select and provide a reasonable range of investment options (if the CAP has been designed by the employer to provide such options).

- Establish the frequency and cost of switching among investment options (convenience and low cost should be factors in these decisions).

- Monitor the investment options offered for continued appropriateness for the CAP as a whole. We submit that this monitoring should include:
  - taking reasonable steps to ensure compliance with applicable laws and regulations;
  - organizational and investment process/philosophy developments within the investment management firm; and
  - CAP Members' servicing requirements (as established by the employer).

  In the Report, the monitoring requirement appears to focus on investment performance alone, which we believe is misguided. While investment performance needs to be tracked, it is the end product of the investment people and process of a firm. Often investment people and process developments deteriorate before investment performance. Undue focus on performance results to the exclusion of the people/process causal factors is inappropriate monitoring. We urge the Joint Forum to change the singular focus on investment performance in the Report to the causal factors of investment performance.

  We further note that a focus on the causal factors of performance (such as investment strategy, people and processes) is more consistent with the current method of regulating pension and trust investments under "prudent person" rules. Under such rules, prudence is a test of the decision making or conduct process, not of ultimate performance or results.

- Ensure that easily accessible (initial and ongoing) disclosure as to the investment options is made available to the Members.

- Ensure the members receive basic information as to the nature of the CAP, the different type of investments, risk/reward strategies, and investment terminology. All communications should be in a user-friendly form and be of a frequency appropriate for CAP Members.

- Establish the default investment option for CAP Members. This applies to Members who do not make a choice for investment of their contributions. This is one area missing in the Report that we believe should be addressed, i.e. the right of the Administrator to select a default option and to not be responsible for the investment performance of that option if it is not suitable for the individual investor's needs.

  Current practices for default options range from money market funds or GIC's to balanced portfolio investment funds. The choice of the default option depends on a number of factors, including: whether the CAP is mandatory or voluntary, the CAP Members' investment knowledge, employer vs employee contributions, and the paternalism of the employer. The choice of money market or GIC's as the default option might indicate that it is the Administrator's view that investment decisions are the sole responsibility of the Members and that Administrators do not have a place in those decisions. Conversely, a choice of balanced fund might indicate a more paternalistic Administrator view that wishes to protect those Members where, for whatever reason, they do not make an investment decision.

We do not recommend the Joint Forum mandate one default investment option as right for all situations but do believe the Joint Forum should consider it as an Administrator's responsibility and provide some protection to Administrators who prudently select default options.

We also believe that the employer (as Plan Sponsor) may **choose** to make investment advice or financial planning/ tools in these matters available to employees to assist them in their decision-making process. Generally accepted practices in the pension industry are developing in this direction. We believe strongly, however, that such services should not be mandatory.

In particular, no employer can or should assume responsibility for addressing the individual financial circumstances of employees. If addressing the individual financial circumstances of employees is or should be an employer responsibility, there is no logical reason why it should be restricted to employers who offer CAPs. If it is an obligation assumed only where a CAP is available to the employees, no prudent employer would offer a CAP.

### 3. Recognizing both Member and Administrator Responsibilities under a CAP

The Report concentrates on the obligations of employers (as Plan Sponsors and Administrators) under CAPs and does not acknowledge that the Members also have responsibilities. Unlike DB pension plans, where the employer bears all the risk and the responsibility of investment performance, under CAPs the Member bears the risk and the responsibility of directing his or her investments (see discussion under ***Understanding the CAP Promise*** in Section 1 above). Members of CAPs and indeed all employees, do and must take responsibility for major financial decisions in their lives, including the level of savings and their risk tolerance. In our view, a major shortcoming of the Report is that it fails to acknowledge Members' responsibilities under a CAP.

To illustrate our concerns in this area, the Report expressly states (at page 27) that "it is not proposed that plan administrators and employers would be held harmless for investment losses of members...." We do not understand the rationale behind this decision. It would be appropriate and most helpful to provide greater clarity as to where the liability of an employer or Administrator begins and ends.

In the Report, the Joint Forum indicated that it was **not** prepared to endorse a "safe harbour" for employers/Administrators in respect of CAPs, similar to that provided under ERISA. We suggest moving beyond a debate over the merits of ERISA-type "safe harbours" and instead focusing on the key issue – that being a recognition that Members have responsibility for their own individual investment decisions. We strongly believe that it is important to clearly articulate that **both** CAP Members and the Plan Sponsor/Administrator have different legal responsibilities under the CAP. Such clarity would effectively provide that the Plan Sponsor/Administrator would not have any liability for outcomes based on Member responsibilities (investment decisions).

The key point is that it is necessary to clarify the current uncertainty of the circumstances under which an employer or Administrator should be liable for investment losses incurred by Members, or for the failure of their investments to meet their expectations.

We submit that the scope of Plan Sponsor/Administrator legal responsibility can and should be determined

by basic legal principles, in particular the concept that a party must be liable for damages resulting from the breach of a legal duty owed to another person. Consequently, it is critical to determine the scope of the legal duties owed by an employer and/or Administrator to CAP Members. This is an issue that the Report clearly identifies (again, at page 27) with the statement: "These principles are designed to meet the legitimate concerns of employers and administrators that their responsibilities are currently unclear...". We agree that this is a very real concern of employers and Administrators, and we applaud the Joint Forum's attempt to clarify this area. We have set out under **Recognizing the Different Roles (and Duties) of the Employer and the Administrator under a CAP** (Section 2 above) what we believe should be the scope of the responsibilities of the employer/Administrator.

We submit that, as a general matter, **employers** (as Plan Sponsors) should **not** be responsible for the investment performance of a CAP, in particular for investment losses of Members. In our view, there is no sound legal basis or any legitimate policy consideration for such liability. The nature of the "CAP promise" does not extend to a general guarantee of investment returns or an indemnity against investment losses by the employer.

Further, the role of the employer in a CAP is not and ought not to be of a nature that implies liability for Member investment losses or failure to meet Member expectations. Clearly, there is no legal basis for the employer to have such liability in cases where an employee invests his or her income in a self-directed retirement plan (or other "external" vehicle), and we see no legitimate basis to create such liability simply because the employer (as Administrator) has taken it upon itself to provide some additional services to employees through the establishment of a CAP.

As with all other regulatory issues, the question of liability with respect to CAPs must be considered in the context of similar and substitute products (see Appendix "A"). It is important that employers or Administrators not acquire so much potential liability in connection with a CAP as to make the CAP a relatively unattractive alternative.

If the Joint Forum has ruled out an ERISA-type "safe harbour" in respect of CAPs, we believe it should, at a minimum, clarify that both Members and Administrators have responsibilities in relation to CAPs, which would (in effect) provide the Administrator with a defence against individual Member claims in respect of actions that are "Member responsibilities". The Joint Forum should also consider recommending a type of statutory "due diligence" defence for Administrators (similar to that which exists under corporate statutes). This defence would be predicated on and consistent with modern notions of prudence and would provide that, where the Administrator has acted in accordance with a statutory standard of care (i.e. has exercised due diligence in decision making) the Administrator would not be liable for the investment performance of the fund or of individual Member accounts. The basis for this defense would require compliance with requirements that are clear and specific, and any legislation should contain an express limitation on liability where the legislated standard of care is met.

We also note the Report needs to deal in more depth with the duty and liability of CAP Providers and investment managers (as agents of the Administrator or CAP Provider). To increase the potential liability of the employer or Administrator (with no statutory defence of due diligence) and accordingly increase the potential liability of agents is, in our view, tantamount to raising the fees charged by the agents, and to invite

legal arguments as to limitation of liability and indemnity provisions in contracts with such agents.

Nothing in our position should be interpreted as advocating that CAP laws regulate CAP Members. But all CAP Stakeholders, including CAP Members, are subject to legislative requirements (much the same way as pension plan members are subject to pension standards legislation) and would benefit from clarifying their respective legal responsibilities in relation to a CAP. We believe the way to recognize CAP Members' responsibilities for their investment decisions is to develop a regime that provides clear communication of Member vs employer/Administrator responsibilities and that provides a reasonable limit on employer/Administrator liability based on a statutory standard of care.

Accordingly, we submit that the Joint Forum advocate a regime that ensures:

- clear communication to CAP Members of their legal responsibilities and the legal responsibilities of the employer and the Administrator; and
- that there is a recognized limit on the liability of the employer/Administrator/CAP Provider (as applicable) and their agents where their legal responsibilities are fulfilled.

## 4. The "Know Your Client" Rule and Investment Advice

We are puzzled by what we perceive to be a recommendation in the Report for a mandatory know your client ("KYC") rule, either through a registrant under provincial securities legislation or as a direct employer/Administrator responsibility. From a "level playing field" perspective, we note that there currently is an ability for discount brokers to gain an exemption from the KYC rule under securities laws.

The Report also appears to advocate that an advisor relationship is required in order for an individual Member to make an investment decision (or the employer/Administrator must ensure that appropriate assistance is provided so that Members may make investment decisions). The KYC profile is cited as a tool that could be used to help Administrators assess the appropriateness of each Member's investment choice.

The concern this raises for the Task Force is the apparent lack of recognition of how current practices in the CAP market have evolved and will continue to evolve in the absence of regulation. This evolution, in many cases, equals if not surpasses the requirements of the KYC model, such that Members have excellent information to devise an appropriate investment strategy without the mandated imposition of an investment advisor. We support and advocate these predominant industry practices in the CAP market.

The investment choices available in a typical CAP are assessed and chosen by the Administrator. They are chosen for their suitability for the particular CAP given its design (eg. long-term retirement savings vehicle) and typically cover a broad cross-section of asset classes but rarely stray into the realm of the highly volatile (in a relative sense).

Further, current practices have evolved in the CAP marketplace where various combinations of the following are available to Members:

- models are available that ask a series of questions of the Member to ensure that their investment choices do not stray outside the risk tolerance (which is also established by the model based on Member feedback);

- material describing the investment options provided;
- explanations of basic investment concepts;
- telephone and internet access to their accounts; and
- access to ongoing education.

This process allows the Member to develop a strategy that takes into account his/her total financial situation. While KYC may be required under securities legislation, where the advisor profits from the individual's investment decisions, no pecuniary gain flows to the employer/Administrator under a CAP and thus KYC is not required since there is no impetus for the employer/Administrator (the latter having a legal duty of care to act in the Member's best interests) to suggest investments that are unsuitable for the Member.

Although we acknowledge the value of investment advisors, we do not believe an employer should be required to provide them to CAP Members. Some employers do provide such support (in a variety of forms) regardless of the nature of the CAP offered to its employees, if any. The fact that an employer chooses to offer a CAP should not carry with it the obligation to also provide investment advisors for its employees.

Also, the Report does not clearly define what is meant by "Investment Advice" and what the Joint Forum would intend to require of Administrators in providing Investment Advice.

For instance, Investment Advice could mean the provision of information of a general nature, not specific to the Member (one-on-one or over the phone) about the risk and reward characteristics of each fund, the investment management team managing each fund, the performance history of each fund, the fees and expenses of each fund, the investment style or strategy used by the investment management team for a fund, the monitoring practices of the Administrator for each fund, and the factors that an individual might normally consider in choosing one or more funds.

Investment Advice could also mean the provision of information specific to the Member: applying the KYC requirement to consider the Member's other assets and income, the assets and income of the Member's spouse, the Member's intended retirement date, the number and ages of the Member's dependants and the Member's tax status. We believe it is reasonable to require a CAP Administrator or Provider to be able to respond to questions of a general nature about the plan and its operation; we do not believe it is reasonable to require a CAP to provide customized advice specific to an individual Member.

In addition, if the advisor provides the "wrong" advice, who bears the liability is a critical question that would have to be addressed in adopting any mandatory "investment advice" model.

Last, but certainly not least, is the cost in providing mandated advice to members. Who will bear this cost? If Members bear the cost:

- with flat-rate fees those members with smaller balances will pay a higher dollar amount relative to their account balances; and
- with the cost charged to the fund similar to a management expense ratio, those members that do not want the service will have to pay for it regardless. Any mandated requirement will result in certain

members calling for an "opt out" provision in the event they already have an advisor relationship or have educated themselves sufficiently to make appropriate decisions of their own.

If employers bear the cost this removes a significant amount of money from the total compensation pool available for other compensation and benefits. If the choice is between requiring individual investment advice with its associated costs as a condition of offering a CAP and not offering a CAP without such obligations, the choice for the employer does not favour CAPs.

## 5. Ensuring a "Level Playing Field" among Insurance, Securities and Pension Regulatory Regimes

As acknowledged in the Report, CAPs are currently regulated under several different regimes: securities laws, insurance laws, and pension laws. The choice of which regulatory regime that CAP is governed by depends more on the CAP Provider than it does on the nature of the CAP. We agree that harmonization of regulatory requirements (such that similar principles are applicable to CAPs irrespective of who the CAP Provider is) can be a legitimate and laudable goal. However, any efforts to harmonize these regulatory regimes should make sense and should not add to the regulatory burden by requiring compliance with the differing rules of each of the foregoing regimes. Instead, it would be preferable if regulatory harmonization (or better still, uniformity) could be achieved through compliance with the rules of any one of the above regimes. In other words, compliance with one regime would be compliance with all regimes.

We recognize that securities regulation effectively regulates publicly traded mutual funds, and is continuously trying to improve such regulation. And a "pure" securities regulatory regime currently regulates some CAPs (eg. group RRSPs) **in lieu of** a pension regulatory regime. We do not, however, believe that a combination of securities and pension regulatory requirements (with additional requirements currently found in neither regime) is likely to produce an appropriate regulatory regime for CAPs and a level playing field for different CAP products or providers. The businesses are very different in nature.

CAPs typically offer a manageable number of relatively conservative pooled funds as investment options, and provide investment education to various extents. Members are protected in the selection and monitoring of funds by the statutory or common law standard of care placed on the Administrator. The management fees are relatively low because of the employer's buying power, and the employer typically bears a portion of the cost of administration. If certain securities law requirements were applicable to investments through CAPs, as well as the requirements of pension legislation (and any additional regulatory requirements arising from the recommendations of the Joint Forum), the playing field between the mutual fund investor and the CAP Member would **not** be level.

We submit that compliance with multiple regimes and/or additional regulation would have costs. If it is not accompanied with clarity on limitation of employer/Administrator legal responsibility, the playing field would be tilted towards simply providing employees additional compensation so that members can invest (or choose not to invest) in the universe of publicly traded mutual funds with no intervention or assistance by the employer. The higher cost retail model would, in our view, not be in the best interests of CAP Members, since the lower cost structure of CAPs increase their final retirement balances and ultimately their level of retirement income.

## Consultation Process

In the report, the Joint Forum invited written comments and suggestions on any aspect of the Report. In particular, the Joint Forum asked for feedback on four specific questions. This section of the Submission provides specific feedback, comments and suggestions in response to the four questions asked in the Report.

1. **Are the statements in the paper about the existing regulatory environment accurate, in your experience?**

   We believe the Report (in Sections IV(ii) and (iii)) contains an accurate statement of Canadian securities and insurance laws, as currently applicable to CAPs.

   Also, for the most part, Section IV (i) of the Report accurately describes the existing regulatory environment in relation to pension plans. We would, however, like this section of the Report clarified to take account of a number of important facets of pension regulation.

   First, it is worth noting that pension laws are much different in nature than securities laws, having different goals and objectives. Unlike securities laws, where the regulators' interpretation of the law provides very strong guidance as to what is legally correct, this is not the case with pension plans where the courts have not hesitated to go against the rulings of the regulators and where regulatory policy has not been recognized as having the force of law.

   Second, the statement is made (on **page 10, of the Report**) that "pension standards are intended to ensure a minimum level of protection for members and other beneficiaries of pension plans by setting out a comprehensive set of rules governing the operation of pension plans, and establishing a regulator who has the duty and remedial authority to enforce compliance with these rules." We believe that the use of the word "comprehensive" is an overstatement. Pension legislation is by no means "comprehensive" — particularly in relation to DC pension plans. There is a significant large body of case law covering the duties and responsibilities of both plan sponsors and plan members which is entirely outside of pension standards legislation. Moreover, many rules and protections are based upon contractual rights (i.e. the terms of a pension plan) and trust law rights.

   Third, this Section fails to mention a very important point; namely, that the current pension rules are directed almost exclusively at DB plans and that there is a noticeable lack of rules directed at DC plans, as well as a great deal of uncertainty surrounding how the rules are applied to DC plans. It is not that the disclosure obligations need to be "modified", it is that there are currently no meaningful disclosure obligations for members of DC pension plans. This is left up to Administrators' best practices. It is continually stated throughout this Section that "minimum standards regarding pension funds also apply to ECDCPP's". But this fails to acknowledge that how such standards apply is often unclear owing to the fact that pension standards legislation was drafted with DB pension plans in mind.

   Finally, some items which are not covered in this section but should be referred to in a discussion of the pension regulatory regime:

- pension plans are also subject to a detailed level of regulation under the *Income Tax Act* (Canada); and
- pension plans are voluntary arrangements for employers and employers also have rights under pension plans and pension legislation.

We would also like to comment on the "Market Reality" outlined in Section III of the Report. The data from Benefits Canada (Page 7 of the Report) is dated. The 2000 numbers are much higher. As of June 2000, the industry experienced an overall increase in assets of 31%. The 1999 numbers have total assets at $46 billion while the 2000 numbers are over $60 billion.

The CAP market now represents nearly 50,000 plan sponsors and 3 million participants, or 10% of the total Canadian population.

The accuracy of the information on Page 8 of the Report is also of concern to the Task Force. With the merger activity in the DC industry (eg. Clarica Life purchased Royal Trust's Group Services and Canada Life purchased Canada Trust's Group Services businesses), there is no longer any significant trust company CAP Provider business remaining.

Finally the information on Page 9 of the Report represents a limited sample versus the universe (206 plan sponsors, and all Mercer clients, from the universe of 50,000 plan sponsors). There is heavy skewing towards money purchase pension plans (60% of the survey) even though the industry administers more Group RRSPs than money purchase pension plans, both in terms of assets and numbers of sponsors. The experience of insurance companies (administering 95% of CAPs) contradicts the last point on Page 9 concerning investment education to members. Plus the Task Force believes that the statement that 50% of CAPs "offer individual counselling for members generally through securities registrants" is unrealistic and misleading given current practices.

We urge the Joint Forum to use the information with caution as we understand that there were few controls in the survey and the questions may not always have been understood.

2. **Are the proposed regulatory principles appropriate and adequate to address the needs of CAP members, plan administrators, employers and regulators?**

We considered each of the four proposed regulatory principles set forth in the Report, in detail. We have a number of comments and questions concerning these principles, which we have set forth below under headings which correspond to those used in the Report.

We are concerned about the terminology employed by the Joint Forum in this Section of the Report. We submit that the Joint Forum should consider the definitions of such terms as "fiduciary", "administrator", "employer" and "plan sponsor" as set forth in our Submission (see **Appendix "C" – *Terminology***). Clarity of these terms (and others) could alleviate some of the concerns and questions that follow.

(i) *Plan Administrators' or Employers' Fiduciary Duties Regarding the Establishment and Maintenance of a CAP*

The Joint Forum's use of the term "fiduciary" to describe the relationship between an employer and its employees is inaccurate and inappropriate. The relationship is a contractual one and as such influences

decisions the employer makes with respect to the **establishment** of the CAP. For example, the employer decides what kind of CAP to implement, the contribution level and whether or not investment choice will be made available to the members. The Administrator will be responsible for the **maintenance** of the CAP. This would include such responsibilities as the selection of the investment options (if choice is available to the members), initial and continuous disclosure and ensuring that investment decision-making tools are made available to CAP members. Delegation of these duties is a choice available to either the employer or the Administrator, although they do not abdicate their overall responsibility.

With respect to non-pension CAPs, the distinction between the duty of the employer in its capacity as Plan Sponsor and in its capacity as Administrator is less clear. Nonetheless, employers must be able to establish and wind up CAPs and set out their basic terms, as matters of contract between their employees and themselves.

The specific "duties" listed in this section also caused us some concern, as follows:

- The first duty states "Select investment options for members which offer a reasonable range of options with different risk and return characteristics, each of which is diversified". We would point out that a single stock investment option (typically under a DPSP or an ESP), usually the employer's securities, could be one of a number of investment options available to members. Alternatively, if the plan is non-contributory, a single stock option could be the only investment available. A single stock option is not in itself "diversified" but it is a viable choice and is currently permitted as a plan design feature.

- We agree with the use of prudence in the selection of the investment manager(s). However, we suggest that the third duty stop at "... for each investment option". Prudent monitoring involves more than setting and monitoring performance against benchmarks. Any attempt at defining prudent behaviour will only allow for some aspect of prudence to be omitted. In addition, we question what constitutes "appropriate action". We would also want to know what makes for "unsatisfactory" performance. These statements have inherent problems associated with them. For example, historical performance is not indicative of future returns. Does an Administrator of a CAP terminate an investment manager with weak performance due to their investment style not being rewarded by the market?

- The inclusion of the fourth duty puzzles us. We understand that a prospectus provides a direct right of action for the purchaser of a security but would argue that the CAP Member that suffers due to "misrepresentation about the investments" will have a direct right of action against the investment manager for negligence misrepresentation or breach of fiduciary duty (if the duty can be established) or an indirect right of action through the Administrator or the employer. We also question how the Joint Forum would propose regulating the contents of a contract that is a voluntary undertaking resulting from the negotiation between the employer/Administrator and the Provider.

- The final duty requires clarification as we question the meaning of the term "penalty". GIC's often have a market value adjustment when cashed-in prior to maturity. Would this be considered a penalty? Is it reasonable to expect a heavy trader (one who buys and sells frequently) to pay some sort of fee so that overall administration costs are controlled?

(ii) *Plan Administrators' or Employers' Fiduciary Duties re: Initial and Continuous Disclosure*

We offer the following comments on ***Initial Disclosure*** items.

In the first item on the list of initial disclosure, the Task Force would change the term "liability" to "responsibility".

The second item should be clarified so that it is understood that "instructions" refers to the administrative process of making the investment choices (eg. whom to contact).

We suggest that Disclosure Item No. 3 is inconsistent with the final duty under Section 2(i) above, where the Report specified that there should be no penalty accompanying switching between investment options.

For Disclosure Item No. 4, we would like to see this revised to read as follows "Fees and costs borne by members for each investment option". This would then encompass any fees associated with commission payment to a third party plus any fees paid by the fund in which the member invests, including audit fees, custodial fees, etc.

We agree with the position of Disclosure Item No. 5.

We agree with Disclosure Item No. 6.

The recommendations in Disclosure Item No. 7 refer to a standardized consumer guide including a "retirement income profile" to educate members about investments. We believe the current information being provided by the group market is, in most cases, adequate in this regard and would want to ensure what the Joint Forum has in mind is not inconsistent with the current practices. We also believe the only aspect that needs to be standardized, if anything, is the general material to be covered rather than standardizing the format and media of this information. Many employers tailor their information to the unique personality of their workforce to enhance the probability of use of this information. Consequently we recommend the Report clarify this recommendation to include the material (i.e. content) requirements but not standardize the format or media used to delivery this information in. We recognize the retail environment does work under a standardized simplified prospectus model but believe the customization of content format and media is a critical component that employers value in order to service their employees.

We agree with Disclosure Item No. 8.

With respect to the ***Continuous Disclosure*** items, we strongly support full disclosure to Members. However with respect to the specifics in the four items set out by the Joint Forum, we have the following comments:

- We do not know exactly what the Joint Forum means by the phrase "annual operating fees for each investment option" in Item No. 1. Examples should be provided to clarify the intention.
- In Item No. 2, we question the scope of the term "material change reports". We agree there should be a general obligation of continuous disclosure of relevant information (information that could affect the price of the investment) that is accessible to Members. We assume it does not refer to material change reports (within the meaning of securities laws) which would not typically be offered to CAPs.
- Item No. 3 appears to require financial statements for each investment option as well as portfolio asset lists. Currently, this information is generally not distributed to Members. A requirement to distribute this information to Members can be costly unless items can be made available in electronic format for members to access, download and print on their own. We urge the Joint Forum to clarify that making

this information available to Members on request would meet the Report's recommendations.

- We agree with Item No. 4.

(iii) *Plan Administrators' or Employers' Fiduciary Duties to provide Appropriate Investment Decision-Making tools to CAP Members*

We offer the following comments on this regulatory principle:

- Duty No. 1 is only appropriate when the Administrator chooses the securities model for the delivery of the CAP to the Members.

- Duty No. 2 concerns us for a number of reasons. The first concern centres around a perceived change in the responsibility of the Administrator with respect to the provision of initial and continuous investment information. In the list of *Initial Disclosure* items, we interpreted the wording as placing responsibility on the Administrator to **provide** Members information about the investment choices.

  In Duty No. 2 the responsibility to provide access to information has changed to **ensuring** that Members are **provided with** information. It should not be the responsibility of the employer or the Administrator to "ensure" that Members receive this information. It is the responsibility of the Member to access the information once it is made available.

  Our second concern with the recommendations in Duty No. 2 has to do with presenting the investment information "in a manner appropriate for the member". The investment material developed will be appropriate for the typical (or targeted) group member, not customized for the individual. The member is obligated to seek help if the material is not to an appropriate level for his/her ability.

  The second part of Duty No. 2 – that Members "receive appropriate assistance with making investment decisions" – is unacceptable to the Task Force. It is not the Administrator's duty to ensure that Members receive this assistance. This effectively creates a KYC requirement on the Administrator. We do not agree with the KYC requirement in a CAP as we believe that predominant industry practices under the current model work well and would urge the Joint Forum to become more familiar with current practices in the industry. Assistance is not without associated costs and someone (the employer or the Member) will have to pay for it. The discount broker industry is moving away from a KYC model and KYC is not required under ERISA. There are potential practical issues with this requirement as members may not want to provide personal financial information to financial advisors hired by the employer.

(iv) *Investment Rules*

We endorse the essence of the principle dealing with Investment Rules, but request further clarification. We believe that there is insufficient detail to ensure there is alignment between our views on these matters and the views of the Joint Forum.

For example, we are puzzled by the references in the Report that each investment option under a CAP should comply with minimum investment rules requiring, among other things, adequate diversification of funds. A minimum diversification requirement for each investment option would effectively prohibit single stock funds (or plans) that are commonly used in the CAP industry.

Similarly, references in the Report to CAP investment options not being subject to "excessive risks" or "greater risks than investors in retail mutual funds or segregated funds" appears to be inconsistent with pension investment standards (which focus on the prudence of the portfolio of all investments in the funds, and not each single investment) and to focus on inappropriate benchmarks.

In short, we think that further detail is required in this area to clarify what "minimum investment rules" the Joint Forum has in mind.

3. **What would be the most effective and appropriate method of implementing the regulatory principles that emerge from this process?**

The Task Force believes the best method of implementing the finalized proposed regulatory principles as outlined in the Report would be accomplished through the development of harmonized best practices guidelines. Working with representatives from the retirement industry, the goal of a joint industry/regulator body would be to standardize the communication and education requirements for CAPs, and clarify the responsibilities of all CAP Stakeholders.

We are reluctant to encourage further regulations for the retirement industry, believing that sufficient regulatory structure exists, subject to clarification of the exemptions from securities legislation, which must be done by regulation. We believe that best practices communicated effectively to the retirement industry and reviewed regularly for applicability, would be embraced by participants of the industry.

However, legislation will undoubtedly be necessary in several areas to fix some of the technical problems identified in this Submission and in the Report, for example:

1. The exemptions under securities legislation should be clarified across the country.
2. Section 22 of the *Pension Benefits Act* (Ontario) needs to be amended to clarify the standard of care for CAPs. As it is now, arguably the Administrator is responsible for the members investment decisions.
3. Investment restrictions should be modified to be appropriate to CAPs. As it is now, they apply to the entire plan. This makes them meaningless as applied to individual members portfolios.

4. **What are the anticipated short and long terms costs (in $ and in plan coverage) of implementing the proposed regulatory principles.**

We undertook an informal polling of industry participants and confirmed our belief that the cost issue is one that is rife with opinions and subjectivity, partly because the range of costs is so wide depending on the CAP structure. Accordingly, making policy decisions without rigorous data can result in decision based on unknowing faulty assumptions about costs. We strongly urge the Joint Forum to conduct a comprehensive survey of the costs of CAPs so that consultation and ensuing decisions can be based upon current data and factual information.

## Concluding Remarks

We are appreciative of the efforts of the Joint Forum in developing the Report, which is a much needed and welcome first step towards developing a proper, reasonable and harmonized regulatory framework for CAPs. We are also appreciative of the opportunity to provide comments and input to the Joint Forum as it develops rules to govern CAPs. We welcome the open process by which the CAP industry and the regulators can jointly develop a mutually acceptable solution to all CAP stakeholders.

This Submission is intended to provide detailed comments and feedback to the Joint Forum in respect of the Report. In many cases, our comments and/or feedback may seem critical of the Report and its recommendations. This should not be interpreted as the Task Force advocating that no further rules or clarification are required with respect to CAPs. To the contrary, we believe that the regulation of CAPs under pension, securities and insurance laws requires both clarification and harmonization.

We also strongly believe that, by reaching common agreement on the fundamental principles underlying the regulation of CAPs, the Report could easily be modified to provide an acceptable blueprint for the future regulation of CAPs.

The ACPM and PIAC would be pleased to work with the Joint Forum either directly or through a joint regulatory/industry committee to modify and refine the recommendations of the final Report.

## Appendix A – CAP Arrangement Continuum

The intention of the continuum shown in this Appendix is to show the range and diversity of the CAP Promise under typical retirement/savings plans in the current environment. It does not purport to comment on the state of laws as they apply (or should apply) to such plans.

The attached continuum lists, for each retirement/savings plan, the following aspects:

- The nature of the promise between the sponsor and the plan member (employee);
- The applicable regulatory regime;
- The range of investment options;
- Who was responsible for selection in monitoring of investment options;
- What investment information is typically provided to plan members;
- The Administrator's investment responsibilities;
- The Member investment responsibilities; and
- The cost to plan members or retail investors of the arrangement.

## CAP Arrangement Continuum

| | | GROUP | | | | INDIVIDUAL | |
|---|---|---|---|---|---|---|---|
| | DEFINED BENEFIT PLANS | EMPLOYER DIRECTED DC PLANS | SELECTED OPTION DC PLANS | SELECTED OPTION SAVINGS | WINDOW SAVINGS PLANS | RETAIL | RETAIL |
| **PROMISE** | Retirement Income | **Retirement and Other Savings Assistance** | | | | | |
| **RETIREMENT INCOME** | Defined Formula | **Determined by: Contributions, Asset Allocation, Market Returns, Member Costs and Annuity Rates** | | | | | |
| **REGULATORY REGIME** | Pension | Pension | Pension Insurance Securities | Insurance Securities | Insurance Securities | Insurance Securities | Insurance Securities |
| **INVESTMENT OPTIONS** | N/A | N/A | Selected by Administrator | Selected by Administrator | Unlimited | Unlimited | Unlimited |
| **SELECTION/ MONITORING** | Administrator | Administrator | Administrator | Administrator/ Agent | Member | Investor | Investor + Advisor |
| **INVESTMENT INFORMATION** | 1. SIP&P<br>2. Financial Statements | 1. Member Statements<br>2. SIP&P<br>3. Financial Statements | 1. Plan Info.<br>2. Concepts<br>3. Options Profiles<br>4. Decision sharing<br>5. Decision Tools<br>6. Performance Commentary | Less than or equal to DC Plans | Less than or equal to DC Plans | Prospectus | Prospectus; KYC; Registered Advisor |
| **MEMBER COST** | N/A | LOW | LOW | LOW | HIGHER | HIGHER | HIGHEST |
| **INVESTMENT RISK/REWARD** | Sponsor | Member | Member | Member | Member | Investor | Investor |
| **ADMINISTRATOR INVESTMENT RESPONSIBILITY** | Prudent Mgmt | Prudent Mgmt | Reasonable Choice Reasonable Info Prudent Monitoring | Reasonable Choice Reasonable Info Prudent Monitoring | Reasonable Info | Disclosure | Disclosure; Advice |
| **MEMBER INVESTMENT RESPONSIBILITY** | None | None | Education; Asset Allocation; Fund Choice; Rebalancing | Education; Asset Allocation; Fund Choice; Rebalancing | Education; Asset Allocation; Fund Choice; Rebalancing | Education; Asset Allocation; Fund Choice; Rebalancing | Education; Asset Allocation; Fund Choice; Rebalancing |

## Appendix B – Task Force Members

| | |
|---|---|
| **Gretchen Van Riesen** | Senior Director, Pension and Benefits Policy, CIBC, Past President and Director, ACPM, Director PIAC, Chair ACPM/PIAC Task Force on Defined Contribution Regulation |
| **Michael Beswick** | Senior VP, Pensions, OMERS, Past President and Director ACPM |
| **Stephen Bigsby** | Executive Director, ACPM |
| **John Denham** | Manager Pension Funds Treasury, IBM Canada Ltd., Member PIAC and ACPM |
| **Mary DePaoli** | Vice President, National Sales and Marketing, Sun Life Financial, Member ACPM |
| **Keith Douglas** | General Manager, PIAC, Former President IFIC |
| **Jeffrey Graham** | Partner, Borden Ladner Gervais LLP, Past President, ACPM |
| **Martin Guest** | CFA, Vice President and Corporate Counsel, Fidelity Investments Canada Limited, Member ACPM, IFIC, CBAO |
| **Priscilla Healy** | Principal, Towers Perrin, Chair, ACPM Uniformity Task Force and Advocacy and Government Relations Committee |
| **Neil Jacoby** | Managing Partner and President, Aurion Capital Management, Past Chair PIAC, Member PIAC and ACPM |
| **Paul Litner** | Partner, Osler, Hoskin & Harcourt LLP, Member ACPM |
| **John Poos** | General Manager Law and Pensions Investment, Stelco Inc., Member PIAC and ACPM |
| **Gemma Salamat** | Financial Advisor, Sun Life Financial Services Inc., Member ACPM |
| **Harry Satanove** | FCIA, CFA, Pension and Investment Consultant, Satanove and Flood Consulting, Member ACPM |
| **Donald Walcot** | Chief Investment Officer, BIMCOR, Past Chair PIAC, |
| **Becky West** | Client Service Executive, Frank Russell Canada Limited, Member ACPM |

## Appendix C – Terminology

In this Submission , the following capitalized terms shall have the meanings given to them below:

| | |
|---|---|
| **CAP (or CAPs)** | means Capital Accumulation Plans, as defined in the Report. |
| **CAP Members (or Members)** | means the members/participants in a CAP. |
| **CAP Providers** | means insurance companies, trust companies, securities dealers and other financial institutions authorized to offer CAPs to Members. |
| **CAP Stakeholders** | means Members, employers (as Plan Sponsors), Administrators, CAP Providers and regulators. |
| **DB** | means defined benefit (plans). |
| **DC** | means defined contribution (plans). |
| **Employer** | Employer and Plan Sponsor are used synonymously in this Submission. |
| **Joint Forum** | means the Joint Forum of Financial Market Regulators' Working Committee on Investment Disclosure on Capital Accumulation Plans. |
| **Plan Sponsor** | means the entity with authority over establishing amending and terminating the CAP and responsible for making contributions to the CAP. |
| **RPPs** | means registered pension plans. |
| **Report** | means the Discussion Paper prepared by the Joint Forum, entitled *"Proposed Regulatory Principles for Capital Accumulation Plans"*. |
| **Submission** | means this document, entitled "Submission to the Joint Forum of Financial Market Regulators' Working Committee on Investment Disclosure in Capital Accumulation Plans". |
| **Task Force** | means the ACPM/PIAC Task Force on Defined Contribution Plan Regulation, the members of which are listed in Appendix "B" to this Submission. |

Certain of these terms are also defined in the text of this Submission and are reproduced here for convenience of reference.