

**Notice and Request for Comment for Amendments to National Instrument 45-106
Prospectus and Registration Exemptions and Adoption of Local Prospectus and
Registration Exemptions for Certain Capital Accumulation Plans**

Introduction and Background

We, the members of the Canadian Securities Administrators (CSA or we), are each adopting in the manner described in this notice, a registration and prospectus exemption for certain capital accumulation plans (the CAP exemption). This CAP exemption implements certain parts of the Guidelines for Capital Accumulation Plans (the Guidelines), which were developed by the Joint Forum of Financial Market Regulators. The Guidelines and the CAP exemption apply to certain tax assisted capital accumulation plans such as defined contribution pension plans and group registered retirement savings plans where plan members make investment choices.

We published the CAP exemption for comment on May 28, 2004 and received 9 comment letters. The CSA thanks each of the commenters for those comments, which are summarized in Appendix A together with our responses.

To provide industry, plan sponsors and members with the benefit of the CAP exemption more quickly, each CSA member is adopting the CAP exemption locally. In most provinces, the CAP exemption is being adopted in the form of a blanket exemption from the dealer registration and the prospectus requirements for certain trades in mutual fund securities.

In Ontario and Québec, the CAP exemption will not be adopted in the form of a blanket exemption, but will be used as a template of standard conditions and terms of relief for applicants who apply for an exemption from the registration or prospectus requirements in the *Securities Act* (Ontario) and in Québec under the *Loi sur les valeurs mobilières* (Québec) and the *Loi sur la distribution des produits et services financiers* (Québec) in connection with trades in mutual fund securities to a CAP.

Appendix B includes the text of the blanket exemption or policy each jurisdiction, except Ontario and Québec is adopting effective October 21, 2005. Ontario and Québec will use this text as a standard template for future applications for exemptive relief in Ontario and Québec.

**Publication for comment of proposed amendment to National Instrument 45-106
*Prospectus and Registration Exemptions***

In this Notice, we are also seeking public comment on the CAP exemption as part of a national instrument. You will find the version of the CAP exemption we are publishing as an amendment to National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) in Appendix C. We will not have a separate national instrument for the CAP exemption and instead will incorporate the CAP exemption into (NI 45-106, which came into force on September 14, 2005).

Following this 90 day comment period, if all required government approvals are received, the CAP exemption will be implemented as a

- rule in British Columbia, Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador,
- regulation in Quebec,
- commission regulation in Saskatchewan, and
- a policy or code in the Northwest Territories, Nunavut and Yukon.

Summary of the CAP exemption

The CAP exemption:

- applies only to mutual fund securities
- harmonizes the regulatory treatment of mutual funds and segregated funds as investments within a capital accumulation plan
- enables plan members to receive information that is appropriate for them, about the mutual funds they can acquire through the plan
- requires 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
- exempts 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 and other conditions.

Summary of Responses to CSA Notice 81-405 Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans

A complete summary of comments we received from our publication of the CAP exemption in May 2004 and our responses to those comments are in Appendix A. The key comments, and the changes we are making to respond to them, are:

- Commenters told us that to be truly harmonized, adopting the CAP exemption locally through blanket exemption orders, was not truly effective because the Ontario Securities Commission is unable to adopt the exemption in the same manner.

In response to this comment, we are publishing the CAP exemption for comment as an amendment to NI 45-106.

- Commenters asked us to expand the exemption to include all capital accumulation plans and not just tax-assisted capital accumulation plans and to broaden the investment restrictions to include investments permitted by pension and insurance regulation.

The CSA believe it is appropriate to limit the applicability of the CAP exemption to the types of capital accumulation plans the Guidelines address. There are some other existing securities exemptions that issuers, service providers and sponsors may be able to rely on for other types of plans or for certain securities in those plans.

- Commenters asked us to incorporate the Guidelines into the CAP exemption.

The CSA developed the CAP exemption so that it incorporates only the elements of the Guidelines that address similar investor protection and market efficiency issues as those addressed by securities regulation and that would provide an adequate substitute for the benefits a plan member would receive from dealing with a registrant, and obtaining the disclosure in a prospectus. While we support the Guidelines in their entirety, many elements of those guidelines do not directly relate to these elements of securities regulation. To impose conditions that are not necessary would, we believe, make compliance more difficult, and reduce the effectiveness of the exemption.

- Commenters asked us not to impose the annual distribution report we had proposed, because it would be difficult to obtain the information in the format we had proposed, and the disclosure wasn't necessary to ensure compliance with the exemption.

We adopted these comments, and instead of the proposed distribution report, we will require mutual fund companies to provide a one-time only notice in which the mutual fund company will advise each securities regulator where the mutual fund company expects to use the CAP exemption, that they intend to rely on the CAP exemption.

- Commenters said the CSA needed to clarify what types of securities the CAP exemption applied to, and questioned whether it was sufficiently broad to exempt products that are currently found in CAPs.

The exemption is available for mutual funds and not for other securities generally. Securities laws in most provinces currently provide exemptions for distributions of securities in a number of other circumstances. Nothing in this CAP exemption, or the Guidelines, preclude a plan sponsor or service provider from using any of the other exemptions if they meet the requirements of that exemption.

Some commenters also asked whether pooled funds that do not currently comply with NI 81-102 *Mutual Funds* must start to do so. The CAP exemption does not impose any mandatory requirements on any issuer, sponsor, or service provider. Compliance with an exemption is always optional. An issuer could comply with the prospectus requirements or use another exemption. If another exemption is not available, and the issuer does not want to incur the expense of an offering under a prospectus, the CAP exemption provides another option for them. No service provider need change their behaviour if they can otherwise comply with securities laws and offer their products to or within a CAP.

- Some commenters questioned why we would not permit a mutual fund to comply with the investment restrictions in any of insurance, pension, or mutual fund regulation, and told us that they did not know how they could comply with the investment restrictions in the exemption which require compliance with the investment restrictions in NI 81-102 *Mutual Funds*.

We have established a Joint Forum working group to consider the differences in the investment restrictions between the pension, insurance and mutual fund regulatory

requirements. Because this exemption is targeted at mutual funds, and there are established, well-understood investment restrictions for mutual funds, we believe it is appropriate to require mutual funds that want an exemption from the prospectus and registration requirement, to comply with these established investment restrictions. Depending on the findings of the Joint Forum working group, we may consider expanding the permissible investments in the future.

Summary of Changes to the CAP Exemption

The key changes we've made to the CAP exemption since the May 28, 2004 publication are that we:

- eliminated the distribution report, as proposed, and replaced it with a notice that a mutual fund must file advising us that it intends to rely on the CAP exemption
- clarified that for the purposes of the CAP exemption, a plan sponsor includes a person that provides services to a plan sponsor (a service provider)
- more closely aligned the requirements for plan sponsors to provide members with information about fees, with the requirements in the Guidelines for fee disclosure
- set out the timing requirements for the plan sponsor to provide certain information to plan members

Related Amendments

In response to specific questions raised by the Québec securities regulator, and the discussion raised by the Nova Scotia and Saskatchewan securities regulators in the Notice we published on May 28, 2004, we considered whether we needed to make any changes to the exemption to impose any of the requirements normally associated with an offering memorandum, including considering whether we needed to provide any additional rights of rescission.

We concluded that the Guidelines and the CAP exemption as we are publishing it, provide adequate safeguards to plan members. In addition, the CSA believes that should a mutual fund company that has a prospectus for a particular mutual fund, use that prospectus as part of its sales process for that fund, plan members would be acquiring those mutual fund securities under that prospectus and would have the remedies provided under securities legislation for investors who acquire securities under a prospectus.

The Alberta Securities Commission will be eliminating certain capital accumulation plan exemptions found in sections 68 and 123 of the ASC Rules (General) and ASC Policy 5.5 *Capital Accumulation Plans*. For further discussion about these exemptions please see the Summary of Comments and Responses.

The Ontario Securities Commission will retain the substance of OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans* (32-503) because the exemption in that Rule is directed at a different target audience. That Rule applies to trades by financial intermediaries (for example banks and trust companies) of mutual fund securities to CAPs under narrower conditions. The Ontario Securities Commission has revoked 32-503 and incorporated its substance into revised OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, which came into effect on September 14, 2005.

Local Amendments

Appendix D to this Notice includes the proposed related amendments to local securities legislation in the jurisdictions that are making local amendments or additional information required in certain jurisdictions. Not all CSA jurisdictions will publish this appendix.

Request for Comments

We request your comments on the proposed amendments to NI 45-106 to include the CAP exemption.

How to Provide your Comments

Please provide your comments by January 19, 2006, by addressing your submission to the securities regulatory authorities listed below:

Alberta Securities Commission
 Saskatchewan Securities Commission
 The Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 New Brunswick Securities Commission
 Office of the attorney general, Prince Edward Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 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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 British Columbia Securities Commission
 P.O. Box 10142, Pacific Centre
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 Vancouver, BC Canada V7Y 1L2
 e-mail: nbent@bcsc.bc.ca

and to

Anne-Marie Beaudoin
 Directrice du secrétariat
 Autorité des marchés financiers
 800, square Victoria, 22nd floor
 P.O. Box 246, Tour de la Bourse
 Montreal, Quebec

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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 local exemption and the proposed amendments to NI 45-106 documents either follows or can be found elsewhere on a CSA member website.

October 21, 2005

Appendix A
Summary of Comments and Responses
CSA Request for Comment 81-405 – Proposed Registration and Prospectus
Exemption for Trades in Certain Capital Accumulation Plans

List of Commenters

The University of British Columbia Faculty Pension Plan
Desjardins Financial Security
Phillips, Hager & North
University of Western Ontario
Canadian Association of Retired Persons
Morneau Sobeco
GRS Securities Inc
The Investment Funds Institute of Canada
Association of Canadian Pension Management/Pension Investment Association of
Canada

In this summary of comments and responses, we grouped similar comments together and have provided a single response. We categorized these comments into broad themes and described these themes in the headings to the comments. Following our discussion of these themes, we set out the comments we received on our specific questions, together with our responses.

Overall support for the proposed exemption

Commenters supported the CSA in our efforts to harmonize the regulatory regimes between mutual funds and segregated funds.

Preference for a national rule

A number of commenters said that while they supported the proposed *Registration and Prospectus Exemption for Trades in Certain Capital Accumulation Plans* (the proposed exemption), they wanted it to take the form of a national rule, adopted by all members of the CSA. They were concerned that implementing the proposed exemption separately in each jurisdiction might result in different treatment of CAPs in different provinces, and would not be a cost-effective response to participants in the CAP marketplace. Implementing the proposed exemption separately might also mean that members in different provinces in the same CAP are treated differently.

One commenter suggested that the OSC implement the proposed exemption in Ontario as a local rule either by making appropriate amendments to the existing corporate-sponsored plan rule (OSC Rule 32-503) or by incorporating the CAP exemptions into the exempt distribution rule (OSC Rule 45-501). This commenter is of the view that this would be a more efficient and cost-effective solution for both CAP industry participants and the OSC than implementation through *ad hoc* discretionary relief. This commenter also suggested the OSC have only one rule (the proposed exemption) rather than retaining Rule 32-503, leaving one rule to provide all necessary exemptions for CAPs. Other commenters asked the OSC to clarify who could or should apply for a registration or a prospectus

exemption, whether the applicant could apply only for a particular plan or multiple plans, and how an applicant would determine the application fee.

Another commenter said that requiring CAPs to apply for an exemption in Ontario continues the existence of inequality between the securities and insurance regulatory regimes.

Other commenters encouraged Alberta and Ontario to retain their existing exemptions, because there may be industry participants who are relying on them who may not want to, or be able to, rely on the proposed exemption. They noted that the existing exemption in Alberta provides relief for some additional securities that may be in a CAP.

Response

Making the exemption a rule

Using a variety of methods to introduce the proposed exemption enables CSA members to implement it more quickly than by engaging in the formal rule-making process. While this process can be completed quickly in some provinces (such as Alberta), in others (such as British Columbia) complying with the requirements to make the proposed exemption a rule would significantly delay its implementation. To make the proposed exemption available more quickly, the CSA intend to incorporate the proposed exemption into National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).

How the Ontario Securities Commission will address the exemption

The Ontario Securities Commission notes that its existing capital accumulation plan rule, OSC Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans* has a number of requirements that do not apply in the proposed exemption. Since the OSC'S existing rule and the proposed exemption address two different situations, the OSC intends to keep its existing rule, and consider discretionary relief applications for CAP plans on the basis outlined in the proposed exemption.

The OSC expects to adopt the proposed exemption as part of NI 45-106 together with the rest of the CSA.

Harmonize other aspects of mutual fund and segregated fund regulation

Some commenters submitted that we could enhance the efficiency of the CAP investment market if there were true harmonization across all distribution channels for investments. They said that the proposed exemption did not harmonize treatment of mutual funds, segregated funds and different types of plans in a number of ways including:

- (a) investment restrictions remain different between insurance regulation, pension regulation and securities regulation for mutual funds
- (b) limiting relief to tax-assisted plans
- (c) not permitting mutual funds to directly use pooled funds that do not comply with the investment restrictions of National Instrument 81-102 *Mutual Funds* (NI 81-102)

- (d) rights of rescission and damages that differ between segregated funds and mutual funds
- (e) imposing offering memorandum requirements for documents in some provinces

Commenters urged us to harmonize and achieve a more comprehensive information disclosure system regardless of the underlying investment(s) made available under the plan.

Response

The proposed exemption was intended only to address inequalities in regulatory treatment for certain types of investment products. Most members of the CSA have other exemptions that, for example, permit employers to offer stock purchase plans that issuers and plan sponsors rely on. Other issues, such as a lack of harmonization between the investment restrictions between insurance products, pension funds, and mutual funds, are not part of our mandate, but are being considered by the Joint Forum of Financial Market Regulators as a separate project.

Some of these comments are also addressed more specifically in responses elsewhere in this summary.

What securities does the exemption apply to?

One commenter asked us to revise the terms of the proposed exemption to clarify whether it would apply to funds that were redeemable only under restricted circumstances, such as termination of employment or retirement, or alternatively, to publish or provide written guidance as to our interpretation of the definition of “mutual fund” and, in particular, the phrase “on demand or within a specified period after demand.” Other commenters questioned whether the proposed exemption would apply to pooled fund.

Response

The proposed exemption is available to all mutual funds. Securities legislation in most provinces provides a definition of mutual fund. Any fund that meets that definition would be eligible to use the proposed exemption. By examining its particular attributes, a fund would need to assess whether or not it meets the definition of mutual fund.

The CSA are not expanding the proposed exemption beyond mutual funds at this time. A fund that did not meet the requirements of the definition, but has similar attributes to a mutual fund should consider whether it might have other exemptions available to it, and if not, could apply for an exemption based on their specific facts.

The proposed exemption does not prohibit using pooled funds as an investment alternative in a CAP, provided that the pooled fund (if it is a mutual fund) either has another exemption available to it, or it meets the conditions set out in the proposed exemption. For example, in order to be eligible to be used as an investment in a CAP, a condition of the exemption is that pooled fund would need to comply with the investment restrictions in NI 81-102. If the pooled fund has another exemption that it is currently relying on, then the proposed exemption will not mandate that those pooled funds stop

using those other exemptions. A mutual fund is not required to use the exemption if it can otherwise distribute its securities in compliance with securities legislation.

Expanding the relief to other plans

Commenters suggested expanding the proposed exemption to apply to non-registered and after-tax, group saving and investment plans, provided that sponsors administer such plans in accordance with the *Guidelines for Capital Accumulation Plans* (the Guidelines). They said that we would not achieve harmonization if the dealer registration exemption were limited to tax-assisted plans because the same service provider would still need to be registered to provide services for an after-tax plan of the same sponsor. They made similar observations about the prospectus exemption.

Response

The Guidelines apply only to tax-assisted capital accumulation plans. We believe it is appropriate to limit the proposed exemption to these types of plans to be consistent with the scope of the Guidelines. There are a number of other existing registration and prospectus exemptions that certain other plans can continue to rely on.

Reporting requirement

Those who commented on the proposed requirement that a mutual fund file an annual report with securities regulators disclosing information about the trades to a CAP, were opposed to completing this report. They explained that they did not understand its purpose, it would be costly, and it was not something that segregated funds were required to do under insurance legislation. They also indicated that this information would be hard to compile, and that existing record-keepers may not have this data available.

Response

Securities regulators require that issuers disclose their trades in securities under a number of other exemptions. The CSA considered imposing this requirement in order to monitor who was using the proposed exemption, and how. Annual reporting would have help us assess the effectiveness of the proposed exemption, the extent to which the exemption is being used in each jurisdiction, and whether its use increases over time.

However, after considering the comments, the CSA have removed the reporting requirement from the proposed exemption and have decided to obtain this information through a notice instead. Under this notice requirement, a mutual fund manager that wishes to use the proposed exemption to distribute securities of funds it manages would have to file a notice in the prescribed form in each jurisdiction where they will offer their funds.

Dealing with former employees and their spouses

One commenter said that the proposed exemption does not adequately address the circumstance where a CAP participant ceases to be an employee of the plan sponsor even though the former employee member's assets are no longer technically held in the CAP. The commenter believes that the proposed exemption should still be available where the former employee member has the same investment options as are offered to the CAP, to

allow the former employee to make investments pursuant to pre-authorized purchase plans and to switch among investment options.

Response

The proposed exemption defines “member” to include a former employee, and his or her spouse and is therefore available to these individuals.

Incorporating the Guidelines

Some commenters indicated that instead of imposing separate requirements for the proposed exemption, we should incorporate the Guidelines by reference into the exemption or should refer to the Guidelines without repeating or changing their provisions.

Response

While the CSA supports the practices described in the Guidelines, not all parts of this document are relevant to securities regulation. Since a person or company will not be able to rely on the exemption unless they comply with all of the conditions of the proposed exemption, we should only impose the requirements that are necessary to ensure that plan members receive the information and assistance necessary for them to make an informed investment decision for their plan. This is the purpose of the conditions set out in the proposed exemption.

Increased role for plan members

One commenter suggested that the decision regarding the choice of mutual funds or mutual fund company(ies) be made by a committee consisting of an equal number of representatives from the “sponsoring company” and representatives selected by the investors, so that the interests of both major participants be protected and harmonized.

Response

The CSA agrees that it is desirable to improve informed decision-making. We encourage plan members to discuss this suggestion with their plan sponsor. However, while this may assist in plan governance, we do not believe that imposing such a requirement is necessary for effective securities regulation. We note that nothing in either the Guidelines or the proposed exemption would restrict plan sponsors from involving plan members in a variety of ways.

Plan members should receive information from both the plan sponsor and the mutual fund company

One commenter recommended that investors receive information from both the plan sponsor as the mutual fund company(ies). In this way, investors will be afforded the broadest and deepest information and protection.

Response

We agree that it is important that investors receive useful and relevant information about their investment choices. While mutual fund companies, through a fund’s prospectus and other disclosure documents provide comprehensive, and largely well-written information

about a mutual fund, research has indicated that many mutual fund investors still find this information difficult to understand. The proposed exemption would enable plan members to receive information that is more directed at helping them make an investment decision.

The CSA also note that the exemption we are adopting specifically permits a service provider (as defined in the exemption) to provide members with most of the information the plan sponsor must provide, on behalf of the plan sponsor.

Impact on other national instruments and policies

One commenter said that there is a conflict between the monthly valuation of investments requirement in the Guidelines and the 10-business days redemption requirement that they note is in 81-102. Another commenter indicated that the proposed rule is silent on the impact on other national instruments and policies that govern the sale of mutual funds.

Response

The CSA note that any requirements to redeem within a certain period of time that are imposed by NI 81-102 apply only to mutual funds that are regulated by that instrument. Pooled funds that are otherwise not required to comply with NI 81-102 need not follow any other requirements of that instrument, except those specifically required by the proposed exemption. The CSA note that that the redemption requirements in NI 81-102 do not impose a 10-day redemption period and refers readers to Part 10 of NI 81-102 for a discussion of the redemption requirements for mutual funds that are subject to NI 81-102.

The CSA note that the proposed exemption is a registration and prospectus exemption only. Any other rules that currently apply to the mutual fund or the person doing the trade would continue to apply.

Drafting comments

Two commenters provide a number of drafting comments on the proposed exemption that addressed technical aspects of the proposed exemption.

Response

We have considered the drafting comments and have incorporated most of the commenters' suggestions.

Comments about Specific Questions

1. Does the proposed replacement by the Alberta Securities Commission with the proposed exemption improve the circumstances for those who trade or distribute mutual fund securities to a CAP when compared to the existing exemption in Alberta, or does it create concerns?

Comment

The only comment received on this question did not support repealing the existing Alberta exemption, since its application is broader than the proposed exemption.

Response

The Alberta Securities Commission will eliminate the capital accumulation plan exemptions found in sections 68 and 123 of the ASC Rules (General) (ASC CAP exemption) and ASC Policy 5.5 – *Capital Accumulation Plans*. Some of the securities described under the ASC CAP exemption are securities that are already exempt under other provisions. Other securities under the ASC CAP exemption are exempt if they are securities for which an insurance company or a trust company may invest in. The legislation that governs what insurance companies and trust companies may invest in has been broadened beyond what was originally intended for capital accumulation plans.

2. 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.

Comments

Most commenters said that we should permit plan sponsors to aggregate fees and expenses when reporting to plan members because it is what most segregated funds and conventional mutual funds do today, and that this approach would enhance comparability of funds for plan members. Another suggested that we should consider the CFA presentation standards.

Some of these commenters indicated that certain fees should not be aggregated. These fees included fees for discretionary transactions such as withdrawal and transfer fees, fees associated with the use of an investment or educational tool, record keeping fees and administration fees. True harmonization would provide the CAP administrator with the ability to report fees on a basis similar to the insurance industry.

One commenter opposed aggregating expenses because other regulatory initiatives, such as proposed National Instrument 81-106 *Investment Fund Continuous Disclosure*, require detailed line item disclosure of mutual fund expenses and complete transparency regarding costs was recommended by the proposed OSC Fair Dealing Model.

Another commenter said that the costs from both the mutual fund companies (such as MERs) and from the “sponsoring companies” should be itemized - and distinguished because the ability of “sponsoring companies” to aggregate their own administrative or other costs along with other fees could lead to abuse. Other commenters indicated that CAP members are most concerned with the cost of participating in the plan, whether it would be an administrative cost or an investment management cost.

Response

We have clarified the terms of the proposed exemption in order to make the fee disclosure that plan sponsors must provide to members more consistent with that required in the Guidelines. We believe that this disclosure is consistent with existing requirements found in NI 81-102 and will provide plan members with a sound base to determine what the direct and indirect fees are for.

3. Staff in Quebec have concerns about the impact of the proposed exemption on the protection generally afforded to investors under securities legislation. For example, the Quebec 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 Quebec.

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 requested comment on these investor protection issues.

Comments

One commenter said that the additional investor protection measures that Quebec is asking about should not be of material concern in the CAP context as plan sponsors will have specified obligations under the Guidelines with respect to the selection of the funds to be available to the CAP members subject to on-going monitoring. If Quebec insists that certain recourses that would normally flow from the dealer registration and prospectus requirements continue to be available, the same remedies should be expressly imposed on segregated funds to harmonize the treatment of mutual funds and segregated funds.

Two other commenters indicated that the Guidelines provide sufficient provisions for the protection of plan members. One commenter added that that members participating in the group plans are unlikely to require a 48-hour withdrawal right.

Response

We interpret existing securities laws to mean that if a prospectus is delivered to a plan member, the member will be relying on that prospectus when deciding to buy the particular mutual fund. In this circumstance plan members who receive a prospectus, and retail investors who receive that same prospectus, will be treated the same under securities laws and more particularly, will have the same statutory rights. In other cases, the CSA note that commenters are generally of the view that the protection normally afforded to investors through securities legislation is not necessary, given the structure of CAPs and the obligations imposed on CAP sponsors in the Guidelines.

In Saskatchewan and Nova Scotia, where some of the documentation provided under the exemption may constitute an offering memorandum under their legislation, the local exemption they are each adopting in their respective blanket orders, provides specific

exemptions from these requirements, and the rights of action that investors would have if the disclosure were an offering memorandum.

It is our understanding that this will harmonize Saskatchewan and Nova Scotia with the rights of action in the other jurisdictions who are adopting this exemption.

In addition, when this exemption is incorporated into NI 45-106 *Registration and Prospectus Exemptions*, in certain provinces there may be additional recourses that investors can use.

Appendix B

Registration and Prospectus Exemption for Certain Capital Accumulation Plans

PART 1 DEFINITIONS

“**capital accumulation plan**” means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan and in Québec and Manitoba, includes a simplified pension plan.

“**member**” means a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

- (a) his or her spouse,
- (b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or
- (c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan.

“**plan sponsor**” means an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the plan sponsor has delegated its responsibilities to the service provider.

“**service provider**” means a person or company that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.

PART 2 EXEMPTIONS

2.1 The dealer registration requirement does not apply to a trade by a person or company in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member’s participation in the capital accumulation plan, if the following conditions are met:

- (a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan,
- (b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision,

(c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in,

- (i) the name of the mutual fund,
- (ii) the name of the manager of the mutual fund and its portfolio adviser,
- (iii) the fundamental investment objective of the mutual fund,
- (iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,
- (v) a description of the risks associated with investing in the mutual fund,
- (vi) where a member can obtain more information about each mutual fund's portfolio holdings,
- (vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and
- (viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund,

(d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including:

- (i) any costs that must be paid when the mutual fund is bought or sold,
- (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,
- (iii) mutual fund management fees,
- (iv) mutual fund operating expenses,
- (v) record keeping fees,
- (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,
- (vii) account fees, and
- (viii) fees for services provided by service providers

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

(e) the plan sponsor has, within the past year, provided the members with performance information about each mutual fund the members may invest in, including,

- (i) the name of the mutual fund for which the performance is being reported,

- (ii) the performance of the mutual fund, including historical performance for one, three, five and 10 years if available,
 - (iii) a performance calculation that is net of investment management fees and mutual fund expenses,
 - (iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,
 - (v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the mutual fund, and corresponding performance information for that index, and
 - (vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance.
- (f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment,
- (g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan,
- (h) the plan sponsor must provide the information required by paragraphs 2.1(b), (c), (d) and (g) prior to the member making an investment decision under the capital accumulation plan, and
- (i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant.

2.2 The prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in section 2.1, if

- (a) the conditions in section 2.1 have been complied with, and
- (b) the mutual fund complies with Part 2 of National Instrument 81-102 *Mutual Funds*.

PART 3 FILING REQUIREMENTS

3.1 Before the first time a mutual fund relies on the exemption in section 2.2, the mutual fund must file a notice in the form found in Appendix A in each jurisdiction in which the mutual fund expects to distribute its securities.

**PART 4 EXEMPTION FROM OFFERING MEMORANDUM
REQUIREMENTS IN CERTAIN PROVINCES¹**

4.1 In Nova Scotia, the Nova Scotia Securities Commission specifies pursuant to subclause 2(1)(ab)(iii) of the Securities Act (Nova Scotia) that the documents containing the information described in paragraphs 2.1(c) and (e) shall not constitute an offering memorandum within the meaning of the Securities Act (Nova Scotia).

4.2 In Saskatchewan:

(1) the provisions of subsections 81(3) and (3.1) of The Securities Act, 1988 (Saskatchewan) do not apply to any documents containing the information described in paragraphs 2.1(c) and (e); and

(2) the provisions of section 138 of The Securities Act, 1988 (Saskatchewan) do not apply to any person or company with respect to the content of the documents containing the information described in paragraphs 2.1(c) and (e).

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¹ In Ontario, an exemption from the offering memorandum requirements is not necessary because the offering memorandum liability provisions in s. 130.1 of the Securities Act (Ontario) are only applicable if a rule specifies that s. 130.1 applies.

Appendix C

Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

1. National Instrument 45-106 *Prospectus and Registration Exemptions* is amended by this Instrument.

2. The following is added after section 2.42:

“Capital accumulation plan

2.42.1 (1) In this section,

“capital accumulation plan” means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group RRSP, a group registered education savings plan, or a deferred profit sharing plan, established by a plan sponsor that permits a member to make investment decisions among two or more investment options offered within the plan and in Québec and Manitoba, includes a simplified pension plan.

“member” means, for the purposes of the definition of capital accumulation plan, a current or former employee of an employer, or a person who belongs, or did belong to a trade union or association, or

- (a) his or her spouse,
- (b) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse, or
- (c) his or her holding entity, or a holding entity of his or her spouse,

that has assets in a capital accumulation plan, and includes a person that is eligible to participate in a capital accumulation plan.

“plan sponsor” means, for the purposes of the definition of capital accumulation plan, an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a service provider to the extent that the plan sponsor has delegated its responsibilities to the service provider.

“service provider” means, a person that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.”

- (2) The dealer registration requirement does not apply to a trade by a person in a security of a mutual fund to a capital accumulation plan, or to a member of a capital accumulation plan as part of the member’s participation in the capital accumulation plan, if the following conditions are met:

- (a) the plan sponsor selects the mutual funds that members will be able to invest in under the capital accumulation plan,
- (b) the plan sponsor establishes a policy, and provides members with a copy of the policy and any amendments to it, describing what happens if a member does not make an investment decision,
- (c) in addition to any other information that the plan sponsor believes is reasonably necessary for a member to make an investment decision within the capital accumulation plan, and unless that information has previously been provided, the plan sponsor provides the member with the following information about each mutual fund the member may invest in,
 - (i) the name of the mutual fund,
 - (ii) the name of the manager of the mutual fund and its portfolio adviser,
 - (iii) the fundamental investment objective of the mutual fund,
 - (iv) the investment strategies of the mutual fund or the types of investments the mutual fund may hold,
 - (v) a description of the risks associated with investing in the mutual fund,
 - (vi) where a member can obtain more information about each mutual fund's portfolio holdings,
 - (vii) where a member can obtain more information generally about each mutual fund, including any continuous disclosure, and
 - (viii) whether the mutual fund is considered foreign property for income tax purposes, and if so, a summary of the implications of that status for a member who invested in that mutual fund,
- (d) the plan sponsor provides members with a description and amount of any fees, expenses and penalties relating to the capital accumulation plan that are borne by the members, including:
 - (i) any costs that must be paid when the mutual fund is bought or sold,
 - (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the plan sponsor,
 - (iii) mutual fund management fees,
 - (iv) mutual fund operating expenses,
 - (v) record keeping fees,
 - (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences,
 - (vii) account fees, and
 - (viii) fees for services provided by service providers

provided that the plan sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the plan sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular member.

- (e) the plan sponsor has, within the past year, provided the members with performance information about each mutual fund the members may invest in, including,
 - (i) the name of the mutual fund for which the performance is being reported,
 - (ii) the performance of the mutual fund, including historical performance for one, 3, 5 and 10 years if available,
 - (iii) a performance calculation that is net of investment management fees and mutual fund expenses,
 - (iv) the method used to calculate the mutual fund's performance return calculation, and information about where a member could obtain a more detailed explanation of that method,
 - (v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the mutual fund, and corresponding performance information for that index, and
 - (vi) a statement that past performance of the mutual fund is not necessarily an indication of future performance.
 - (f) the plan sponsor has, within the past year, informed members if there were any changes in the choice of mutual funds that members could invest in and where there was a change, provided information about what members needed to do to change their investment decision, or make a new investment,
 - (g) the plan sponsor provides members with investment decision-making tools that the plan sponsor reasonably believes are sufficient to assist them in making an investment decision within the capital accumulation plan,
 - (h) the plan sponsor provides the information required by paragraphs (b), (c), (d) and (g) prior to the member making an investment decision under the capital accumulation plan, and
 - (i) if the plan sponsor makes investment advice from a registrant available to members, the plan sponsor must provide members with information about how they can contact the registrant.
- (3) In Nova Scotia, the securities regulatory authority specifies pursuant to subclause 2(1) (ab)(iii) of the Securities Act (Nova Scotia) that documents containing the information described in paragraphs (2)(c) and (e) do not constitute an offering memorandum within the meaning of the *Securities Act* (Nova Scotia).
- (4) The prospectus requirement does not apply to a distribution of a security of a mutual fund in the circumstances set out in subsection (2), if
- (a) the conditions in subsection (2) have been complied with, and

(b) the mutual fund complies with Part 2 of National Instrument 81-102 *Mutual Funds*.”.

3. Part 6 is amended by adding the following:

“Notice required to rely on capital accumulation plan exemption

6.5.1 Before the first time a mutual fund relies on the exemption in section 2.42.1, the mutual fund must file a notice in the form found in Appendix C in each jurisdiction in which the mutual fund expects to distribute its securities.”

4. The following is added after Appendix B

“Appendix C

Notice of Intention to Rely on Exemption in s. 2.42.1

Issuer information

1. State the full name, address and telephone number of the mutual fund that distributed or intends to distribute the security.
2. State whether the mutual fund is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.
3. List each jurisdiction where the mutual fund is, or intends to distribute mutual fund securities in reliance on the exemption for capital accumulation plans and deliver the notice to the relevant securities regulatory authority listed in the attached Schedule.

Certificate

On behalf of the mutual fund, I certify that the statements made in this report are true.

Date: _____

Name of mutual fund (please print)

Print name and position of person signing

e-mail address of person signing

Signature

Schedule to Appendix C

Instruction:

Prior to relying on the exemption, you must file this notice with the securities regulatory authority in each jurisdiction in which the mutual fund is currently providing services to a capital accumulation plan, or where they intend to provide services to a capital accumulation plan. If you subsequently intend to provide services to a capital accumulation plan located in a new province, you must file a notice in that province.

Notice - Collection and use of personal information

The securities regulatory authorities collect the personal information required under this notice for the purposes of the administration and enforcement of the securities legislation. Freedom of information legislation in certain jurisdictions may require the securities regulatory authority to make this information available if requested. As a result, the public may be able to obtain access to the information.

If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdictions where the mutual fund files this form, at the address(es) set out below.

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Telephone: (604) 899-6854
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506
Attention: Exempt Distributions

Alberta Securities Commission

4th Floor, 300 – 5th Avenue SW
Calgary, AB T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission

6th Floor 1919 Saskatchewan Drive
Regina, SK S4P 3V7
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission

1130 – 405 Broadway Avenue
Winnipeg, MB R3C 3L6
Telephone: (204) 945-2548

Facsimile: (204) 945-0330

Ontario Securities Commission

20 Queen Street West

Suite 1900, Box 55

Toronto, ON M5H 3S8

Telephone: (416) 593-3682

Facsimile: (416) 593-8252

Public official contact regarding indirect collection of information:

Administrative Assistant to the Director of Corporate Finance

Telephone: (416) 593-8086

Autorité des marchés financiers

800, Square Victoria, 22^e étage

C.P. 246, Tour de la Bourse

Montréal (Québec) H4Z 1G3

Telephone: (514) 395-0337 or 1-877-525-0337

Facsimile: (514) 864-3681

New Brunswick Securities Commission

133 Prince William Street, Suite 606

Saint John, NB E2L 2B5

Telephone: (506) 658-3060

Facsimile: (506) 658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building

1690 Hollis Street

Halifax, NS B3J 3J9

Telephone: (902) 424-7768

Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, P.O. Box 2000

Charlottetown, PE C1A 7N8

Telephone: (902) 368-4569

Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador

P.O. Box 8700

2nd Floor, West Block Confederation Building

St. John's, Newfoundland and Labrador A1B 4J6

Telephone: (709) 729-4189

Facsimile: (709) 729-6187

Government of Yukon

Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867)

Government of the Northwest Territories

Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, NT X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NU X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

5. These amendments come into force on ●.”

Appendix D

Amendments To Alberta Securities Commission Rules (General)

PART 1 AMENDMENTS TO ALBERTA SECURITIES COMMISSION RULES (GENERAL)

1.1 Amendment - The Alberta Securities Rules (General) are amended by repealing sections 68 and 123.

PART 2 EFFECTIVE DATE

2.1 Effective Date - These amendments are effective [*].