

**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 Quebec, 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 Quebec 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 Quebec, is adopting effective October 21, 2005. Ontario and Quebec will use this text as a standard template for future applications for exemptive relief in Ontario and Quebec.

**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 Quebec 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 s.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* (Rule 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 Rule 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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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