



Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

January 25, 2012

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
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Me Anne-Marie Beaudoin
Secrétaire de L' Autorité
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Dear Sir/Madam:

**Canadian Securities Administrators Consultation Paper 91-403 on Derivatives:
Surveillance and Enforcement**

The Canadian Life and Health Insurance Association is pleased to provide comments on the Canadian Securities Administrators Consultation Paper 91-403 on Derivatives: Surveillance and Enforcement.

Established in 1894, the Canadian Life and Health Insurance Association (CLHIA) is a voluntary trade association that represents the collective interests of its member life and health insurers. These members account for over 99 per cent of the life and health insurance in force in Canada and contribute to the financial well-being of millions of Canadians by providing a wide range of financial security products. The Annex to this letter provides a brief overview of the industry's role in Canada's economy.

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The CLHIA understands the interest by provincial securities regulators in examining the regulation of OTC derivatives and considering whether there are regulatory gaps that should be addressed in some manner. In examining the Canadian marketplace, it should be noted that the major participants in the Canadian derivatives market are banks, which are federally regulated by the Office of the Superintendent of Financial Institutions (OSFI). With respect to insurance companies, it should also be noted that they are participants in the buy-side of the derivatives market and that the most significant insurance company participants in the buy-side of the derivatives markets in Canada are also federally regulated by OSFI. Given the international nature of derivatives trading and the nature of regulation of the major participants, the development of any further regulation should to the extent required, be considered at the federal level. OSFI is a prudential regulator with expertise in this area of regulation.

With respect to market conduct matters, the participants at this level are sophisticated investors and the market conduct does not relate to consumer protection. To the extent that there are activities occurring at a consumer level, CLHIA understands the interest of provincial regulators in ensuring that there are no significant regulatory gaps that would threaten consumer interest. However, it is not clear what market conduct issues are particularly relevant to derivatives, and why additional regulatory powers would be required.

With respect to surveillance and monitoring, the CLHIA agrees that further study and research is required with respect to the development of a comprehensive market surveillance system.

As stated in the CLHIA submissions on Consultation Papers 91-401 and 91-402, if the provincial securities regulators determine to develop any regulations pertaining to derivatives, it is of critical importance to maintain a harmonized legislative and regulatory framework among all provincial and territorial jurisdictions in Canada. This is necessary as a swap between two counterparties in Canada may involve multiple jurisdictions. For example, a trader located in Ontario employed by a federally regulated bank with a head office in Quebec may enter into a swap with a trader in Manitoba who is employed by a federally regulated insurance company with a head office in Ontario. The swaps may be collateralized and involve custodians and include the delivery of collateral in additional jurisdictions. As well, if the swaps are reported to a trade repository and/or cleared, the jurisdiction of the trade repository and clearing agency must also be considered. In addition, due to the cross-border nature of many trades (e.g., between a Canadian federally regulated insurance company and a U.S., Swiss or German bank), any form of regulation must also strive for cooperation and harmonization globally so that an efficient marketplace is maintained. Duplicate or different reporting requirements in different jurisdictions must be avoided as it would add to cost and administration, which would have an impact on the competitiveness of Canadian financial institutions within their global operations.

The development of a provincial surveillance and monitoring regime would require clarification as to what entities would be required to report to provincial securities regulators. The responsibility for reporting of trade information should lie with the market



makers or the trade repositories. As stated in the CLHIA's response to Consultation Paper 91-402, the life and health insurance supports development of a national trade repository. Since OTC derivative transactions are most frequently undertaken with Canadian banks which function as the market makers in Canada, Canadian banks would be best placed to shoulder the responsibility with respect to any reporting requirement imposed on market makers. Taking into consideration the federally regulated nature of the banks and the support for a national trade repository, development of a reporting regime at a federal level, with access to appropriate information by provincial regulators on a confidential basis, would be the most efficient course of action in meeting Canada's international obligations.

Furthermore, any reporting requirements should be focused on the nature of the risk that it attempts to address and not be unduly burdensome. Data which is provided should allow regulators to identify trends and assist with market transparency. However, the cost of implementation and maintenance of compliance obligations must be considered in proportion to the risk.

The primary goal of the G20 recommendation is the reduction of systemic risk. It should be noted that the relative size of the Canadian derivatives market and of the Canadian participants in the global derivatives market is not significant. For this reason, CLHIA would suggest that it is reasonable for the CSA to consider and follow developments in other principal jurisdictions as they occur.

With respect to the powers of provincial securities regulators related to market conduct, the type of risk which the CSA may be trying to address must be considered. Since as noted above, OTC derivative transactions do not involve consumers but are generally undertaken by sophisticated investors, market conduct issues are substantially different. In this context, OTC derivatives are better understood as being private contracts between sophisticated investors rather than as traded securities. The focus of regulation should be to address issues related to systemic risk.

As noted, the life and health insurance industry is for the most part currently regulated by OSFI regarding issues related to solvency. Current reporting to OSFI already includes a detailed analysis of derivative obligations. Therefore, any additional reporting obligations need to be considered carefully and duplicative regulation should be avoided.

If you require any additional information at this time, please feel free to contact me by e-mail at JWood@clhia.ca or by telephone at 416-359-2025.

Yours truly,

James Wood
Counsel

Life and Health Insurance in Canada

About the Life and Health Insurance Industry in Canada

The life and health insurance industry contributes to the financial well-being to more than 26 million Canadians by providing a wide range of financial security products such as individual and group life insurance, annuities, pensions, RRSPs, RRIFFs, disability insurance and supplementary health insurance. The industry is a major investor in Canada's economy with total assets of \$475 billion. This pool of capital is one of the country's most important sources of long-term investment capital. The industry employs 132,000 Canadians across the country.

Canada's life and health insurance industry is sound and well capitalized -- it is well positioned to meet the obligations of its policyholders despite the challenges of the current economic climate. Canadian life and health insurance companies' credit standing remains strong and amongst the very highest in the corporate world.

Key Industry Statistics – 2009

	<u>Canada</u>
Benefit payments	\$58.6 billion
Canadians with coverage for:	
Financial protection (any product)	26 million
Supplementary health benefits	23 million
Disability income protection	11 million
Life insurance	21 million
Individual Annuities (RRSPs, RRIFFs, etc.)	3.6 million
Group RRSPs	2.0 million
Pensions	1.0 million
Assets	\$475 billion
Life Insurance ownership	\$3.5 trillion
Employees & agents	132,000
Head offices	96

Contributions of the Industry

Life and health insurers make significant contributions to the country's economic and social well-being. The industry:

- **provides a wide range of financial security products to more than 26 million Canadians**
- **makes benefit payments of nearly \$59 billion annually** to Canadians. Over 90% goes to living policyholders as annuity, disability or health benefits. The remainder goes to beneficiaries as death claims.
- **is a major investor in Canada's economy** with assets of \$475 billion in the country.

- **plays an important role in meeting the financing needs of all levels of government** in Canada with government securities accounting for 17% of total assets.
- **is a significant contributor to public finances in Canada.** The industry paid almost \$3 billion in taxes during 2008, with over \$1.5 billion paid to provincial governments. In addition, the industry collects and remits retail sales tax payable by policyholders on group insurance premiums which amounted to over \$1.5 billion in Ontario and Quebec.
- **is a major employer** with 132,000 Canadians earning some or all of their livings from the industry.
- **contributes to small business.** The products of life and health insurers and the consultative role of life insurance agents help small and medium-sized businesses attract and retain a skilled workforce.
- **is internationally successful.** In more than 20 countries around the world, Canadian life and health insurers have an outstanding track record of competing in foreign markets, with over \$74 billion or just over half of their worldwide premiums generated abroad.
- **develops products to reflect and to anticipate changing consumer needs and expectations** such as "index-linked" life insurance policies; innovative approaches to group insurance ("cafeteria" and "spending account" options); flexible retirement options; and innovative and expanded health insurance (critical illness and long term care).
- **takes industry-wide initiatives to protect consumers** by developing guidelines, voluntarily and proactively, to respond to emerging issues.
- **has an independent OmbudService for consumers** of life and health insurance products called the OmbudService for Life and Health Insurance (OLHI). Consumers with questions or complaints can call, free of charge, the OLHI for bilingual information and assistance about the life and health insurance products and services.

About the CLHIA

The Canadian Life and Health Insurance Association Inc. (CLHIA), established in 1894, is a voluntary trade association that represents the collective interests of its member life and health insurers. Our members account for over 99% of the life and health insurance in force in Canada and administer more than half of Canada's pension plans. For more information about the CLHIA and the life and health insurance industry visit www.clhia.ca

