Canadian Life and Health Insurance Association Inc.

Association canadienne des compagnies d'assurances de personnes inc.

September 5, 2013

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

DELIVERED VIA E-MAIL: comments@osc.gov.on.ca

Dear Mr. Stevenson:

Proposed Ontario Securities Commission Rule 91-506 Derivatives: Product Determination and Rule 91-507 Trade Repositories and Derivatives Data Reporting

The Canadian Life and Health Insurance Association is pleased to provide comments on proposed Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* and 91-507 *Trade Repositories and Derivatives Data Reporting*.

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. The industry, which provides employment to 65,510 Ontario residents and has investments in Ontario of more than $240 billion, protects some 10.6 million Ontarians through products such as life insurance, annuities, RRSPs, disability insurance and supplementary health plans. It pays benefits of more than $33 billion a year to Ontarians and administers about two-thirds of Canada's pension plans. Canadian life insurance companies participate as end-users in Canadian and foreign derivatives markets.

With respect to Rule 91-506, the CLHIA is pleased that the scope of excluded derivatives in section 2(b) has been expanded to include insurance or annuity contracts issued outside of Canada with an insurer holding a licence under insurance legislation of a foreign jurisdiction, if they would be regulated as insurance under insurance legislation of Canada or Ontario if they had been entered into in Ontario. The CLHIA is also pleased that the Companion Policy to Rule 91-506 has been expanded to clarify that a reinsurance contract would be considered to be an insurance or annuity contract and thus not subject to inclusion.

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However, we believe that a small change to section 2(b)(ii) is warranted to minimize regulatory uncertainty. The requirement that the foreign insurance or annuity contract only qualifies for the exclusion "if it would be regulated as insurance under insurance legislation of Canada or Ontario if it had been entered into in Ontario" creates an unnecessary burden on foreign insurers when doing business with Canadian clients outside of Canada, to examine Canadian and Ontario insurance legislation to ensure compliance with this rule. Further, there could be regulatory uncertainty in the case of a non-standard foreign insurance or annuity contract that may not yet be addressed by Canadian or Ontario insurance legislation. As such, we respectfully request that the above-noted phrase be replaced with "provided that the insurance or annuity contract is permitted under such foreign insurance legislation".

With respect to Rule 91-507, section 27 sets out a protocol for reporting of trades by counterparties and subsection (2) ultimately imposes an obligation on the local counterparty to monitor the reporting of the trade by the clearing agency, the dealer or the other counterparty. This monitoring requirement is unduly onerous for end-users. It's also unclear what is intended by subsection (2) where the trade involves a dealer, as the definition of local counterparty includes both the dealer and the party who is organized under local laws. The ultimate obligation to comply with the reporting requirement should stay with the clearing agency or dealer regardless of their jurisdiction. End-users should not be required to monitor the reporting activities of dealers and clearing houses.

The obligation for the local counterparty to report may result in reporting obligations by multiple parties where counterparties are located in different jurisdictions. We believe it would be reasonable for the rules to be designed such that the Ontario Securities Commission can require a dealer to satisfy the reporting obligation even if the dealer is not based in Ontario. This would greatly limit the potential for duplicate reporting by multiple parties.

Where a U.S. swap dealer with a Canadian counterparty is required to report in the U.S., it would be reasonable to require the U.S. swap dealer to also be responsible for the Canadian reporting requirements, or, require the Canadian trade repositories to coordinate with U.S. swap data repositories (and trade repositories in other jurisdictions) to alleviate the burden of multiple reporting. Obviously, an internationally harmonized approach to reporting obligations is imperative.

As stated in previous submission letters, reporting of intra-group or inter-affiliate transactions should not be required. End-users should be able to organize their affairs by setting up internal back-to-back arrangements without triggering filing requirements. Trade reporting with respect to such transactions will not result in greater transparency; to the contrary, it will result in duplication and distortion of the number of true market transactions.

It should be noted that at the current time insurers do not have the systems capability to do real-time reporting, and any required reporting by insurers in the capacity of being end users would be very costly, which costs are likely to be passed on to the insurers' customers.

The issue of maintaining a harmonized approach among all Canadian jurisdictions remains paramount. The rules being developed need to include a process to avoid the requirement to report in more than one Canadian jurisdiction.

The CLHIA appreciates the opportunity to provide its comments on the proposed rules. 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

James Wood
Counsel