



September 17, 2018

DELIVERED VIA EMAIL: consultation-en-cours@lautorite.qc.ca
comments@osc.gov.on.ca

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Dear Sirs/Mesdames:

Re: Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed National Instrument 93-102 *Derivatives: Registration* (collectively, the “Proposed Rules”)

The Canadian Life and Health Insurance Association is pleased to provide comments on the Canadian Securities Administrators’ proposed National Instruments 93-101 *Derivatives: Business Conduct* (the “Business Conduct Rule”) and proposed National Instrument 93-102: *Derivatives Registration* (the “Registration Rule”).

The Canadian Life and Health Insurance Association (CLHIA) is a not-for-profit, membership-based organization that represents companies which together account for 99 percent of Canada’s life and health insurance business. CLHIA’s member companies, through a wide range of products and services, help Canadians to protect themselves and their families against the financial risks surrounding premature death, illness and retirement. These products include individual and group life insurance, supplementary health insurance and individual and group annuities (including RRSPs, RRIFs, TFSAs and Defined Contribution pension plans).

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The CLHIA supports the goal of establishing a robust investor protection regime related to derivatives that meets The International Organization of Securities Commission's international standards and which protects participants in the OTC derivatives markets from unfair, improper or fraudulent practices.

Life Insurance Company Operations

Canadian life insurance companies generally participate as end-users in Canadian and foreign derivatives markets, and we understand that the end-user exemptions in Section 49(2) of the Registration Rule and Section 37(1) of the Business Conduct Rule will be relied upon where appropriate to exempt Canadian life insurance companies from the requirements of the Proposed Rules which apply to derivatives dealers and derivatives advisers. A key matter is that life insurance companies do not function as "market-makers" in derivatives.

In addition, insurance contracts have generally been excluded from the application of securities registration requirements. For example, section 8.14 of National Instrument 31-103: *Registration Requirements, Exemptions and Ongoing Registrant Obligations* entitled "Variable insurance contract" specifically exempts trades by insurance companies in certain insurance products. Similarly, section 2.39 of National Instrument 45-106: *Prospectus Exemptions* (NI 45-106) provides insurance companies with an exemption from the prospectus requirements for distributions of certain insurance products including group insurance.

To enhance alignment between the Proposed Rules and existing securities registration requirements, consideration should be given to including in the Registration Rule an exemption for insurance companies dealing in certain insurance products, with such exemption mirroring the language found in section 2.39 of NI 45-106.

Additionally, we would note that OSFI actively regulates life insurance companies as Federally Regulated Financial Institutions with respect to solvency and risks, including the risks associated with derivatives exposure, resulting in a robust regulatory framework.

Investment Management Subsidiaries

Canadian life insurance companies also often have investment management subsidiaries that are registered advisers under Canadian securities legislation with employees who are also registered and provide advice with respect to investments in segregated funds, mutual funds, managed accounts and purchases for general account holdings of life insurers. Some of these insurance company subsidiaries and their personnel may also be subject to registration as derivatives dealers or derivatives advisers in accordance with the requirements of the Proposed Rules.



In this regard, we note that sections 53(1) and 60(1) of the Registration Rule provide that entities that would be brought within the registration requirements solely as a result of their dealing with, or providing advice to an affiliated entity are exempted from the registration requirement. Section 4 of the Business Conduct Rule includes a somewhat similar exemption for persons or companies in respect of their dealing with or advising an affiliated entity; however, section 4 of the Business Conduct Rule does not, on a strict reading, necessarily provide an exemption from registration obligations.

Given the foregoing, we think it would be more clear as to which persons and entities need to be registered if the exemptions in the Proposed Rules were made consistent. This would mean adding the exemptions from sections 53(1) and 60(1) of NI 93-102 to 93-101 and adding the exemption from section 4 of NI 93-101 to NI 93-102.

Support for CMIC's Submission to the CSA

In this context, at least two large Canadian insurers have participated in developing the submissions of the Canadian Market Infrastructure Committee (CMIC), and the CLHIA wishes to express its general agreement with the concerns raised in the CMIC submissions related to the Proposed Rules.

Given the small size of the Canadian derivatives market and its heavy reliance on global participants, it is vitally important to harmonize with international standards where appropriate. In particular, it is important to harmonize with requirements in the United States. Further detail is also required about what jurisdictions will qualify for substituted compliance. We share the concern that many foreign dealers and advisers will not want to assume increased legal and regulatory risk and compliance burden associated with any unique Canadian requirements. Reduced foreign participation in the Canadian market will result in restricted liquidity and access to foreign advisers, and it will increase costs for Canadian businesses.

We support the goal of avoiding duplicative and / or unnecessary regulation, particularly where the OTC derivatives markets in Canada are functioning well and the costs do not appear to outweigh the benefits. We agree with CMIC's view that it is appropriate to exclude financial institutions which are federally regulated by OSFI from the dealer and adviser registration requirements. We also agree with CMIC's recommendations with respect to derivatives advisory services that are provided by foreign advisers and by non-foreign advisers that are currently registered under Canadian securities legislation.



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 email at JWood@clhia.ca or by telephone at 416-359-2025.

Yours truly,

“James Wood”

James Wood
Senior Counsel