



Canadian Life  
and Health Insurance  
Association Inc.

Association canadienne  
des compagnies d'assurances  
de personnes inc.

April 10, 2012

John Stevenson, Secretary  
Ontario Securities Commission  
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Me Anne-Marie Beaudoin  
Secrétaire de L' Autorité  
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Dear Sir/Madam:

**Canadian Securities Administrators Consultation Paper 91-404 on Derivatives:  
Segregation and Portability in OTC Derivatives Clearing**

The Canadian Life and Health Insurance Association is pleased to provide comments on the Canadian Securities Administrators Consultation Paper 91-404 on Derivatives: Segregation and Portability in OTC Derivatives Clearing ("CP 91-404").

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 insurance insurers. The industry, which provides employment to almost 135,000 Canadians and has investments in Canada of \$514 billion, protects more than 26 million Canadians through products such as life insurance, annuities, RRSPs, disability insurance and supplementary health plans. It pays benefits of almost \$65 billion a year to

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Canadians and administers over one-half of Canada's pension plans. Canadian life insurance companies participate as end-users in Canadian and foreign derivatives markets.

The CLHIA agrees with the Committee's statement that it is crucial that rules developed for the Canadian market accord with international practice to ensure that Canadian market participants and financial market infrastructures have full access to the international market and are regulated in accordance with international principles. The CLHIA also supports the Committee's stated goal of ensuring that central counterparties ("CCPs") possess adequate rules and infrastructure to facilitate the segregation and portability of collateral in a manner that provides market participants with appropriate protections in order to facilitate their involvement in the OTC derivatives market.

The CLHIA agrees with a number of the Committee's recommendations in CP 91-404.

- The CLHIA supports the Committee's recommendation that clearing members be required to segregate customer collateral from their own proprietary assets and that all OTC derivatives CCPs employ an account structure that enables the efficient identification of positions and collateral belonging to each individual customer of a clearing member.
- The CLHIA agrees with the Committee's recommendation that every OTC derivatives CCP be structured to facilitate the portability of customer positions and collateral. The portability of customer positions and collateral should not be restricted to default situations and should be made available to customers at their discretion. It is important to provide customers with flexibility to respond to market developments.
- The costs of different segregation structures offered by a CCP should be transparent to the customer and individual customer account segregation structures should be available at a reasonable cost.
- The CLHIA supports the Committee's recommendation that OTC derivatives CCPs be required to maintain the Complete Legal Segregation Model with respect to the handling of customer collateral. Under this model, customers are protected against fellow customer risk and recordkeeping requirements provide enhanced portability.
- The level of risk associated with investment of collateral in a customer pool rather than on an individual basis as proposed under the Full Physical Segregation Model is acceptable, provided that investments of collateral are restricted to instruments with minimal risk. It is important to establish



a framework which balances the protections to the customer against administrative efficiency and costs to the customer.

- The CLHIA supports the Committee's recommendation that a perfection by control regime for cash collateral be instituted through appropriate amendments to each province's PPSA laws.
- It is important that stay orders under bankruptcy and insolvency legislation do not take effect with respect to OTC derivatives transactions and that closeout netting rights are immediately enforceable. Federal and provincial laws should be updated to provide such protections in transactions involving central counterparties.

As well, consideration needs to be given to the consequences of imposing a requirement that customer collateral be governed by Canadian laws when dealing with a cross-border transaction involving a foreign CCP.

Development of a framework for establishment of a CCP regime needs to be done on a national harmonized basis. To maintain market efficiency, it is important that each province not have separate or differing requirements. The Canadian derivatives regulatory regime also needs to be harmonized with international jurisdictions. Regulation of CCPs in Canada should recognize the significant role that foreign central clearing counterparties will play in the clearing of swaps and not impose barriers to Canadian participants in this market.

The CLHIA appreciates the opportunity to provide its comments on the Consultation Paper. If you require any additional information at this time, please feel free to contact me by e-mail at [JWood@clhia.ca](mailto:JWood@clhia.ca) or by telephone at 416-359-2025.

Yours truly,

James Wood  
Counsel