



**Canadian Life  
and Health Insurance  
Association Inc.**

**Association canadienne  
des compagnies d'assurances  
de personnes inc.**

June 17, 2013

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

Me Anne-Marie Beaudoin  
Secrétaire de L'Autorité  
Autorité des marchés financiers  
800 square Victoria, 22e étage  
C.P., 246 Tour de la Bourse  
Montréal, Québec  
H4Z 1G3

DELIVERED VIA E-MAIL: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)  
[Consultation-en-cours@lautorite.qc.ca](mailto:Consultation-en-cours@lautorite.qc.ca)

Dear Sir/Madam:

**Canadian Securities Administrators Consultation Paper 91-407- Derivatives:  
Registration**

The Canadian Life and Health Insurance Association is pleased to provide comments on the Canadian Securities Administrators ("CSA") Consultation Paper 91-407 *Derivatives: Registration* ("CP 91-407").

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, and many of the members are participants in the Canadian derivatives market, as further discussed below. 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, Registered Retirement Savings Plans, and disability insurance and supplementary health plans. It pays benefits of almost \$65 billion a year to 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.



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The CLHIA is in general agreement with the CSA's suggested approach to registration and the criteria outlined for considering when registration is required, although further information is needed regarding how the registration requirements would apply in a life insurance company context. CLHIA has several comments which are outlined below.

### Large Derivative Participants Registration

CP 91-407 states that registration as large derivative participants (LDPs) will be required where the entity is a Canadian resident entity that maintains a substantial position in a derivative or a category of derivatives and the entity's exposure in Canadian derivatives markets results in counterparty exposure that could pose a serious risk to Canadian financial markets or to the financial stability of Canada or a province or territory of Canada. The CLHIA agrees that LDPs which pose a systemic risk as a result of derivatives trading activity should be regulated. The CLHIA agrees that additional work should be undertaken in consultation with other Canadian authorities, including OSFI, to establish the thresholds for registration as a LDP.

CP 91-407 notes that in the United States the CFTC defines a major swap participant as a person who is not a swap dealer and that maintains a substantial position in any major category of swaps excluding positions held to hedge or mitigate commercial risk. The CLHIA recommends that an approach similar to that in the United States which takes into consideration positions held to hedge or mitigate commercial risk should be used in Canada, which would further the goal of greater international harmonization. As it is a common practice for life insurers to use derivatives to hedge or mitigate commercial risk, Canadian life insurers that must comply with regulatory requirements more stringent than foreign regulatory requirements would face a competitive disadvantage compared to their United States and other foreign counterparts. If positions held to hedge or mitigate commercial risk are excluded in calculating whether a market participant maintains a "substantial position" in derivatives, similar to the hedging exclusion in the United States regulatory scheme, then generally speaking, we would expect the Canadian life insurance companies to not fall within the LDP category since the dominant purpose for which life insurance companies use derivative instruments is to hedge or mitigate commercial risk.

### Advisor Registration

Life insurance companies may have investment management subsidiaries with employees who are also registered as portfolio managers or advisers who provide advice with respect to investments in segregated funds, mutual funds and purchases for general account holdings of life insurers. CP 91-407 states that persons registered as securities dealers or securities advisers may also be subject to registration as derivative dealers or derivative advisers and will be subject to compliance with both regimes. We agree that it is important that steps be taken to streamline all regulatory processes as much as possible so that a minimum of



additional compliance burden is added. The creation of a new registration category with overlapping regulatory requirements seems unnecessarily burdensome. In many cases, the derivative activities of investment managers would be minimal. Proficiency requirements should be linked to the extent and complexity of the derivatives activity used by the investment manager. We would suggest that the regulators begin by gathering information from existing registrants as to their derivatives activities which would assist the regulator in determining the scope and purpose of any additional regulatory requirements.

#### Exemption from Registration Requirements

CP 91-407 notes that some persons triggering registration as a derivatives dealer, a derivatives adviser or LDPs, will be subject to regulation by other entities with regulatory responsibilities. Where such a regime provides for equivalent supervision and regulatory requirements that are monitored and enforced to the satisfaction of Canadian securities regulators, those persons should not be subject to overlapping requirements. The CLHIA agrees that exemptions from registration requirements should be adopted where equivalent regulatory regimes are in place.

In this context, it would be appropriate for life insurance companies which are prudentially regulated by OSFI to be exempted from the LDP registration requirement. OSFI actively regulates life insurance companies with respect to solvency and the risks associated with derivatives exposure. We understand that OSFI is currently working on updating its guidance with respect to derivatives usage by federally regulated life insurance companies. Regulation under provincial securities legislation for such institutions would amount to duplicate regulation.

#### Exemption from Registration Requirements – De Minimis Participants

CP 91-407 notes that while the CSA's suggested registration requirements applicable to a derivatives dealer will be comparable to the requirements in the United States as mandated under the Dodd Frank Act, it will not recommend a comparable de minimis exemption. The Committee reasoned that the recommendation to exclude such de minimis exemption is to provide the same protections regardless of the size or the total derivatives exposure of the dealer.

The CLHIA believes that the focus on financial market stability and transparency should not be achieved without also preserving commercial end users' access to derivatives used to hedge or mitigate commercial risks, and we believe the de minimis exemption, if implemented judiciously and incrementally, would achieve this goal. Our primary concern with the registration requirement without de minimis exemption is that such regulatory scheme will affect the availability of derivative-based non-traditional risk management products offered by some of the CLHIA members to Canadian end users. Such products



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serve a beneficial purpose to Canadian end users by allowing them to hedge commercial risk that cannot be hedged through traditional insurance.

Without de minimis exemption, the insurers that offer such derivative-based products to Canadian end users could potentially be considered derivatives dealers even though such products are not traded for speculative purposes, and the increased compliance cost may drive such companies to cease offering such derivative-based products to Canadian end users, which would leave the end users to resort to a handful of large dealers such as large banks. With less competition, the cost of risk management for Canadian end users is likely to increase.

Finally, the de minimis exemption would allow regulators to maximize limited resources to achieve the goal of financial market stability and transparency more effectively by allowing regulators to first focus on regulating the large systemically significant derivatives dealers, who account for vast majority of the derivatives market. Then, the regulators can weigh the incremental costs with incremental benefits of regulating smaller derivatives market participants whose derivatives activity fall below the de minimis threshold.

The CLHIA believes that the de minimis exemption found in the United States regulatory framework is based on sound public policy, and for the foregoing reasons, we respectfully request that the Committee include a comparable exemption in Canada.

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