



August 7, 2018

Cooperative Capital Markets Regulatory System
c/o Capital Markets Authority Implementation Organization
P.O. Box 109, TD Tower North
Suite 3110, 77 King Street West
Toronto, Ontario M5K 1G8

By email: comment@ccmr-ocrmc.ca

Dear Sir or Madam:

Re: Consultation re Capital Markets Act - Draft Prospectus and Related Registration Exemptions

I am writing on behalf of Canada's life and health insurance companies in response to the captioned consultation, and to recommend a simple but significant clarification to the proposed exemptions.

The Canadian Life and Health Insurance Association (CLHIA) is a not-for-profit, membership-based organization that represents 99% of Canada's life and health insurance companies. 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).

In the context of products and services linked to capital markets, CLHIA members offer individual variable insurance contracts that are valued by reference to one or more "segregated fund", with each such fund being a specified pool of assets that is held by the insurer exclusively for the benefit of policyholders who allocate premiums to that fund. Importantly, such contracts – often referred to informally as segregated fund contracts – contain a minimum guaranteed return of at least seventy-five percent of contributed premiums on death of the life insured or maturity, and are therefore excluded from the definition of a "security" under existing provincial securities legislation and under paragraph (f) of that definition in section 1 of the proposed *Capital Markets Act*.

Canadian Life and Health Insurance Association
79 Wellington St. West, Suite 2300
P.O. Box 99, TD South Tower
Toronto, Ontario M5K 1G8
416-777-2221 www.clhia.ca

Association canadienne des compagnies d'assurances de personnes
79, rue Wellington Ouest, bureau 2300
CP 99, TD South Tower
Toronto (Ontario) M5K 1G8
416-777-2221 www.accap.ca

This exemption is reasonable in light of the comprehensive legislative, regulatory and supervisory framework applicable to life insurance companies, their intermediaries and insurer's products and services, at federal, provincial and territorial levels throughout Canada.

Proposed section 2.39 of CMRA Regulation 45-501 contains additional registration and prospectus exemptions for life insurance products, as reproduced below:

- (1) In this section,
 - (a) "contract" "group insurance", "insurance company", "life insurance" and "policy" have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.
 - (b) "variable insurance contract" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.
- (2) The prospectus requirement does not apply to a distribution of a variable insurance contract by an insurance company if the variable insurance contract is
 - (a) a contract of group insurance,
 - (b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,
 - (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or
 - (d) a variable life annuity.

These exemptions are similarly reasonable given the scope and effectiveness of insurance law and supervision. However, we believe that the exemption provided in paragraph 2(b) (which we believe has been imported from National Instrument 45-106) would benefit from further clarification.

Our understanding is that the intent of paragraph 2(b) is to provide an exemption for individual life insurance contracts that satisfy the stated capital guarantee at maturity. However, absent a definition of "whole life insurance", the practical scope of the proposed exemption is unclear.

Consequently, we recommend that subsection 2.39(2) be reordered as follows:

- (2) The prospectus requirement does not apply to a distribution of a variable insurance contract by an insurance company if the variable insurance contract is
 - (a) a contract of group insurance,
 - (b) a variable life annuity,

- (c) a life insurance contract, other than a contract referenced in either of paragraph (a) or (b), providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity, or
- (d) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds.

Thank you for the opportunity to provide comments regarding the proposed exemptions. CLHIA would be pleased to discuss our concern and recommendations at your convenience. Please feel free to contact me by telephone at 416-359-2021 or by email at rsanderson@clhia.ca should you or your colleagues wish to discuss this matter.

Yours sincerely,

(Original signed by)

Ronald Sanderson
Director, Policyholder Taxation and Pensions