



Frank Swedlove
President/Président

November 19, 2014

To: The Cooperative Capital Markets Regulatory System
Delivered by e-mail to: commentonlegislation@ccmr-ocrmc.ca

Dear Sir/Madam:

CCMR System and Draft legislation

We are writing to provide comments on the draft Provincial Capital Markets Act that is being developed as part of the Cooperative Capital Markets Regulatory System.

The Canadian Life and Health Insurance Association (CLHIA) is a voluntary trade association that represents companies which together account for 99 percent of Canada's life and health insurance business. The industry, which provides employment to more than 142,000 Canadians and has investments in Canada of about \$615 billion, protects almost 27 million Canadians through products such as life insurance, annuities, Registered Retirement Savings Plans, and disability insurance and supplementary health plans. It pays benefits of over \$66 billion a year to Canadians and manages about two-thirds of Canada's private pension plans.

Our comments focus on a specific exemption for insurance products within provincial securities legislation and the importance of maintaining a harmonized regulatory approach for such products under insurance legislation.

Background

By way of background, the definitions of "security" in each of British Columbia, Ontario, New Brunswick, Saskatchewan and Prince Edward Island (the "Participating Provinces") include exemptions for certain insurance products issued by insurance companies. This reflects the fact that the regulation of securities has been separate from the regulation of insurance due to the very different considerations applicable to securities as compared to policies of insurance.

As an example of this separation, subsection 1(1) of the *Securities Act* (Ontario) and the comparable provisions in the securities Acts of the other Participating Jurisdictions provide that the definition of "security" excludes bonds, debentures, shares, etc. that are contracts of insurance issued by an

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insurance company. This exemption from the definition of a security recognizes the different legal nature of insurance products, as compared to securities, and the fact that both are historically subject to separate but equally stringent regulatory regimes.

Provincial Capital Markets Act

The securities legislation in British Columbia, Ontario and New Brunswick includes a specific exemption from the definition of “security” that is similar to the exclusion in subsection (f) of the definition of “security” in the draft Provincial Capital Markets Act (the “PCMA”). Generally, this exemption from the definition of “security” refers to life insurance contracts that are commonly known as “individual variable insurance contracts” (“IVICs”).

However, the PCMA changes the current definition of “security” by, among other things, adding the bolded and underlined words, as follows:

- (f) any agreement 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, other than, **unless otherwise provided by the regulations**, a contract issued by an insurance company governed by the laws of Canada or of a province which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity;

These added words would give the Participating Provinces the ability, by regulation, to eliminate the exemption for IVICs and to absorb such insurance contracts under securities law. This is a very serious concern for the industry and is contrary to the long-standing industry position that insurance should not be regulated as a security.

IVICs have always been subject to the regulation and oversight of insurance regulators and it should remain clear that insurance regulators will continue to be the sole regulators. An additional layer of securities regulation would create a significant amount of unnecessary duplicative regulation, would greatly increase compliance costs, and would be contrary to one of the purposes of the CCMRS, which is to reduce the number of regulators and the associated regulatory burden.

Life and health insurers are subject to a robust regulatory framework established by provincial and federal laws to help ensure that the interests of policyholders are protected. Provincial and federal insurance legislation includes requirements related to corporate governance, audit and actuarial requirements, prohibitions against unfair and deceptive acts and practices, and proficiency standards for life insurance agents. The regulatory prudential requirements include risk-based, actuarial reserves and minimum capital requirements to cover the maturity, death benefit and income guarantees associated with IVICs.

IVICs are also subject to CLHIA Guideline G2, Individual Variable Insurance Contracts Relating to Segregated Funds, which provides uniform regulation across Canada. The requirements of Guideline G2 are reflected in Regulations made under the *Insurance Act* (Ontario) (see Variable Insurance Contracts,

O. Reg. 132/97). In Quebec, the Autorité des marchés financiers Guideline on Individual Variable Insurance Contracts Relating to Segregated Funds includes similar content to CLHIA Guideline G2.

It is our strongly held position that individual variable insurance contracts must continue to be solely regulated by insurance regulators. The continuing oversight by insurance regulators makes it duplicative and unnecessary to allow the Participating Provinces to absorb IVICs under securities law. As such, the words “unless otherwise provided by regulation” are not needed and should be removed from paragraph (f) in the definition of a “security” in the PCMA.

Should you have any questions regarding our comments, please contact our General Counsel Frank Zinatelli (416-359-2044 or fzinatelli@clhia.ca).

Yours sincerely,

Original signed by

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