Dave Johnston
President and Chief Operating Officer, Canada

December 8, 2014

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

Dear Sir or Madam,

Re: Cooperative Capital Markets Regulatory System – Draft Legislation for Consultation

We are writing to provide comments on the draft Provincial Capital Markets Act (the "**PCMA**") and the draft Federal Capital Markets Stability Act (the "**CMSA**") that are being developed as part of the Cooperative Capital Markets Regulatory System (the "**National System**").

About Great-West

Great-West Lifeco Inc. (TSX:GWO) is an international financial services holding company with interests in life insurance, health insurance, retirement and investment services, asset management and reinsurance businesses. Great-West Lifeco has operations in Canada, the United States, Europe and Asia through Great-West Life, London Life, Canada Life, Irish Life, Great-West Financial and Putnam Investments. Great-West Lifeco and its companies have over $1 trillion in consolidated assets under administration as of September 30, 2014 and are members of the Power Financial Corporation group of companies.

Background

The definitions of "security" in the securities legislation of 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 is separate from the regulation of insurance.

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This historical separation is exemplified by the establishment in Ontario of the Hockin-Kwinter Accord (the "**Accord**") in 1987. The Accord was an intergovernmental agreement between Tom Hockin, then Federal Minister of State (Finance) and Monte Kwinter, then Minister of Financial Institutions for the Province of Ontario. The purpose of the Accord was to introduce a new regime for the regulation of federal financial institutions (which includes federally regulated insurance companies) and their subsidiaries and affiliates, and eliminate regulatory confusion between the Ontario Securities Commission and the Office of the Superintendent of Financial Institutions.

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

Provincial Capital Markets Act (PCMA)

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 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, amongst other things, adding the bolded wording below:

> (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 assests, other than**, <u>unless otherwise provided by the regulations</u>,** 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; ***(the bolding and underlining is ours)***

By suggesting that these life insurance products could be regulated by securities regulators, confusion and uncertainty as to their future legal status may be created in the minds of potential policyholders, and the negative impacts of this uncertainty could be magnified due to the long term nature of insurance policies and the important role that insurance policies play in the retirement and pension income system in this country. The additional words also ignore the historical separation between the regulation of insurance policies and securities.

In addition, we note that the insurance industry has a robust regulatory system, an effective policyholder protection regime, well-established consumer protection mechanisms, and a distinct, licensed distribution model. IVICs, in particular, are subject to Guideline G2 - Individual Variable Insurance Contracts Relating to Segregated Funds, of the Canadian Life and Health Insurance Association (the "**CLHIA**"), which provides uniform regulation across Canada. The requirements of Guideline G2 are also reflected in Regulations made under the *Insurance Act* (Ontario) (Variable Insurance Contracts, O. Reg. 132/97). In Quebec, the Autorité Des Marchés Financiers' Guideline on Individual Variable Insurance Contracts Relating to Segregated Funds has substantially the same affect as CLHIA Guideline G2. Regulatory prudential requirements for life insurance companies include risk-based, actuarial reserves and minimum capital requirements to cover the maturity and death benefit guarantees associated with IVICs, and this helps ensure that the interests of policyholders are protected.

Given the foregoing, the words "unless otherwise provided by regulation" should be removed from paragraph (f) in the definition of a "security" in the PCMA to maintain the long-established public policy in this area and avoid confusion and regulatory uncertainty in the marketplace.

Capital Markets Stability Act (CMSA)

It is very difficult to provide meaningful comments on the CMSA as many important matters are intended to be dealt with in regulations, and drafts of those have not yet been provided for comment.

However, we note that Part 2 of the CMSA grants very broad powers to the Federal Government. These include provisions that allow the Capital Markets Regulatory Authority (the "**Authority**"), in consultation with the Chief Regulator, to designate certain capital markets intermediaries, securities and derivatives trading facilities, clearing agencies and credit rating organizations, as well as specific classes of securities and derivatives ("**products**") and specific benchmark prices, estimates, rates, indexes or values ("**benchmarks**") to be "systemically important". Further, the Authority may also designate certain market practices as "systemically risky". The specific tests for making such designations in each case turns on whether "in the Authority's opinion…a systemic risk related to capital markets" could be posed by the relevant capital markets intermediary, trading facility clearing agency, rating organization, benchmark, product or market practices.

There is very little specific guidance in the CMSA on the meaning of "systemically important", "systemic risk" or "systemically risky", and once such a designation order is made, the relevant entity, benchmark, product or practice becomes subject to all relevant regulations. Further, there does not appear to be any specific restrictions on the type or scope of regulations that may be made by the Authority in respect of such categories of persons or the relevant product, practice or benchmark, other than that the regulations should be made in order to address systemic risk.

Given the foregoing, it is conceivable that financial products and services that are currently regulated separately from securities (e.g., insurance products such as IVICs) could be brought under the CMSA if they are deemed to be securities or systemically important. This would likely result in confusion due to regulatory overlap, increased compliance costs that would be passed on to the public and a potential loss of confidence by investors. Further, given the historical separation of the regulation of insurance products and securities and the large number of stakeholders that would likely be affected, the 90 day period to provide comments that is required by subsection 87(3) of the CMSA would likely be insufficient.

We strongly recommend that the CMSA be revised to include: (i) clear rules on when a capital markets intermediary, product or practice may be determined to be systemically important or systemically risky, as applicable; and (ii) a specific stakeholder consultation process before determining a capital market intermediary, product or practice is systemically important or systemically risky, as applicable, and that such process be separate from the general public consultation process. This would provide greater transparency and ensure that the Authority has all necessary information to evaluate proposed regulations.

Other Matters

Currently, the National Instrument system provides a relatively harmonized approach to securities registrant requirements. Upon inception, the proposed National System will replace the current securities legislation in the Participating Provinces. This will result in registrants that operate in multiple jurisdictions being required to comply with the rules in Participating Provinces, as well as non-participating provinces. Due to this, and in order to avoid creating additional regulatory confusion, we strongly recommend that the Federal Government and the Participating Provinces continue to participate in the National Instrument system; this will help to avoid increasing the regulatory burden on securities registrants that operate across Canada.

Sincerely,

Dave Johnston

President & COO, Canada