



Canadian Life  
and Health Insurance  
Association Inc.

Association canadienne  
des compagnies d'assurances  
de personnes inc.

Frank Swedlove  
President

July 14, 2008

Mr. David Murchison  
Executive Director  
Expert Panel on Securities Regulation  
Ottawa, Ontario  
K1A 0G5

Dear Mr. Murchison:

**Re: Public Consultation Paper - Expert Panel on Securities Regulation**

The Canadian Life and Health Insurance Association (CLHIA) is pleased to provide input on the consultation paper issued by the Expert Panel on Securities Regulation and would like to thank the Expert Panel for its invitation dated April 18, 2008 to participate in the consultation process.

Established in 1894, CLHIA is a voluntary trade association that represents the collective interests of its member life and health insurers. These members account for over 99 per cent of the life and health insurance in force in Canada and contribute to the financial well-being of millions of Canadians by providing a wide range of financial security products. The Annex to this letter provides a brief overview of the industry's role in Canada's economy.

Further to the Expert Panel's task of bringing forth recommendations to improve the content and structure of securities regulation for Canada and to develop a common model securities act by the end of 2008, the CLHIA's comments focus on two topics: first, some general comments about the desirability of adopting a principles-based approach to regulation; and second, in the context of the development of a common model securities act, the need to continue the exemptions from securities legislation for insurance products.

**Principles-Based Securities Regulation**

While there have been great strides in establishing common requirements among the present 13 jurisdictions now involved in regulation of securities activity, every opportunity should be taken to further improve the system. It is the CLHIA's view that all governments should make it a priority to work co-operatively to reduce regulatory burden and overlap in the regulation of securities and to develop an ongoing system of securities regulation that ensures efficient and effective regulation in the future.

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The CLHIA urges the Expert Panel on Securities Regulation to embrace a principles-based regulatory approach. In recent years, Canadian life and health insurance regulators, consistent with many financial services regulators around the world, have increasingly moved towards principles-based regulation. Under such an approach, regulators set expected outcomes and the industry determines how to efficiently and effectively meet those outcomes. Consumers benefit from those efficiencies and from an industry that has the flexibility to be innovative and responsive to changing marketplace needs. From the regulators' perspective, principles-based regulation provides the ability to set high-level principles that are applicable across dissimilar regions, industries and products.

A spokesperson for the United Kingdom's Financial Services Authority (FSA) recently spoke of the importance of principles-based regulation, noting that it is the FSA's belief that *"legislators need to keep a clear focus on ultimate outcomes and key principles not only because we – as a national regulator - are keen to maintain some flexibility, but because we see there is a real danger in detailed Regulations or Directives being quickly overtaken by market events and thus reducing the ability of the European markets to be as innovative and competitive as they can be."*<sup>1</sup>

For all these reasons, the life and health insurance industry strongly supports a principles-based approach and recommends that it be utilized in the securities area.

### **Exemptions for Insurance Products From the Definition of "Security"**

Given the Expert Panel's mandate to draft a common model securities act, the industry strongly recommends that such a model act include the traditional exemptions for life insurance products in the definition of a "security".

By way of background, exemptions from securities legislation for individual variable annuity contracts (IVICs) with at least a 75 per cent guarantee and life insurance company issued annuities have traditionally been contained in the definition of a "security". Using Ontario as an example, the insurance exemptions that are contained at present in most provincial Securities Acts definitions of "security" are set out in bold:

One: Security includes "any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription **other than a contract of insurance issued by an insurance company licensed under the Insurance Act...**";

<sup>1</sup> Speech by Verena Ross, Director, Strategy & Risk, FSA to the British Bankers Association - 2<sup>nd</sup> European Securities Forum - September 13, 2007



Two: Security includes “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, **except a contract issued by an insurance company licensed under the Insurance Act 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**”; and,

Three: Security includes “any income or annuity contract **not issued by an insurance company**”.

In addition to the exemptions from "security" described above, please note that National Instrument 45-106 – Prospectus and Registration Exemptions, includes an exemption for group variable insurance contracts. The exemption language in this National Instrument is a carry-over from exemptive language generally adopted by regulation or policy in all Canadian jurisdictions and provides a harmonized approach to the exemption for group products. This exemption language for group products should also be reflected in the common model securities act that the Expert Panel is developing.

There are good and valid reasons why life insurance products have traditionally been carved out from the definition of a security. The authority to issue annuity contracts is given to life insurance companies under their incorporating legislation. Policyholders are safeguarded by regulatory prudential requirements for life insurance companies that include risk-based actuarial reserves and minimum capital requirements to cover the maturity and death benefit guarantees associated with IVIC contracts. Annuities issued by life insurance companies are insurance products under provincial insurance laws and are regulated under the Insurance Acts of the various provinces. IVIC products are also subject to CLHIA Guideline G2, Individual Variable Insurance Contracts Relating to Segregated Funds, which provides uniform regulation across Canada. The exemptions included in the definition of security define the boundary between securities law and the regulation of insurance products. The distinction between insurance and securities has been described in this way for many years in a harmonized way across Canada. It continues to be effective.

The exemptions from the definition of a security recognize the different legal nature of insurance products and a historically different approach to regulatory supervision of the products. The insurance industry has a unique regulatory system, an effective policyholder protection regime, well-established consumer protection mechanisms, and a distinct distribution model.

Insurance laws across Canada have been largely harmonized for decades. As well, in the securities area, the traditional exemptions for life insurance products in the definition of “security” have essentially been harmonized. This harmonization has greatly benefited Canadian consumers, the industry and insurance regulators.



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The CLHIA understands that one of the aims of a common model securities act is to harmonize securities law in order to obtain similar benefits. With a view to ensuring that harmonization is maintained, the CLHIA strongly recommends that the new model securities legislation include the traditional exemptions for life insurance products in the definition of a security.

We appreciate the opportunity to provide the Expert Panel on Securities Legislation with these comments and look forward to further improvements to the harmonization and efficiency of Canada's securities regulatory framework. Should you have any questions or require additional information, please feel free to contact me at 416-359-2000 or via e-mail at [fswedlove@clhia.ca](mailto:fswedlove@clhia.ca) or my colleague Frank Zinatelli at 416-359-2044 or via e-mail at [fzinatelli@clhia.ca](mailto:fzinatelli@clhia.ca).

Yours very truly,

*"Original signed by Frank Swedlove"*

Frank Swedlove

# Life and Health Insurance in Canada

## About the Life and Health Insurance Industry in Canada

The life and health insurance industry contributes to the financial well-being of about 26 million Canadians by providing a wide range of financial security products such as individual and group life insurance, annuities, pensions, RRSPs, RRIFs, disability insurance and supplementary health insurance. The industry is a major investor in Canada's economy with total assets of \$402 billion. This pool of capital is one of the country's most important sources of long-term investment capital. The industry employs 121,000 Canadians across the country.

Standard and Poor's has described the competition within the Canadian life and health insurance industry as "tooth and nail", with 106 companies competing aggressively. Canadian-controlled firms have 83% of the Canadian market and are highly successful internationally, with 3 companies in the top 12 life insurers in the world, based on market capitalization.

## Key Industry Statistics – 2006

	<u>Canada</u>
Head offices	106
Employees & agents	121,000
Benefit payments	\$53.4 billion
Taxes	\$2.5 billion *
Retail Sales Tax on Group Life & Health Premiums	\$1.6 billion
Assets	\$402 billion
Life Insurance ownership	\$2.9 trillion
Canadians with coverage for:	
Financial protection (any product)	26 million
Supplementary health benefits	22 million
Disability income protection	11 million
Life insurance	20 million
Individual Annuities (RRSPs, RRIFs, etc.)	3.7 million
Group RRSPs	1.7 million
Pensions	1.0 million

\* Total taxes include provincial of \$1.2 billion and federal of \$1.3 billion

## Contributions of the Industry

Life and health insurers make significant contributions to the country's economic and social well-being. The industry:

- **provides a wide range of financial security products to about 26 million Canadians**
- **makes benefit payments of more than \$53 billion annually** to Canadians. Over 90% goes to living

policyholders as annuity, disability or health benefits. The remainder goes to beneficiaries as death claims.

- **is a major investor in Canada's economy** with assets in Canada of \$402 billion.
- **plays an important role in meeting the financing needs of all levels of government** in Canada with government securities accounting for 18% of total assets.
- **is a significant contributor to public finances in Canada.** In 2005, the industry paid \$2.5 billion in taxes, with \$1.2 billion paid to provincial governments. In addition, the industry collects and remits retail sales tax payable by policyholders on group insurance premiums which amounted to \$1.4 billion in Ontario and Quebec during 2005.
- **is a major employer** with 121,000 Canadians earning some or all of their livings from the industry.
- **contributes to small business.** The products of life and health insurers and the consultative role of life insurance agents help small and medium-sized businesses attract and retain a skilled workforce.
- **is internationally successful.** In more than 20 countries around the world, Canadian life and health insurers have an outstanding track record of competing in foreign markets, with \$78.8 billion or 56% of their worldwide premiums generated abroad.
- **develops products to reflect and to anticipate changing consumer needs and expectations** such as "index-linked" life insurance policies; innovative approaches to group insurance ("cafeteria" and "spending account" options); flexible retirement options; and innovative and expanded health insurance (critical illness and long term care).
- **takes industry-wide initiatives to protect consumers** by developing guidelines, voluntarily and proactively, to respond to emerging issues.
- **funds an independent OmbudService for consumers of life and health insurance** products and also operates a Consumer Assistance Centre which responds to 40,000 call a year with information about the industry and assistance in locating lost life insurance policies.

## About the CLHIA

The Canadian Life and Health Insurance Association Inc. (CLHIA), established in 1894, is a voluntary trade association that represents the collective interests of its member life and health insurers. Our members account for 99% of the life and health insurance in force in Canada and administer about two-thirds of Canada's pension plans. For more information about the CLHIA and the life and health insurance industry visit [www.clhia.ca](http://www.clhia.ca)



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