



Canadian Life  
and Health Insurance  
Association Inc.

Association canadienne  
des compagnies d'assurances  
de personnes inc.

May 28, 2008

Mr. John Stevenson  
Secretary  
Ontario Securities Commission  
20 Queen Street West  
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Ms. Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
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Dear Sirs/Madame:

**Proposed National Instrument 31-103 –Registration Requirements and New Revised  
National Instrument 45-106 – Prospectus and Registration Exemptions**

We are writing at this time to provide the comments of the Canadian Life and Health Insurance Association (CLHIA) with respect to proposed National Instrument 31-103 Registration Requirements and the new revised National Instrument 45-106 Prospectus and Registration Exemptions. Established in 1894, the CLHIA is a voluntary association with member companies that account for 99 per cent of the life and health insurance business in force in Canada.

The CLHIA is generally supportive of the work of the Canadian Securities Administrators (CSA) aimed at streamlining Canada's current securities regulatory system. The industry recommends that the CSA and all governments continue to 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 has some specific comments related to the exemptions for variable insurance contracts included in proposed National Instrument 31-103 and new revised National Instrument 45-106, as well as some general comments relating to the exemptions from securities legislation for individual variable insurance contracts and life insurance company issued annuities.

### **Specific Comments**

Section 8.10 (1) of proposed NI 31-103 states that in this section “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 of National Instrument 45-106, Prospectus and Registration Exemptions. We have two comments with respect to the references in Appendix A.

- (i) In British Columbia, at present, the definition of “life insurance” is included in the *Financial Institutions Act* and not the *Insurance Act*.
- (ii) In Ontario, the definition of life insurance is now included in a Superintendent’s Classes of Insurance Order rather than section 1 of the *Insurance Act*. Attached for your reference are copies of the Superintendent’s Order and Schedule 1, Classes of Insurance and Definitions for Purposes of the Insurance Act, which are posted on the Financial Services Commission of Ontario website.

As part of your review, we would recommend that the CSA adopt procedures to ensure that the cross references to the definitions of these terms remain up-to-date.

### **General Comments**

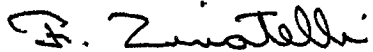
As noted above, we wanted to take this opportunity to comment on exemptions from securities legislation for individual variable insurance contracts and life insurance company issued annuities. National Instrument 45-106 includes an exemption for group variable insurance contracts. However, exemptions for deferred annuity individual variable insurance contracts (IVICs) with at least a 75 per cent guarantee and insurance company issued annuity contracts already exist as a result of exclusions from the definition of “security” contained in the various provincial securities acts.

As you may be aware, in the past year, Prince Edward Island, Yukon, Northwest Territories and Nunavut undertook a project to update their securities legislation using as a basis the Uniform Securities Act released by the CSA in December 2003. The Uniform Securities Act includes a revised definition of “security” which does not contain the traditional exemptions for IVIC contracts with a 75% guarantee and insurance company issued annuity contracts. Fortunately, exemptions for insurance products have been maintained in Prince Edward Island and the Yukon by the adoption of local rules. In the Northwest Territories and Nunavut, the exemptions are being maintained by including them in their new legislation, as exclusions from the definition of a “security”.

With a view to maintaining across Canada the harmonized exemption for IVICs with a 75% guarantee and annuities issued by life insurance companies that have existed for many decades, the CLHIA strongly recommends that, going forward, the traditional exemptions for life insurance products continue to be set out in the definition of a "security".

We appreciate the opportunity to provide the CSA with these comments and look forward to further improvements to the harmonization and efficiency of Canada's securities regulatory framework. Please feel free to contact me at 416-359-2044 or via e-mail at [fzinatelli@clhia.ca](mailto:fzinatelli@clhia.ca) or my colleague James Wood at 416-359-2025 or via e-mail at [jwood@clhia.ca](mailto:jwood@clhia.ca) should you have any questions or wish to discuss these comments further.

Yours very truly,

A handwritten signature in black ink, appearing to read "F. Zinatelli". The signature is written in a cursive style and is positioned to the left of a vertical line.

Frank Zinatelli  
Vice President, Legal Services and Associate General Counsel

## Classes of Insurance Order

**REGARDING the determination and definition of classes of insurance for purposes of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended (the "Act") and for purposes of granting licences to insurers under the Act**

**AND REGARDING, in particular, section 43 of the Act**

### **CLASSES OF INSURANCE ORDER**

Classes of insurance under the Act have historically been defined in section 1 of the Act and insurers have been licensed to carry on business in one or more of the distinct classes of insurance listed in R.R.O. 1990, Regulation 666 ("Regulation 666").

On July 1, 1998, section 43 of the Act was amended in order to grant the Superintendent of Financial Services (the "Superintendent") the legal authority to determine and define classes of insurance for purposes of the Act and for purposes of granting licences to insurers under the Act by way of Superintendent Order. The amendment stipulated that the existing classes of insurance listed in Regulation 666 would continue until the Superintendent made an Order that was inconsistent with Regulation 666.

By Superintendent Order dated August 5, 1999, a new class of insurance ("loss of employment insurance") was created.

In the fall of 2003, the Canadian Council of Insurance Regulators ("CCIR") agreed on a largely streamlined and harmonized set of classes of insurance and applicable definitions. This included introduction of a new class known as "other approved products" for new insurance products that do not come within any other class. The CCIR recommended that each jurisdiction make the relevant legislative and regulatory changes needed to implement the new classes and definitions, as required in each jurisdiction.

In Ontario, the existing classes of insurance definitions in section 1 of the Act were repealed and other complementary amendments were made to the Act under the *Government Efficiency Act, 2002*, S.O. 2002, c.18 (Bill 179).

Complementary amendments were also made to other affected legislation in the *Budget Measures Act (Fall) 2004*, S.O. 2005, c.31 (Bill 149) and the *Budget Measures Act, 2005 (No. 2)*, S.O. 2005, c.31 (Bill 18). These changes were made in order to facilitate implementation of the new classes of insurance and their definitions for purposes of the Act by way of Superintendent Order rather than through their definition in the Act.

All of these legislative amendments will be proclaimed in force on **April 30, 2007**.

On **April 30, 2007**, Regulation 666 will be revoked, and the following complementary changes will also be made:

- o the provisions governing title insurance, currently contained in Regulation 666, will be re-enacted without change as a new regulation, Ontario Regulation 69/07,
- o the regulation governing the compensation associations, currently contained in R.R.O. 1990, Regulation 667, as amended, will be revoked and enacted as a new regulation, Ontario Regulation 67/07,
- o complementary regulation changes will be made to Ontario Regulation 11/01, as amended, under the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, to Ontario Regulation 347/04, as amended and to R.R.O. 1990, Regulation 671, as amended.

This Order is made in anticipation of the proclamation of all of these changes.

This Order sets out the new classes of insurance, and the corresponding definitions of these terms, for purposes of the Act.

The list of classes will be published in *The Ontario Gazette*, and will be re-published in July of each year, as required by section 43(1.2) of the Act.

## **ORDER**

### **Pursuant to section 43(1) of the Act, I order that:**

(a) the classes of insurance, for purposes of the Act and for purposes of granting licences to insurers under the Act, are the classes determined and defined in Schedule 1 to this Order, and

(b) the Order of the Superintendent dated August 5, 1999 defining loss of employment insurance as a class of insurance, is revoked.

### **Effect of Order:**

The effect of this Order is that,

(a) The definitions of the classes of insurance set out in Schedule 1 replace the definitions that were previously contained in the Act and apply for purposes of the Act and regulations. Words and expressions in the Act and regulations referring to any of the classes set out and defined in Schedule 1 shall be interpreted according to those definitions.

(b) The classes of insurance for which an insurer may be licensed to carry on business under the Act shall be the classes determined and defined in Schedule 1 of this Order.

This Order shall take effect on **April 30, 2007**.

Dated at Toronto this 10th day of April, 2007.

Bob Christie  
Chief Executive Officer and  
Superintendent of Financial Services

### **Attachment:**

- o Schedule 1

**SCHEDULE 1**

**Classes of Insurance and Definitions for Purposes of the *Insurance Act*, R.S.O. 1990,  
c.I.8, as amended (the "Act")**

**By Order of the Superintendent of Financial Services  
Section 43 of the Act  
Effective April 30, 2007**

"accident  
and  
sickness  
insurance"

"accident and sickness insurance" means insurance

- (a) against loss resulting from bodily injury to, or the death of, a person caused by an accident;
- (b) under which an insurer undertakes to pay a certain sum or sums of insurance money in the event of bodily injury to, or the death of, a person caused by an accident;
- (c) against loss resulting from the sickness or disability of a person excluding loss resulting from an accident or death;
- (d) under which an insurer undertakes to pay a certain sum or sums of insurance money in the event of the sickness or disability of a person not caused by an accident; or
- (e) under which an insurer undertakes to pay insurance money in respect of the health care, including the dental care and the preventive care, of a person.

"aircraft  
insurance"

"aircraft insurance" means insurance against

- (a) liability arising out of bodily injury to, or the death of, a person, or the loss of, or damage to, property, in each case caused by an aircraft or the use of an aircraft; or
- (b) the loss of, the loss of use of, or damage to, an aircraft.

"automobile  
insurance"

"automobile insurance" means insurance

- (a) against liability arising out of bodily injury to, or the death of, a person, or the loss of, or damage to, property, in each case caused by an automobile or the use or operation of an automobile;

- (b) against the loss of, the loss of use of, or damage to, an automobile; or
- (c) that falls within paragraph (a) or (b) of the class of accident and sickness insurance, if the accident is caused by an automobile or the use or operation of an automobile, whether or not liability exists in respect of the accident, and the automobile insurance contract includes insurance against liability arising out of bodily injury to, or the death of, a person caused by an automobile or the use or operation of an automobile.

"boiler and machinery insurance"

"boiler and machinery insurance" means insurance

- (a) against liability arising out of bodily injury to, or the death of, a person, or the loss of, or damage to, property, or against the loss of, or damage to, property, in each case caused by the explosion or rupture of, or accident to, pressure vessels of any kind or pipes, engines and machinery connected to or operated by those pressure vessels; or
- (b) against liability arising out of bodily injury to, or the death of, a person, or the loss of, or damage to, property, or against the loss of, or damage to, property, in each case caused by a breakdown of machinery.

"credit insurance"

"credit insurance" means insurance against loss to a person who has granted credit if the loss is the result of the insolvency or default of the person to whom the credit was given.

"credit protection insurance"

"credit protection insurance" means insurance under which an insurer undertakes to pay off credit balances or debts of an individual, in whole or in part, in the event of an impairment or potential impairment in the individual's income or ability to earn an income.

"fidelity insurance"

"fidelity insurance" means

- (a) insurance against loss caused by the theft, the abuse of trust or the unfaithful performance of duties, by a person in a position of trust; and
- (b) insurance under which an insurer undertakes to guarantee the proper fulfillment of the duties of an office.

"hail insurance"

"hail insurance" means insurance against the loss of, or damage to, crops in the field caused by hail.

"legal expenses insurance"

"legal expenses insurance" means insurance against the costs incurred by a person or persons for legal services specified in the legal expenses insurance policy, including any retainer and fees incurred for the services, and other costs incurred in respect of the provision of the services.

"liability insurance"

"liability insurance" means insurance other than insurance that is incidental to another class of insurance,

- (a) against liability arising out of bodily injury to, or the disability or death of, a person, including an employee;
- (b) against liability arising out of the loss of, or damage to, property; or
- (c) if the liability insurance contract includes the insurance described in paragraph (a), against expenses arising out of bodily injury to a person other than the insured or a member of the insured's family, whether or not liability exists.

"life insurance"

"life insurance"

- (a) means any insurance that is payable
  - (i) on death,
  - (ii) on the happening of an event or contingency dependent on human life,
  - (iii) at a fixed or determinable future time, or
  - (iv) for a term dependent on human life; and
- (b) without restricting the generality of paragraph (a), includes
  - (i) insurance under which an insurer, as part of a contract of life insurance, undertakes to pay an additional sum of insurance money in the event of the death by accident of the person whose life is insured,
  - (ii) insurance under which an insurer, as part of a contract of life insurance, undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease, and



- (iii) an undertaking to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, for a term dependent solely or partly on a human life, and such an undertaking shall be deemed always to have been life insurance.

"marine insurance"

"marine insurance" means insurance against,

- (a) liability arising out of,
  - (i) bodily injury to or death of a person, or
  - (ii) the loss of or damage to properties, or
- (b) the loss of or damage to property,

occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incidental thereto, or during transit otherwise than by water incidental to such a voyage or marine adventure.

"mortgage insurance"

"mortgage insurance" means insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage or charge on real property or an immovable, a hypothec on an immovable or any other interest in real or immovable property.

"other approved products insurance"

"other approved products insurance" means insurance against risks that do not fall within another class of insurance.

"property insurance"

"property insurance" means insurance against the loss of, or damage to, property and includes insurance against loss caused by forgery.

"surety insurance"

"surety insurance" means insurance under which an insurer undertakes to guarantee the due performance of a contract or undertaking or the payment of a penalty or indemnity for any default.

"title  
insurance"

"title insurance" means insurance against loss or damage caused by

- (a) the existence of a mortgage, charge, lien, encumbrance, servitude or any other restriction on real property;
- (b) the existence of a mortgage, charge, lien, pledge, encumbrance or any other restriction on personal property;
- (c) a defect in any document that evidences the creation of any restriction referred to in paragraph (a) or (b);
- (d) a defect in the title to property; or
- (e) any other matter affecting the title to property or affecting the right to the use and enjoyment of property.