



**Submission of Sun Life Financial  
to the Competition Policy Review Panel  
in response to its consultation paper entitled  
“Sharpening Canada’s Competitive Edge”**

January 11, 2008

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Sun Life Financial<sup>1</sup> is pleased to respond to the consultation paper dated October 30, 2007 of the Competition Policy Review Panel entitled “Sharpening Canada’s Competitive Edge”.

A significant participant in foreign markets for over a century, Sun Life has commented for some time that in a globalizing economy and industry, it must look abroad to grow and must meet the highest standards of international competitiveness. Although the responsibility for Sun Life succeeding globally rests primarily with its management and board of directors, the policies of the Government of Canada that are the focus of the Panel’s review can and must play an important supportive role for all Canadian businesses operating internationally. This submission sets forth our views on some of the key questions raised in the Consultation Paper and on the nature of that support.

**INTERNATIONAL COMPETITIVENESS AND CANADIAN GLOBAL CHAMPIONS**

Sun Life and Canada’s other large life insurance companies are among Canada’s most international businesses, competing vigorously with foreign insurance and wealth management companies in key markets around the world. The following table contains for 2007 the percentage of revenues generated and income earned in Canada, the United States and elsewhere by Canada’s three largest life insurance companies as well as comparative figures for the six largest Canadian banks; they demonstrate the international character of our own business and that of the other large Canadian life insurers.

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<sup>1</sup> Sun Life Financial is a leading international financial services organization providing a diverse range of protection and wealth management products and services to individuals and corporate customers in key markets worldwide, including Canada, the United States, the United Kingdom, Ireland, Hong Kong, the Philippines, Japan, Indonesia, India, China and Bermuda. As of September 30, 2007, the Sun Life Financial group of companies had total assets under management in excess of \$427 billion.

**Canadian Large Life Insurers and Banks -  
Domestic and Foreign Revenue and Earnings in 2007**

<i>Revenue</i>	<i>Percentage of Total<sup>1</sup></i>		
	<i>Canada</i>	<i>US</i>	<i>Other</i>
Sun Life Financial	42%	50%	8%
Manulife Financial	28	55	17
Great-West Life	40	24	36
Six largest Canadian banks	71	15	14
<b><i>Earnings</i></b>			
Sun Life Financial	45%	39%	16%
Manulife Financial	28	49	23
Great-West Life	45	26	29
Six largest Canadian banks	66	12	22

<sup>1</sup> Source: Publicly available information. Revenue and earnings are, for the three life insurers, for the nine months ended September 30, 2007, and for the six banks, for the twelve months ended October 31, 2007.

To a significant extent as a result of their expansion in the United States and elsewhere, Canada's life insurance companies have succeeded in growing and acquiring scale, especially in comparison with industry leaders in the United States. The following table shows the ranking by market capitalization of the largest Canadian and American life insurance companies.

**North American Life Insurers - Market Capitalization**

<i>Life Insurer</i>	<i>Market Capitalization<sup>1</sup></i> <i>(in billions of U.S. dollars)</i>
1. AIG	\$147.9
2. <b>Manulife Financial</b>	<b>61.2</b>
3. MetLife	45.6
4. Prudential	42.2
5. <b>Great-West Life</b>	<b>31.8</b>
6. <b>Sun Life Financial</b>	<b>31.7</b>
7. AFLAC	30.6
8. Hartford	27.4
9. Principal Group	18.0
10. Lincoln	15.7

<sup>1</sup> As of December 31, 2007.

This represents a striking success in the internationalization of Canadian business. There are few industries in which three of the top ten North American competitors are Canadian.

If Canada's large life insurance companies are to compete globally – against large, well capitalized European and Asian, as well as American, companies – they must, however, expand further. While the United States, the world's largest insurance market, remains very attractive, Sun Life is equally focused on opportunities in Asia. The emerging markets of China and India, which have vast potential and are now being opened to foreign participants in stages, are particularly important and Sun Life now operates in both. In China, we have since 2002 carried on business through Sun Life Everbright, a joint venture with China Everbright Group that provides individual life and health insurance and group life insurance. In India, we have since 1999 participated in a joint venture with the Aditya Birla Group that offers individual and group life insurance, group pensions and mutual funds. We expect that embracing the opportunities for growth in Asia will over time enable Sun Life to increase our scale and in turn to realize the benefits of that, including reduced unit costs (particularly with respect to technology) and increased opportunities for investments in product development, brand development, marketing and technology. Ultimately, this will be beneficial not only to shareholders (in the form of increased earnings and higher share prices), but also to customers (to the extent that lower costs result in lower prices for products and services).

Viewed from a broader national economic perspective, foreign direct investment by international Canadian companies like Sun Life has significant benefits. As a recent publication of the C.D. Howe Institute puts it:

Direct investment abroad by Canadian-based companies (whether Canadian or foreign owned) provides numerous benefits: greater opportunities to expand business operations to international markets; greater market share for Canadian products; better access to resources, technologies, know-how, and financing. Outbound [foreign domestic investment] by Canadian-based multi-nationals also improves domestic company export performance.<sup>2</sup>

Recognizing these benefits, the Consultation Paper states that “[t]he public policy objective is to maximize opportunity for our domestic firms to grow into global champions and for our existing champions to further expand their reach” (at p. 4). Elsewhere, the Consultation Paper focuses specifically on the question of challenges faced by small and medium-sized enterprises seeking to become global competitors. Sun Life agrees emphatically with the policy objective of developing Canadian global champions. We must, however, be realistic about the opportunities that are available. Canada has a small number of large companies that are competing effectively internationally at this time on a significant scale and they offer the best chance to succeed as Canadian global champions, especially if one accepts the analysis of Dean Roger Martin that there is only a very short period, which he puts at twenty years, in which Canada has the remaining opportunity to foster the development of globally competitive

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<sup>2</sup> Jack M. Mintz and Andrey Tarasov, “Canada Is Missing Out on Global Capital Market Integration” (August 21, 2007).

companies.<sup>3</sup> Emphasizing the further development of Canada's leading companies into global champions is, in addition, important for the purposes of achieving one of the other goals that the Panel properly recognizes Canada should have: that of attracting foreign global champions to locate or invest in Canada. Only if the Canadian business environment has the key attributes – which include (as the Consultation Paper notes at p. 32) economic infrastructure, knowledge infrastructure and human capital – required by those foreign enterprises will they choose Canada. And the Canadian business environment will only have those attributes if Canada is already the home to leading Canadian international or global companies.

## **RECOMMENDATIONS**

We believe that all initiatives of the Government of Canada that impact on businesses to any significant extent must be tested in terms of the likelihood that they will foster the international competitiveness of Canadian enterprises and the development of Canadian global champions. The range of these initiatives, which include all forms of business regulation and taxation, is vast, as thus is the scope for application of this principle. Obvious areas for its application include, however, the ones identified by the Panel: above all, trade and investment law and also the *Investment Canada Act* and (to a lesser extent) the *Competition Act*. In general, in these areas the Government of Canada must seek to promote more foreign investment and trading opportunities for Canadian businesses. This requires the Government to liberalize restrictions on foreigners investing and trading in Canada, affording them non-discriminatory treatment, at least where their countries provide reciprocity.

Moreover, in focusing on fostering international competitiveness and Canadian global champions, the Government of Canada must truly be globally oriented. Canada's international orientation has long been overwhelmingly American and that has served our country well in many respects. While economic relations with the United States will always remain critical, however, Canada cannot afford to ignore any other relevant market. At this time, it is imperative that the Government of Canada focus on opportunities in Asia for Canadian businesses.

### **Trade and Investment Law**

The Government of Canada has been a strong partner in Sun Life's efforts to enter new international markets, as we have publicly acknowledged on many occasions. We have received significant support from ministers and officials in Ottawa, as well as assistance in foreign countries from Canada's senior diplomats, trade missions, embassies and consulates. This support has made an important contribution to Sun Life's expansion in some of the world's fastest growing markets.

However, our ability to expand and compete successfully in foreign markets is hindered by what is rightly characterized as a patchwork quilt of global trade rules in the financial services sector and by investment restrictions that persist in many jurisdictions. Sun

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<sup>3</sup> Roger Martin and Gordon Nixon, "Whoa, Canada: More Must Be Done to Protect Companies from Foreign Takeovers. The Country's Place in the World Depends On It." (*The Globe and Mail*, p. B1, July 2, 2007).

Life urges the Government of Canada to play a more active and intense role in the World Trade Organization (the “WTO”) services negotiations and to adopt a more assertive program of negotiating bilateral trade and investment treaties in key markets. The Government can be particularly supportive of a number of Canada’s international companies by taking the following three specific initiatives.

First, the Government should become far more active in promoting the WTO’s efforts to obtain new commitments in the services sector. In its financial services component, Canada should work actively and strategically to obtain new commitments from other states—especially those with emerging markets, like China and India – under the General Agreement on Trade in Services. To create global champions in the financial services sector, the Government’s approach to services negotiations must move decisively from a defensive posture, where the primary focus has often been on protecting domestic interests, to an offensive strategy aimed at opening foreign markets. In particular, the Government should negotiate for new national treatment and market access commitments from other states that:

- remove restrictions on equity ownership of local financial services corporations that treat foreigners differently from local investors;
- remove restrictions on the form in which a financial services company must be established;
- remove prohibitions on supplying services cross-border, such as financial services provided via the Internet;
- remove nationality requirements for the provision of financial services;
- ensure that no competitive advantages are provided to local or government entities other than those subsidies or government grants that are specifically provided for under the General Agreement on Trade in Services; and
- ensure regulatory transparency in the financial services sector.

Second, the Government should adopt a more assertive and outward-looking strategy of negotiating bilateral trade and investment treaties with the governments of countries that are important markets for Canada’s international or global companies. This is the practical alternative to proceeding through the WTO, which, as the Consultation Paper notes (at p.27), “has few investment undertakings”. Although the Government is now making efforts to catch up, Canada has fallen well behind the United States, and very far behind EU countries such as the United Kingdom, the Netherlands, France and Germany, in negotiating bilateral investment treaties to promote and protect investments by its multinationals abroad. Bilateral investment treaties, in particular, can be very rapidly negotiated and provide fundamental rule of law protections of national treatment, fair treatment and protection from expropriation for Canadian companies investing abroad. The Government has negotiated less than a third as many bilateral investment treaties as major EU countries and has insisted—in contrast to most other states—that its bilateral investment treaties contain a lengthy list of reservations designed to protect domestic restrictions on investment. The Government must re-think its approach to bilateral investment treaties so it can offer the same global playing field of international investment protection that major EU states currently provide for their own multinationals.

Third, to create an international environment that supports Canadian multinationals expanding abroad, the Government must be prepared where appropriate to liberalize its own restrictions on the provision of foreign services and on investment, at least on a reciprocal basis. For example, the *Insurance Companies Act* contains a widely held rule that limits the percentage of shares that any one shareholder may own in a large demutualized Canadian life insurance company, subject to the ability of the Minister of Finance to waive this rule in respect of any particular company.<sup>4</sup> However, that waiver and the approval of any transaction by the Minister may only be exercised in conformity with Canada's international trade obligations; they may not be withheld on a basis that discriminates against foreign nationals from WTO countries (assuming they do not discriminate against Canadians). We accordingly recommend that a confirmatory amendment to this effect be made to the *Insurance Companies Act* (and other federal financial institution legislation).<sup>5</sup>

### *Investment Canada Act*

The Consultation Paper seeks comments on changes to the *Investment Canada Act* and, in particular, on the "net benefit" test established by that Act for assessing a proposed transaction. We consider that it would be appropriate to change the *Investment Canada Act* in two respects, one particular to the financial services sector and one general.

The *Investment Canada Act* now applies to financial services companies in a manner that is both unclear and complex, particularly in relation to life insurance companies.<sup>6</sup> In addition, the *Investment Canada Act* applies to the acquisition of financial services companies at the threshold of \$5 million, as compared with the threshold of general application of \$281 million (in 2007). We see no justification for such a lower threshold for financial services. More importantly, however, in light of the rigorous approval process under the *Insurance Companies Act* and other federal financial institution legislation for acquisitions of companies subject to these statutes, which permits the Minister of Finance, in part through the Office of the Superintendent of Financial Institutions, to conduct a wide-ranging inquiry that includes in most cases consideration of "the best interests of the financial system in Canada"<sup>7</sup>, we see no reason for the continued application of the *Investment Canada Act* to those acquisitions<sup>8</sup>. In particular, where a foreign acquiror is involved, it is inconceivable that this aspect (including its regulatory and other significance) would not be adequately and appropriately taken into account in the financial institution legislation approval process. As a result, a further approval process under

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<sup>4</sup> The *Bank Act* also contains a widely held rule but does not permit waiver of it.

<sup>5</sup> The *Insurance Companies Act* currently contains, in section 420(2), a provision that is consistent with this principle. That section prohibits Ministerial approval of the acquisition of a Canadian life insurance company by a foreign insurance company from a non-WTO country unless reciprocity is afforded to Canadian life insurance companies by that country.

<sup>6</sup> Among other things, section 10(1)(j) of the *Investment Canada Act* exempts from review the acquisition of a Canadian insurance company on the basis of the nature of its gross investment revenue, a test both Investment Canada and private sector parties have found difficult to apply.

<sup>7</sup> *Insurance Companies Act*, section 420(1)(h).

<sup>8</sup> The *Bank Act* contains (currently in section 522.28, which is to be replaced by a comparable section 522.34) an exemption from the *Investment Canada Act* for acquisitions of banks that is broad in scope, although not comprehensive.

the *Investment Canada Act* is at best duplicative and burdensome and at worst inconsistent. Accordingly, Sun Life recommends that the *Investment Canada Act* be amended to exempt on a comprehensive basis acquisitions reviewed under the *Insurance Companies Act* and other federal financial institution legislation. In addition, we think in principle (without first-hand knowledge of other relevant industries or their regulatory regimes) that for many, if not all, of Canada's regulated industries—whether that regulation is federal or provincial—that require approval of acquisitions under rigorous review processes, comprehensive exemptions from the application of the *Investment Canada Act* would also be appropriate.

On a broader level, Sun Life thinks that there is merit in changing the “net benefit” test, with a view to reducing regulation of foreign acquisitions to the minimum necessary to achieve policy objectives. Indeed, if one assumes – apparently with the Panel – that foreign direct investment is in general a good thing for Canada, it can reasonably be argued that there is no need for such a test (or the legislation), apart from some exceptional cases such as those of national security and state-owned or controlled enterprises operating non-commercially; no particular transaction need be beneficial if transactions collectively are and the competitive effect of each acquisition is assessed under the *Competition Act*. Assuming, however, that review of each foreign acquisition (at a reasonable financial threshold) continues, we think that a significantly higher standard for disapproval (or for what is, in practice, the imposition of undertakings as a condition of approval, which are now required in virtually all cases) is appropriate. That would be much more consistent with significant efforts of the Government of Canada directed towards the liberalization of foreign markets for the benefit of Canadian businesses and with regulation of foreign investment internationally. One way of raising the standard for disapproval would be to require Investment Canada to conclude that a particular transaction was unduly or significantly detrimental to Canada – a test that both raises the standard and reverses the onus. It seems likely, however, that such a test would continue to involve the obscure balancing of factors that pertains under the current “net benefit” test, and thus not make any material change to the standard for disapproval. Accordingly, we think it would be better to require that Investment Canada, in order to disapprove a transaction, establish that the transaction is contrary to the “national interest”, with that term defined rigorously; this new test would replace the “net benefit” test in all cases. It would also be consistent with the Government of Canada's intention to consider giving Investment Canada the power to disapprove foreign acquisitions on national security grounds.

### **Federal Financial Institution Widely Held Rules**

Among the sector-specific schemes of regulation of foreign investment, the Panel seeks comments on the widely held rules applicable to Canadian large demutualized life insurance companies (although not other large life insurance companies), banks and other federal financial institutions.

The Consultation Paper (at p. 46) notes what the Panel considers to be significant aspects of these widely held rules, including that they have a prudential justification and the fact that they are not foreign ownership rules but rules of general application to all owners. (Foreign ownership rules in the financial services sector were abolished in conjunction with the assumption of Canada's obligations under the Free Trade Agreement and other trade treaties.) As the Consultation Paper also observes, other countries that generally do not have ownership

restrictions have requirements for approval of investments in financial institutions; these can and often do function as ownership restrictions. In addition, the widely held rules permit at least some consolidation transactions with Ministerial approval; indeed, since the Minister of Finance may waive the widely held rules applicable to large demutualized life insurance companies, Sun Life and other such companies are essentially in the same position as they would be under a simple Ministerial approval regime that did not involve ownership rules.

Moreover, the widely held rules are one component of a balanced and cohesive regulatory policy for the life insurance industry that the Government of Canada has developed and implemented over the last decade. The Government encouraged demutualization and did so on the basis of widely held rules for large companies that demutualized. An appropriate degree of consolidation – exemplified by Sun Life’s acquisition of Clarica and GreatWest Lifeco’s purchase of Canada Life – was approved. The Government also maintained a considerable degree of separation between banking and life insurance by, among other things, prohibiting “cross pillar” mergers between the large insurers and banks. This multi-faceted government policy has been an outstanding success.

As a result, Sun Life does not think that the widely held rules applicable to it are required to be abolished or changed in any fundamental way. As explained under “Trade and Investment Law” above, however, we think that it is highly desirable that a confirmatory amendment be made to the *Insurance Companies Act* to the effect that the widely held rule may not be applied in a manner that discriminates against foreigners.

### *Competition Act*

In its furthest reaching question about Canadian competition law, the Panel asks (Consultation Paper, p. 25) whether Canadian merger regulation strikes the right balance between competition and the development of Canadian global competitors. The issue thus raised is whether limits on market power in Canada should be relaxed in the case of Canadian global champions that either need or have extraordinary scale in Canada.

If the Government of Canada were to conclude that a relaxation of competition law for the benefit of Canadian global champions was appropriate, it would be a simple matter to amend the *Competition Act* to achieve this result. Section 94 already provides that the Competition Tribunal may not disapprove certain listed mergers<sup>9</sup> and that section could be expanded, for example, to provide for an exemption where the Minister of Industry certifies that the merger involves a “major international competitor”, which would be defined, with suitable criteria, as being a Canadian global champion.

In our view, however, it would be premature to propose that very significant change. Rather, we recommend that the Panel commission and assess research on the matter. It is frequently asserted in the media and anecdotally that other countries, particularly smaller ones and those in Europe, have succeeded in fostering the development of global champions in

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<sup>9</sup> Section 94(b) of the *Competition Act* permits the Minister of Finance to certify that a merger involving a federal financial institution is in the public interest and hence to exempt it from an adverse order by the Competition Tribunal.

circumstances where Canada has failed. To the extent that these global champions have been fostered, it must have been either in compliance with applicable competition or antitrust law or on the basis of a relaxation of it. Whatever the facts are, this is an important matter and resolving it will assist the Panel and the Government of Canada in dealing with this fundamental question.

In one area of competition law, however, we do recommend a change. That is the matter of the efficiencies defence, also discussed in the Consultation Paper (at p. 24). Under section 96 of the *Competition Act*, the Competition Tribunal may not make an order disapproving a merger where efficiency gains will be greater than the effects of any lessening of competition. This defence, which is an unusual component of Canadian competition law, has been disfavoured by the Competition Bureau, although it has recently announced that it was ceasing efforts to amend the *Competition Act* to eliminate or curtail the defence. We think there is considerable merit in the efficiency defence and instead recommend that the *Competition Act* be amended to strengthen the requirement to consider efficiencies in the review of mergers and to set forth clearly how the Competition Bureau and the Competition Tribunal are to take efficiencies into account. This is one way in which, on an economically justifiable basis, Canadian competition law can foster the development of Canadian global champions.

### **Consolidation of Financial Institutions**

One particular issue that the Panel, in the course of its review, may be inclined or requested to consider is that of consolidation of Canadian financial institutions. Sun Life has repeatedly expressed its views on this topic. Both absolutely and relative to intra-industry combinations, we think that “cross pillar” mergers between large banks and large life insurance companies are inferior in business and policy terms. This is particularly the case with respect to their effect on the international competitiveness and potential for growth of the life insurance company and the bank involved. The current policy prohibiting such mergers has been a tremendous success.

### **FURTHER CONTACT**

Sun Life Financial would also be pleased to expand upon this submission or to answer any questions that the Panel may have about it. Any further contact should be addressed to:

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