

## **2003 BCSECCOM 189**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain of the mutual fund self-dealing prohibitions to permit certain mutual funds to make purchases and sales of securities of Sun Life Financial Services of Canada Inc. and CI Fund Management Inc., related companies to the manager of the mutual funds provided that a fund governance mechanism is used

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 121(2)(c), 123, 127(1)(a) and 130

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUÉBEC,  
NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE SYSTEM FOR  
EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF MCLEAN BUDDEN LIMITED (“MCLEAN  
BUDDEN”) MCLEAN BUDDEN BALANCED GROWTH FUND  
MCLEAN BUDDEN CANADIAN EQUITY GROWTH FUND  
MCLEAN BUDDEN CANADIAN EQUITY VALUE FUND  
MCLEAN BUDDEN GLOBAL EQUITY FUND  
(collectively, “MB Mutual Funds”)  
MB BALANCED GROWTH PENSION FUND  
MB CANADIAN EQUITY GROWTH FUND  
MB GLOBAL EQUITY FUND  
MB BALANCED GROWTH FUND  
MB CANADIAN EQUITY PLUS FUND  
MB PRIVATE BALANCED FUND  
MB CANADIAN EQUITY FUND  
MB BALANCED FUND  
MB CANADIAN EQUITY VALUE FUND  
MB SELECT BALANCED FUND  
MB SELECT CANADIAN EQUITY FUND  
MB SELECT GLOBAL EQUITY FUND  
MB BALANCED VALUE FUND  
MB GLOBAL EQUITY GROWTH FUND  
MB GLOBAL EQUITY VALUE FUND**

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**MB LIFEPLAN INCOME FUND  
MB LIFEPLAN GROWTH AND INCOME FUND  
MB LIFEPLAN GROWTH FUND  
(collectively, "MB Pooled Funds")**

**MRRS DECISION DOCUMENT**

WHEREAS McLean Budden has made an application for a decision (the "Decision") of the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation do not apply so as to prevent the MB Mutual Funds and, where applicable, the MB Pooled Funds, or other mutual funds of which McLean Budden is or may be the manager or portfolio adviser (individually, a "Fund", and, collectively, the "Funds") from investing in, or continuing to hold an investment in, securities of the Sun Life Financial Services of Canada Inc. ("Sun Life") or in CI Fund Management Inc. ("CI"):

- a. the provision prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company or in any person or company in which a substantial security holder of the mutual fund, its management company or its distribution company has a significant interest; and
- b. the provision prohibiting the portfolio manager of an investment portfolio from causing the investment portfolio or in British Columbia prohibiting a mutual fund or a responsible person from causing a mutual fund to invest in an issuer in which a responsible person is a director or an officer unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (the provisions of a. and b. being, collectively, the "Investment Restrictions");

AND WHEREAS the Investment Restrictions described in paragraph (a) above are applicable to the MB Pooled Funds in the following Jurisdictions: Alberta, Ontario and Québec and the Investment Restrictions described in paragraph (b) above are applicable to the MB Pooled Funds in the following Jurisdictions: Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador.

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS it has been represented by McLean Budden to the Decision Makers that:

1. Each of the MB Mutual Funds is a mutual fund within the meaning of the Legislation and is a reporting issuer subject to National Instrument 81-102.
2. Each of the MB Mutual Funds is not in default under the Legislation.
3. Each of the MB Pooled Funds is not a reporting issuer under the Legislation and is not subject to National Instrument 81-102.
4. McLean Budden is or will be the portfolio manager of the Funds and is or will be the management company of the Funds for purposes of the Legislation.
5. Securities of the Funds are or will be offered in all the Jurisdictions.
6. McLean Budden is a 57 percent owned indirect subsidiary of Sun Life and as a result Sun Life is a substantial security holder of McLean Budden.
7. Sun Life has approximately an aggregate 31.6 percent indirect ownership interest in CI through two of Sun Life’s wholly-owned subsidiaries, Sun Life Assurance Company of Canada and Clarica Life Insurance Company and as a result CI is an issuer in which a substantial security holder of McLean Budden has a significant interest.
8. Certain directors and/or officers of McLean Budden who are responsible persons in respect of the Funds are also directors and/or officers of Sun Life and CI; however, such individuals do not participate in the formulation of, or generally have access prior to implementation to, the day to day investment decisions made on behalf of the Funds.
9. McLean Budden is prohibited by the Investment Restrictions from causing the investment portfolios of the Funds to invest in securities of Sun Life because:

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- (i) Sun Life is a substantial security holder of the management company of the Funds; and
  - (ii) Certain directors of McLean Budden are also directors and/or officers of Sun Life.
- 10. McLean Budden is prohibited by the Investment Restrictions from causing the investment portfolios of the Funds to invest in securities of CI because:
  - (i) CI is an issuer in which a substantial security holder of the management company of the Funds has a significant interest; and
  - (ii) certain directors of McLean Budden are also directors and/or officers of CI.
- 11. For purposes of the requirement of section 11.3(b) of Part B of Form 81-101 FI – Contents of Simplified Prospectus – under National Instrument 81-101, the broad based securities market index which is relevant to comparing the performance of many of the MB Mutual Funds is the BMO/TSX Composite Cap 10% Index. This is also an index against which the performance of the MB Pooled Funds is measured.
- 12. The common shares of Sun Life and CI are represented in the BMO/TSX Composite Cap 10% Index in approximately 2.9 percent and 0.3 percent respectively as at November 30, 2002.
- 13. With a market capitalization of over \$17 billion Sun Life is currently the 8<sup>th</sup> largest company in the publicly traded Canadian equity market. It is currently the second largest company in the insurance sector in Canada. CI is the second largest publicly traded mutual fund company in the Canadian market and has a market capitalization of over \$1.7 billion.
- 14. The number of publicly traded mutual fund companies in Canada has been significantly reduced over the last few years. CI represents one of the remaining opportunities for the Funds to invest in this sector.
- 15. In the context of the Canadian capital markets, the ability to invest in securities of Sun Life and CI is extremely important to the Funds. It is not prudent for a portfolio manager to arbitrarily exclude securities of such issuers from the universe of securities available for investment.

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16. McLean Budden considers that it would be in the best interests of investors in the Funds if McLean Budden were permitted to invest the portfolios of the Funds in securities of Sun Life and/or CI where such investments are consistent with the investment objectives of the Funds.
17. McLean Budden has agreed to appoint an independent committee (the "Independent Committee") to review the Funds' purchases, sales and continued holdings of securities of Sun Life and CI to ensure that they have been made free from any influence by Sun Life or CI and without taking into account any consideration relevant to Sun Life and CI or any associate or affiliate of Sun Life or CI.
18. In reviewing the Funds' purchases, sales and continued holdings of securities of Sun Life and CI, the Independent Committee will take into account the best interests of the unitholders of the Funds and no other factors.
19. Compensation to be paid to members of the Independent Committee will be paid on a per meeting plus expenses basis and will be allocated among the Funds in a manner that is considered by the Independent Committee to be fair and reasonable to the Funds.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the Jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

1. McLean Budden and the MB Mutual Funds are exempt from the Investment Restrictions so as to enable the MB Mutual Funds to invest, and continue to hold an investment in, securities of Sun Life and CI;
2. McLean Budden and the MB Pooled Funds are exempt from the Investment Restrictions in each of the Jurisdictions in which such Investment Restrictions are applicable to the MB Pooled Funds (as described in the recitals to this decision) so as to enable the MB Pooled Funds to invest, and continue to hold an investment in, securities of Sun Life and CI; and
3. the Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule

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of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provision of this Decision;

provided that:

- a. McLean Budden has appointed the Independent Committee to review the Funds' purchases, sales and continued holdings of securities of Sun Life and CI;
- b. the Independent Committee has at least three members, none of whom is an employee, director, officer or associate of:
  - (i) Sun Life or CI;
  - (ii) McLean Budden or any other portfolio manager of the Funds;  
or
  - (iii) any associate or affiliate of Sun Life, CI, McLean Budden or any other portfolio manager of the Funds;
- c. the Independent Committee has a written mandate describing its duties and standard of care which, at a minimum, sets out these conditions;
- d. the members of the Independent Committee exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- e. none of the Funds relieves the members of the Independent Committee from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);
- f. none of the Funds indemnifies the members of the Independent Committee against legal fees, judgements and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph (d);
- g. none of the Funds incurs the cost of any portion of liability insurance that insures a member of the Independent Committee for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);

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- h. the cost of any indemnification or insurance coverage paid for by McLean Budden, any other portfolio manager of the Funds, or any associate or affiliate of McLean Budden or any other portfolio managers of the Funds to indemnify or insure the members of the Independent Committee in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) is not paid either directly or indirectly by the Funds;
- i. the Independent Committee reviews the Funds' purchases, sales and continued holdings of securities of Sun Life and CI regularly, but not less frequently than quarterly or such shorter period as the Independent Committee may require;
- j. the Independent Committee forms the opinion at any time, after reasonable inquiry, that the decisions made on behalf of each Fund by McLean Budden or the Fund's portfolio manager to purchase, sell or continue to hold securities of Sun Life and CI were, and continue to be, in the best interests of the Fund and to:
  - (i) represent the business judgement of McLean Budden or the Fund's portfolio manager, uninfluenced by considerations other than the best interests of the Fund;
  - (ii) have been made free from any influence by Sun Life or CI and without taking into account any consideration relevant to Sun Life or CI or any associate or affiliate of Sun Life or CI ; and
  - (iii) not exceed the limitations of the applicable legislation;
- k. the determination made by the Independent Committee pursuant to paragraph (j) above is included in detailed written minutes provided to McLean Budden not less frequently than quarterly;
- l. the reports required to be filed pursuant to applicable legislation with respect to every purchase and sale of securities of Sun Life and CI are filed on SEDAR in respect of the relevant Fund;
- m. the Independent Committee advises the Decision Makers in writing of:
  - (i) any determination by it that condition (j) has not been satisfied with respect to any purchase, sale or holding of securities of Sun Life or CI;

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- (ii) any determination by it that any other condition of this Decision has not been satisfied;
  - (iii) any action it has taken or proposes to take following the determinations referred to above; and
  - (iv) any action taken, or proposed to be taken, by Sun Life, CI, McLean Budden or a portfolio manager of the Funds in response to the determinations referred to above;
- n. the relationship between related parties including the percentage of ownership will be the initial information stated followed thereafter with disclosure of the existence, purpose, duties and obligations of the Independent Committee, the names of its members, whether and how they are compensated by the Funds, and the fact that they meet the requirements of condition (b);
  - (A) in the case of the MB Mutual Funds,
    - (i) in a press release issued, and a material change report filed, prior to reliance on the Decision;
    - (ii) in item 12 of Part A of the simplified prospectus of the Funds; and
    - (iii) on McLean Budden's internet website; and
  - (B) in the case of the MB Pooled Funds, in a written notice mailed to each investor.

DATED February 28, 2003.

Robert Korthals

Robert L. Shirriff