

# 2002 BCSECCOM 214

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from POP eligibility requirements to allow a wholly-owned Canadian subsidiary of a MJDS eligible U.S. issuer to issue approved rating debt, fully and unconditionally guaranteed by the U.S. parent company using a short form prospectus. Relief also granted from Canadian GAAP reconciliation requirements. Relief granted from continuous disclosure requirements for Canadian subsidiary.

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85, 87, 91(1)(b), 119(2)(b), 169(4)

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145, 149, 184(2)

National Instrument 44-101 *Short Form Prospectus Distributions*, B.C. Reg. 424/2000

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND, NOVA SCOTIA, ONTARIO, PRINCE EDWARD ISLAND, QUÉBEC, AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF JOHN HANCOCK FINANCIAL SERVICES, INC.  
AND JOHN HANCOCK CANADIAN CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (the "Decision Makers" or the "Commissions") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan (the "Jurisdictions") has received an application (the "Application") from John Hancock Financial Services, Inc. ("JHFS") and John Hancock Canadian Corporation ("JHCC", and together with JHFS, the "Applicants") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

A. the Applicants be exempted from the following requirements contained in the Legislation:

(i) the requirements in section 2.5(1) of National Instrument 44-101 ("NI44-101"), that a person or company guaranteeing non-convertible debt issued by a subsidiary be a reporting issuer with a 12 month reporting history in a Canadian province or territory, and have a current annual information form (an "AIF") (the "Eligibility Requirement"), in order to permit JHCC to issue (the "Offering") non-convertible debt securities, in particular senior unsecured notes (the "Notes"), with an approved rating, as defined in NI 44-101, which will be fully and unconditionally guaranteed by JHFS;

(ii) the requirement in NI 44-101 that the short form prospectus filed by JHCC in connection with the Offering include a reconciliation (the "Reconciliation Requirement") to Canadian generally accepted accounting principles ("GAAP") of the consolidated financial statements of JHFS and its subsidiaries included in or incorporated by reference into the prospectus which have been prepared in accordance with foreign GAAP and that where such financial statements are audited in accordance with foreign generally accepted auditing standards ("GAAS"), JHCC provide a

## 2002 BCSECCOM 214

statement by the auditor disclosing any material differences in the auditor's report and confirming that the auditing standards of the foreign jurisdiction are substantially similar to Canadian GAAS;

(iii) the requirement in NI 44-101 and under the Legislation of Ontario (Ontario Securities Commission Rule 51-501), Québec (section 159 of the Regulation to the *Securities Act* (Québec)) and Saskatchewan (Saskatchewan Instrument 51.501 of the Saskatchewan Securities Commission) that JHCC have a current AIF and file renewal AIFs (the "AIF Requirements") with the Commissions;

(iv) the requirement that JHCC file with the Commissions and send, where applicable, to its securityholders audited annual financial statements or annual reports, where applicable, including without limitation management's discussion and analysis thereon (the "Annual Financial Statement Requirements");

(v) the requirement that JHCC file with the Commissions and send, where applicable, to its securityholders unaudited interim financial statements, including without limitation management's discussion and analysis thereon (the "Interim Financial Statement Requirements");

(vi) the requirement that JHCC issue and file with the Commissions press releases and file material change reports (the "Material Change Requirements");

(vii) the requirement that the insiders of JHCC file with the Commissions insider reports (the "Insider Reporting Requirements"); and

(viii) the requirement that JHCC comply with the proxy and proxy solicitation requirements, including filing an information circular or report in lieu thereof (the "Proxy Requirements" and, together with the Annual Financial Statement Requirements, the Interim Financial Statement Requirements, the Material Change Requirements, and the Insider Reporting Requirements, the "Continuous Disclosure and Reporting Requirements"); and

B. the Application and the Decision, as defined below, be held in confidence by the Decision Makers subject to certain conditions.

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

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

1. JHFS was incorporated under the laws of Delaware on August 26, 1999, and is not a reporting issuer or the equivalent in any of the provinces or territories of Canada.
2. Prior to February 1, 2000, the business of JHFS was conducted by John Hancock Mutual Life Insurance Company (the "Mutual Company"). The Mutual Company had been in business as such since 1862 until it converted from a mutual life insurance company to a stock life insurance company (*i.e.*, demutualized) and became a wholly-owned subsidiary of JHFS, which is a holding company.
3. JHFS has been a reporting company under the *Securities Exchange Act of 1934*, as amended (the "1934 Act"), since January 27, 2000. JHFS has filed with the U.S. Securities and Exchange Commission (the "SEC"), among other things, annual reports under Form 10-K for the fiscal years ended December 31, 1999 and 2000 and quarterly reports under Form 10-Q for the quarterly periods ended March 31, 2001 and June 30, 2001, in accordance with the filing

## 2002 BCSECCOM 214

obligations set out in sections 13 and 15(d) of the 1934 Act (collectively, the “JHFS Disclosure Documents”).

4. The aggregate market value of JHFS’s equity securities (which are listed and posted for trading over the facilities of the New York Stock Exchange (the “NYSE”)), calculated in accordance with NI 44-101, on August 24, 2001 was approximately US\$12.25 billion.
5. JHFS has received an approved rating from Moody’s Investors Service, Inc. of P-1 and Standard & Poor’s Ratings Group of A-1 on its commercial paper program. As at July 31, 2001, JHFS had approximately US\$71 million outstanding under its commercial paper program.
6. JHCC was incorporated as an unlimited liability company under the laws of Nova Scotia on March 27, 2001, and is an indirect wholly-owned subsidiary of JHFS.
7. JHCC is a reporting issuer or the equivalent in each of the provinces of Canada and has been so since April 20, 2001, the date of filing its (final) prospectus dated April 20, 2001 in respect of its distribution (the “Prior Offering”) of \$220,000,000 6.672% senior unsecured notes (the “6.672% Notes”). The 6.672% Notes are currently rated AA (low) by DBRS Inc., A1 by Moody’s Investor Service, Inc. and A+ by Standard & Pools.
8. JHCC’s primary business is to access Canadian capital markets to raise funds on behalf of the Canadian subsidiary companies of JHFS. JHCC has no operations that are independent of JHFS, has no products or services, owns no property and has no employees. The only securities that JHCC has outstanding are common shares held by John Hancock Canadian LLC, a wholly-owned subsidiary of JHFS, and the 6.672% Notes.
9. JHFS satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 (“NI 71-101”) and is eligible to use the multi-jurisdictional disclosure system (“MJDS”), as set out in NI 71-101, for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
10. Except for the fact that JHCC is not incorporated under United States law, the Offering would comply with the alternative eligibility criteria for offerings of non-convertible debt having an approved rating under the MJDS as set forth in Section 3.2 of NI 71-101.
11. JHCC is ineligible to issue the Notes by way of a prospectus in the form of a short form prospectus under NI 44-101 as neither JHCC nor JHFS, as credit supporter for the payments to be made by JHCC under the Notes, has been a reporting issuer with a 12 month reporting history in any province or territory of Canada, and JHFS does not itself have a current AIF.
12. In connection with the Prior Offering, exemptions were obtained from the Continuous Disclosure and Reporting Requirements in an MRRS decision document dated March 21, 2001 (the “Prior Decision Document”), subject to certain conditions including, among others, that certain of the continuous disclosure materials filed by JHFS with the SEC in the United States also would be filed with the Commissions, which conditions have been complied with by the Applicants.
13. The Prior Decision Document requires JHCC or JHFS to file with the Commissions certain of the documents filed by JHFS with the SEC within 24 hours of their being filed with the SEC.
14. The different public holidays between the United States and Canada, together with the standard five day work week within which the Decision Makers conduct business, may create

## 2002 BCSECCOM 214

circumstances in which it is not possible to satisfy the obligation to file documents within the 24 hours prescribed by the Prior Decision Document.

15. In connection with the Offering:

(i) the prospectus will be prepared pursuant to the short form prospectus requirements contained in NI 44-101 and will comply with the requirements set out in Form 44-101F3 of NI 44-101 with the disclosure required by item 12 of Form 44-101F3 of NI 44-101 being addressed by incorporating by reference relevant portions of the JHFS Disclosure Documents and with the disclosure required by item 7 of Form 44-101F3 of NI 44-101 being addressed by disclosure with respect to JHFS in accordance with United States requirements;

(ii) the prospectus will include or incorporate by reference all material disclosure concerning JHCC;

(iii) the prospectus will incorporate by reference the JHFS Form 10-K for the fiscal year ended December 31, 2000, together with all Form 10-Qs and Form 8-Ks filed under the 1934 Act in respect of the financial year following the year that is the subject of the JHFS Form 10-K, and will incorporate by reference any documents of the foregoing type filed after the date of the prospectus and prior to termination of the Offering and will state that purchasers of the Notes will not receive separate continuous disclosure information regarding JHCC;

(iv) the annual and interim financial statements that will be included or incorporated by reference in the prospectus are prepared in accordance with U.S. GAAP and otherwise comply with the requirements of U.S. law, and in the case of the audited annual financial statements, such financial statements are audited in accordance with U.S. GAAS;

(v) JHFS will fully and unconditionally guarantee the payments to be made by JHCC as stipulated in the terms of the Notes or in an agreement governing the rights of holders of Notes such that the holder of Notes will be entitled to receive payment from JHFS within 15 days of any failure by JHCC to make a payment as stipulated;

(vi) the Notes will have an approved rating;

(vii) JHFS will sign the prospectus as credit supporter and promoter; and

(viii) JHFS will undertake to file with the Commissions, in electronic format under JHCC's SEDAR, as defined in National Instrument 13-101, profile, all documents that it files under Section 13 (other than sections 13(d), (f) and (g) which relate, *inter alia*, to holdings by JHFS of securities of other public companies) and 15(d) of the 1934 Act, together with the appropriate filing fees, until such time as the 6.672% Notes and the Notes are no longer outstanding.

16. The consolidated financial statements of JHFS and its subsidiaries that will be included in or incorporated by reference into the short form prospectus in connection with the Offering have been prepared in accordance with U.S. GAAP.

17. In the circumstances, were JHFS to have effected the Offering of the Notes under the MJDS it would be unnecessary for it to reconcile to Canadian GAAP its financial statements included in or incorporated by reference into the short form prospectus in connection with the issuance of the Notes.

18. Part 7 of NI 44-101 and Item 20.1 of Form 44-101F3 of NI 44-101 would seem to require the reconciliation to Canadian GAAP of financial statements prepared in accordance with foreign GAAP that are included in a short form prospectus.

## 2002 BCSECCOM 214

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 each Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Applicants be exempted from the Eligibility Requirement and the Reconciliation Requirement in connection with the Offering provided that:

- (i) each of JHCC and JHFS complies with paragraph 15 above;
- (ii) JHCC complies with all of the filing requirements and procedures set out in NI 44-101 except as varied by the Decision;
- (iii) JHFS remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of JHCC; and
- (iv) JHFS continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purposes of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is that, in connection with the Offering, the AIF Requirements shall not apply to JHCC, provided that (i) JHFS complies with the AIF requirements of NI 44-101 as if it is the issuer; and (ii) the Applicants comply with all of the conditions in the Decisions above and below.

Nicholas A. Pittas

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is that in connection with the Offering, the following exemptions are granted, and in connection with the Prior Offering, the exemptions from the Continuous Disclosure and Reporting Requirements in the Prior Decision Document are revoked and the following exemptions are granted:

- A. the Annual Financial Statement Requirements shall not apply to JHCC, provided that (i) JHCC files with the Commissions the annual reports on Form 10-K filed by JHFS with the SEC within one business day after they are filed with the SEC; and (ii) such documents are provided to holders of 6.672% Notes and the Notes (the "Noteholders") whose last address as shown on the books of JHCC is in Canada in the manner and at the time required by applicable United States law;
- B. the Interim Financial Statement Requirements shall not apply to JHCC, provided that (i) JHCC files with the Commissions the quarterly reports on Form 10-Q filed by JHFS with the SEC within one business day after they are filed with the SEC; and (ii) such documents are provided to Noteholders whose last address as shown on the books of JHCC is in Canada in the manner and at the time required by applicable United States law;
- C. the Material Change Requirements shall not apply to JHCC, provided that (i) JHCC files with the Commissions the mandatory reports on Form 8-K (including press releases) filed by JHFS with the SEC forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC; (ii) JHFS complies with the requirements of the NYSE in respect of making public disclosure of material information on a timely basis and forthwith

## 2002 BCSECCOM 214

issues in each Jurisdiction any press release issued in this regard; (iii) JHFS forthwith issues in each Jurisdiction and JHCC files with the Commissions any press release that discloses material information and which is required to be issued in connection with the mandatory Form 8-K requirements applicable to JHFS; and (iv) if there is a material change in respect of the business, operations or capital of JHCC that is not a material change in respect of JHFS, JHCC will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not be a material change in respect of JHFS;

D. the Insider Reporting Requirements shall not apply to insiders of JHCC, provided that such insiders file with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder; and

E. the Proxy Requirements shall not apply to JHCC, provided that (i) JHFS complies with the requirements of the 1934 Act and the rules and regulations thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meeting of its note holders (if any); (ii) JHCC files with the Commissions the materials relating to the meeting filed by JHFS with the SEC promptly after they are filed by it with the SEC; and (iii) such documents are provided to Note holders whose last address as shown on the books of JHCC is in Canada in the manner, at the time and if required by applicable United States law;

for so long as (i) JHFS maintains an approved rating in respect of the 6.672% Notes and the Notes; (ii) JHFS maintains direct or indirect 100% beneficial ownership of the voting securities of JHCC; (iii) JHFS maintains a class of securities registered pursuant to section 12 of the 1934 Act; (iv) JHFS continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; (v) JHCC carries on no other business than that set out in paragraph 8 of the Decision (vi) JHFS continues to fully and unconditionally guarantee the 6.672% Notes and the Notes as to the payments required to be made by JHCC to the Noteholders; (vii) JHCC does not issue additional securities other than the 6.672% Notes and the Notes (or any other series of the 6.672% Notes or the Notes which hereinafter may be issued), debt securities ranking *pari passu* to the 6.672% Notes or the Notes, any debentures issued in connection with the security granted by JHCC to the holders of 6.672% Notes and Notes or debt ranking *pari passu* with the 6.672% Notes or the Notes, and those securities currently issued and outstanding, other than to JHFS or to wholly-owned subsidiaries of JHFS; and (viii) if notes of another series or debt securities ranking *pari passu* with the 6.672% Notes and the Notes are hereinafter issued by JHCC, JHFS shall fully and unconditionally guarantee such notes or debt securities as to the payments required to be made by JHCC to holders of such notes or debt securities.

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is that the Application and the Decision shall be held in confidence by the Decision Makers until the earlier of the date that the preliminary prospectus is filed in connection with the Offering and October 31, 2001.

DATED on September 17, 2001

H. Leslie O'Brien