

2002 BCSECCOM 302

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the registration and prospectus requirements for certain trades in securities in connection with an arrangement where exemptions not available for technical reasons – first trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 *Resale of Securities*.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, and 76

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA,
ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC, NEW BRUNSWICK,
PRINCE EDWARD ISLAND, NOVA SCOTIA, NEWFOUNDLAND AND
LABRADOR,
THE YUKON TERRITORY, THE NORTHWEST TERRITORIES AND
THE NUNAVUT TERRITORY**

AND

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

AND

**IN THE MATTER OF
SUN LIFE FINANCIAL SERVICES OF CANADA INC. AND
CLARICA LIFE INSURANCE COMPANY**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (collectively, the “Jurisdictions”) has received an application from Sun Life Financial Services of Canada Inc. (“Sun Life”) and Clarica Life Insurance Company (“Clarica”) (collectively, the “Filer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the trades of securities contemplated by the proposed securities exchange transaction (the “Transaction”) involving Sun Life and Clarica to be effected by way of a reorganization of its corporate structure shall be exempt from the registration and prospectus requirements of the Legislation;

2002 BCSECCOM 302

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 the Filer has represented to the Decision Makers that:

1. Sun Life and Clarica have entered into a transaction agreement dated December 17, 2001 (the “Transaction Agreement”) providing for the Transaction to be effected by way of a reorganization of Clarica’s capital structure involving the change of the common shares of Clarica (the “Clarica Common Shares”) into a new class of exchangeable shares of Clarica (the “Exchangeable Shares”) and the automatic exchange of the Exchangeable Shares for common shares of Sun Life (the “Sun Life Common Shares”) to be issued by Sun Life to holders of Clarica Common Shares (“Clarica Shareholders”) all as more particularly described in paragraphs 7 and 8 below.
2. Sun Life is a holding company incorporated under the Insurance Companies Act (Canada) (the “ICA”) and is a “reporting issuer” under the Legislation. To its knowledge, Sun Life is not in default of any applicable requirement of the Legislation. Sun Life is eligible to use a short form prospectus pursuant to National Instrument 44-101 in each Jurisdiction. Sun Life is a “qualifying issuer” as defined in Multi-Lateral Instrument 45-102 Resale of Securities (“MI 45-102”). Sun Life’s registered office is located at 150 King Street West, Toronto, Ontario M5H 1J9.
3. The authorized share capital of Sun Life consists of an unlimited number of Sun Life Common Shares, an unlimited number of Class A Shares, issuable in series and an unlimited number of Class B Shares, issuable in series. Currently, the only shares outstanding are Sun Life Common Shares, of which, as at December 31, 2001, there were 431,708,091 outstanding. The Sun Life Common Shares are currently listed and posted for trading on the Toronto, New York, London and Philippines stock exchanges.
4. Clarica is an insurance company incorporated under the ICA and is a “reporting issuer” under the Legislation. To its knowledge, Clarica is not in default of any applicable requirement of the Legislation. Clarica is eligible to use a short-form prospectus pursuant to National Instrument 44-101 in each Jurisdiction. Clarica’s registered office is located at 227 King Street South, Waterloo, Ontario N2J 4C5.
5. The authorized share capital of Clarica consists of an unlimited number of Clarica Common Shares and an unlimited number of seven classes of Special Shares (Classes A through G) having three different priorities with respect to payment of dividends and distribution of assets in the event of liquidation, dissolution or winding-up of Clarica. As of December 13, 2001, 6,000,000 Non-cumulative Redeemable Class A Preferred Shares, Series 1 (the “Class A Shares”) and 134,268,867 Clarica Common

2002 BCSECCOM 302

Shares were issued and outstanding. The Clarica Common Shares are currently listed and posted for trading on The Toronto Stock Exchange.

6. The reorganization of Clarica's capital structure will be comprised of the following:
 - (a) an amendment to the by-laws of Clarica to create a new class of non-voting exchangeable shares of Clarica (the "Exchangeable Shares") ranking junior to the Class A Shares and junior or equal to the other classes of Special Shares of Clarica and having the following principal conditions:
 - (i) each Exchangeable Share, other than those held by Clarica Shareholders that validly exercise their Dissent Right (defined below) ("Dissenting Shareholders") will be exchangeable automatically for 1.5135 Sun Life Common Shares, subject to customary anti-dilution provisions (the "Exchange Ratio");
 - (ii) each Exchangeable Share held by a Dissenting Shareholder will be exchangeable automatically for that number of Sun Life Common Shares as is to be determined in accordance with the dissent rights agreement between Clarica, Sun Life and each Dissenting Shareholder (the "Dissent Rights
 - (iii) the exchange of Exchangeable Shares for Sun Life Common Shares will be effected automatically at the time of the closing of the Transaction (the "Closing Time"); and
 - (iv) following such automatic exchange, the Exchangeable Shares will be convertible into Clarica Common Shares;
 - (b) an amendment to the by-laws of Clarica to change the Clarica Common Shares, other than any owned beneficially by Sun Life or its subsidiaries as general fund assets, into Exchangeable Shares at the Closing Time on the basis of one Exchangeable Share for each Clarica Common Share; and
 - (c) the entering into of the Dissent Rights Agreement to provide Clarica Shareholders with a dissent right (the "Dissent Right") substantially similar to the dissent right in section 190 of the Canada Business Corporations Act, except that payment of fair value for the Clarica Common Shares would be made only in Sun Life Common Shares and the notice of dissent will be required to be delivered not later than 2:00 p.m. (Toronto time) on the business day before the Clarica Meeting (defined below).
7. At the Closing Time, the reorganization of Clarica's capital structure will be implemented through the occurrence of the following steps in the following order:

2002 BCSECCOM 302

- (a) all the Clarica Common Shares, except those beneficially owned by Sun Life or any of its subsidiaries as general fund assets, will be changed into Exchangeable Shares;
- (b) each Exchangeable Share, will be exchanged automatically with Sun Life for:
 - (i) in the case of each Exchangeable Share other than those held by Dissenting Shareholders, that number of Sun Life Shares as is equal to the Exchange Ratio; and
 - (ii) in the case of each Exchangeable Share held by a Dissenting Shareholder, that number of Sun Life Common Shares as is to be determined in accordance with the Dissent Rights Agreement; and
- (c) Sun Life will convert the Exchangeable Shares acquired by it as contemplated above into Clarica Common Shares in accordance with the share conditions of the Exchangeable Shares.

These steps will occur automatically, without any further action being taken by holders of the Clarica Common Shares on the third business day after all required approvals to the completion of the Transaction have been obtained, and provided that all other conditions to the completion of the Transaction are satisfied or waived.

- 8. No fractional Sun Life Common Shares will be issued pursuant to the Transaction. In lieu of any such fractional shares, each holder of Clarica Common Shares who would otherwise be entitled to receive a fraction of a Sun Life Common Share will receive a cash payment equal to such holder's pro rata portion of the net proceeds received from aggregating all such fractional interests and selling them in the open market.
- 9. Options to purchase Clarica Common Shares ("Clarica Options") have been granted pursuant to the Clarica Canadian and United States Management Stock Incentive Plans (the "Clarica Option Plans"). As of December 31, 2001, there were Clarica Options outstanding which, when vested, would be exercisable to acquire a total of 3,084,500 Clarica Common Shares. The terms of the Clarica Option Plans provide that all unvested Clarica Options will vest immediately prior to a "change of control" of Clarica as defined in the Clarica Option Plans. This definition would include the completion of the Transaction. The Clarica Option Plans further provide that following the completion of the Transaction, all outstanding Clarica Options will thereafter be exercisable to acquire the same per share consideration as was received by holders of Clarica Common Shares pursuant to the Transaction.
- 10. The Transaction Agreement contemplates that, subject to the receipt of all required approvals, Clarica will amend the terms of the Clarica Option Plans to provide that each unexercised Clarica Option outstanding at the Closing Time will be exchanged for an option under the Clarica Option Plans to acquire that number of Sun Life

2002 BCSECCOM 302

Common Shares as is equal to the product of the number of Clarica Common Shares that were issuable on exercise of such Clarica Option immediately prior to the Closing Time multiplied by the Exchange Ratio and rounded down to the nearest whole number of Sun Life Common Shares (a “New Clarica Option”). Sun Life has agreed under the terms of the Transaction Agreement to issue the appropriate number of Sun Life Common Shares on the exercise of the New Clarica Options. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such New Clarica Option will otherwise be unchanged from those of the relevant Clarica Option. New Clarica Options will be non-transferable other than in certain limited circumstances.

11. The Transaction has been voted on and approved by holders of Clarica Common Shares and holders of Clarica participating policies and holders of Clarica non-participating policies issued by The Mutual Life Assurance Company of Canada on or before March 31, 1995 (“Clarica Policyholders”) at a meeting held on March 6, 2002 (the “Clarica Meeting”). Under the ICA, the Transaction required the favourable vote of at least 66 2/3% of the votes cast by the holders of the Clarica Common Shares voting separately as a class and the favourable vote of at least 66 2/3% of the votes cast by holders of the Clarica Common Shares and the Clarica Policyholders voting together at the Clarica Meeting. The Clarica Meeting was held in accordance with the ICA.
12. In connection with the Clarica Meeting, Clarica and Sun Life have prepared and Clarica has delivered to the Clarica Shareholders and the Clarica Policyholders entitled to delivery of policyholder meeting materials, a management information circular dated January 11, 2002 (the “Clarica Circular”). In addition to containing a detailed description of the Transaction, the Clarica Circular was prepared in conformity with the provisions of the Act and contains prospectus-level disclosure of the business and affairs of each of Clarica and Sun Life.
13. The steps under the Transaction, the exercises of the Dissent Right, if any, the amendment to the Clarica Option Plans and the exercises of the New Clarica Options, if any, involve or may involve a number of trades of securities (collectively, the “Trades”) and there may be no registration or prospectus exemption available under the Legislation for certain of the Trades.
14. A holder of Clarica Common Shares will make one fundamental investment decision at the time when such holder votes in respect of the Transaction and/or determines whether to dissent in respect thereof. As a result of this decision, a holder of Clarica Common Shares will ultimately receive Sun Life Common Shares in exchange for the Exchangeable Shares held by such holder or in payment of the fair value of the Clarica Common Shares formerly held by such holder. The holders of Clarica Options are not being asked to make any investment decision and, absent the amendment of the Clarica Option Plans contemplated above, would receive Exchangeable Shares upon the exercise of their Clarica Options following the

2002 BCSECCOM 302

completion of the Transaction which would then be immediately exchanged for Sun Life Common Shares. The contemplated changes in respect of the Clarica Options have been proposed in order to achieve the same economic result on a basis that does not disadvantage the holder of Clarica Options from a tax perspective.

15. Sun Life has applied to list the Sun Life Common Shares to be issued or made issuable pursuant to the Transaction, the exercise of the Dissent Right and the amendment to the Clarica Option Plans on the Toronto and New York stock exchanges.

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 under the Legislation is that the Registration and Prospectus Requirements shall not apply to the Trades provided that the first trade in any security acquired pursuant to this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction (the “Applicable Legislation”) unless in respect of a first trade of Sun Life Common Shares

- (a) except in Quebec, the conditions in subsections (3) or (4) of section 2.6 of M.I. 45-102 Resale of Securities are satisfied; and
- (b) in Quebec,
 - (i) the issuer or one of the parties to the Transaction is and has been a reporting issuer in Quebec for the 12 months immediately preceding the trade,
 - (ii) no unusual effort is made to prepare the market or to create demand for the securities that are the subject of the trade,
 - (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

2002 BCSECCOM 302

- (iv) if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

DATED this 20th day of March, 2002.

Paul Moore

Theresa McLeod