

# 2007 BCSECCOM 119

January 22, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 171 – variation of a decision - An issuer wants to vary or repeal and replace a previous decision it received to revise the conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the conditions to the relief are no longer appropriate because of a change in the issuer's circumstances; the previous relief would no longer be available to the applicant; alternative conditions can be structured that address the issuer's new circumstances

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85 and 171

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New  
Brunswick, Nova Scotia, and Newfoundland and Labrador  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Maritime Life Canadian Funding  
(the Trust)

## MRRS Decision Document

## Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Trust for a decision under the securities legislation of the Jurisdictions (the Legislation), to vary the terms

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and conditions attaching to and forming part of decisions (collectively, the 2005 Decision) previously granted by the Decision Makers, as applicable, on March 11, 2005, which granted relief to the Trust from:

1. certain continuous disclosure requirements under National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) (in Québec, relief from the continuous disclosure requirements was granted by a revision of the general order No. 2004-PDG-0020 dated March 26, 2004);
2. certain requirements to file interim certificates under Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) (in Québec, relief from the certification requirements was granted by decision No. 2005-PDG-0428 dated December 19, 2005); and
3. certain insider reporting requirements of the Legislation and National Instrument 55-102 – *System for Electronic Disclosure by Insiders*.

The Manufacturers Life Insurance Company (MLI) has made an application (the MLI Application) to the Decision Makers for, among other things, exemptions (the MLI Exemptions) from the requirements contained in:

1. NI 51-102 to file and deliver, as applicable, (a) audited annual financial statements including MD&A thereon required by sections 4.1 and 5.1 of NI 51-102, (b) unaudited interim financial statements including MD&A thereon required by sections 4.3 and 5.1 of NI 51-102, (c) an AIF required by section 6.1 of NI 51-102, (d) press releases and material change reports required by section 7.1 of NI 51-102 in the case of material changes that are also material changes in the affairs of Manulife Financial Corporation (MFC), and (e) other material contracts required by section 12.2 of NI 51-102, and
2. MI 52-109 to file (a) annual certificates (as defined in MI 52-109) under section 2.1 of MI 52-109, and (b) interim certificates (as defined in MI 52-109) under section 3.1 of MI 52-109.

The MLI Exemptions are subject to, among other things, the following conditions:

1. MFC remains a reporting issuer or the equivalent thereof under the Legislation that is not in default of any of its obligations under the Legislation.
2. MFC enters into a full and unconditional unsubordinated guarantee of the Annuities (the MFC Guarantee) and becomes a co-obligor with MLI with respect to the Undertaking (the MFC Undertaking, and with the MFC

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Guarantee, the MFC Obligations) within 15 business days of the date of the decision granting the MLI Exemptions, and for so long as the Annuities are outstanding and there are obligations under the Undertaking outstanding, MFC continues to provide the MFC Obligations.

3. MFC files for the periods covered by any interim or annual consolidated financial statements of MFC, either as a standalone document or as part of such MFC financial statements, consolidating comparative financial information (Consolidating Comparative Financial Information) for MFC that includes the following line items: (a) revenues, (b) income from continuing operations (before extraordinary items), (c) net earnings, (d) invested assets, (e) other assets, (f) policy liabilities, and (g) other liabilities, presented with a separate column for each of the following: (a) MFC, (b) MLI, (c) in the event that any subsidiaries of MFC have also guaranteed any designated credit support securities (as defined in NI 51-102) of MLI or outstanding Class A Shares or Class B Shares of MLI from time to time, other than shares issued to and held by MFC or an affiliate (as defined in NI 51-102) of MFC, each of such subsidiaries on a combined basis, (d) any other subsidiaries of MFC on a combined basis, (e) consolidating adjustments, and (f) the total consolidated amounts.
4. MLI files a notice indicating that it is relying on the continuous disclosure filings of MFC and setting out where those documents can be found for viewing in electronic format.
5. MLI immediately issues in Canada a news release and files a material change report (MLI Material Change Reports) for all material changes in respect of the affairs of MLI that are not also material changes in the affairs of MFC.
6. MLI files its annual financial statements (collectively with the Consolidating Comparative Financial Information and the MLI Material Change Reports, On-Going MLI Information) prepared in accordance with Canadian generally accepted accounting principles concurrently with the filing of the audited annual financial statements of MLI prepared in order to comply with the *Insurance Companies Act* (Canada), as amended, with the Superintendent of Financial Institutions (Canada).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

1. the Ontario Securities Commission is the principal regulator for the application; and

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2. this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 – *Definitions* and the 2005 Decision have the same meaning in this decision unless they are defined in this decision.

### **Representations**

This decision is based on the facts represented by the Trust in the 2005 Decision, which remain accurate as of the date hereof, except that:

1. With respect to the representation made in paragraph 21 of the 2005 Decision, Maritime Life obtained an MRRS Decision Document providing that it would cease to be a reporting issuer under applicable securities laws as of March 15, 2005 and thus it is no longer obligated to prepare, file and deliver continuous disclosure documents under applicable securities laws.
2. With respect to the representation made in paragraph 25 of the 2005 Decision, for so long as the MLI Exemptions remain effective, Noteholders will not be able to assess the strength of MLI's covenants by reviewing information prepared and filed by MLI in connection with MLI's performance, as a "reporting issuer" or the equivalent thereof, of the continuous disclosure obligations and other requirements arising under the applicable Legislation. For so long as the MLI Exemptions remain effective, Noteholders will be able to assess the strength of MLI's covenants by reviewing the On-Going MLI Information and will be able to rely on the MFC Obligations, and assess the strength of MFC's covenants thereunder, by reviewing information prepared and filed by MFC in connection with MFC's performance, as a "reporting issuer" or the equivalent thereof, of the continuous disclosure obligations and other requirements arising under the applicable Legislation.
3. With respect to the representation made in paragraph 27 of the 2005 Decision, the current financial strength rating (or claims paying rating) of MLI from Standard & Poor's is "AAA".
4. With respect to the representation made in paragraph 32 of the 2005 Decision, the Trust will issue press releases and file material change reports in accordance with the requirements of the Legislation in respect of material changes in its affairs which do not relate solely to the affairs of MLI and which have not been the subject of a filing by MLI or, for so long as the MLI Exemptions remain effective, in respect of material changes in its

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affairs which do not relate solely to the affairs of MFC and which have not been the subject of a filing by MFC.

5. With respect to the representation made in paragraph 33 of the 2005 Decision, the Trust will (a) file, or cause to be filed under its SEDAR profile, a notice to Noteholders that provides a reasonable description of the matters previously contemplated in the similar notice required under the 2005 Decision, together with a reasonable description of the MLI Exemptions, the entering into by MFC of the MFC Obligations and the consequences of this decision to Noteholders, and (b) file a notice to Noteholders under its SEDAR profile that it will undertake, upon the request of a Noteholder, to facilitate delivery to that Noteholder of, without duplication, the continuous disclosure documents of MLI, including, for so long as the MLI Exemptions remain effective, the On-Going MLI Information, filed by MLI on SEDAR and, for so long as the MLI Exemptions remain effective, the continuous disclosure documents of MFC filed by MFC on SEDAR.

This decision is further based on the following facts represented by the Trust:

1. The Trust has been advised by MLI that MFC has delivered an undertaking to the Ontario Securities Commission confirming that, following MFC entering into the MFC Obligations and for so long as MLI qualifies for the MLI Exemptions, MFC will be considered a “responsible issuer” for purposes of determining MFC’s liability under Part XXIII.1 of the *Securities Act* (Ontario) as if the annuity-backed, secured, limited recourse debt securities of the Trust (the Notes) were an “issuer’s security” of MFC for purposes of such Part.
2. The Trust has been further advised by MLI that it has delivered an undertaking to the Ontario Securities Commission confirming that, following MFC entering into the MFC Obligations and for so long as the Trust qualifies for the exemptive relief in the 2005 Decision, as varied by this decision, MLI will be considered a “responsible issuer” for purposes of determining MLI’s liability under Part XXIII.1 of the *Securities Act* (Ontario) as if the Notes were an “issuer’s security” of MLI for purposes of such Part.
3. The Trust has been further advised by MLI that MFC has delivered an undertaking to the Decision Makers that, as soon as practicable after the granting of the decision granting the MLI Exemptions, MFC will take the following steps:

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- (a) MFC will enter into the MFC Guarantee, and
- (b) MFC will become a co-obligor with MLI with respect to the Undertaking,

and that MFC will use its best efforts to complete such steps within five business days of the decision granting the MLI Exemptions.

- 4. The Trust has been further advised by MLI that the MFC Obligations will be subject to the termination thereof upon the earliest to occur of:
  - (a) unless MFC and MLI agree to the contrary, the date that no Annuities are outstanding or no obligations under the Undertaking are outstanding;
  - (b) the date that MFC no longer owns, directly or indirectly, all of the outstanding common shares of MLI;
  - (c) the date that the Trust ceases to be a reporting issuer, or the equivalent thereof, in all of the provinces of Canada; and
  - (d) the date that MLI commences filing with the Decision Makers:
    - (i) audited annual financial statements including MD&A thereon required by sections 4.1 and 5.1 of NI 51-102;
    - (ii) unaudited interim financial statements including MD&A thereon required by sections 4.3 and 5.1 of NI 51-102;
    - (iii) an AIF required by section 6.1 of NI 51-102;
    - (iv) press releases and material change reports required by section 7.1 of NI 51-102 in the case of material changes that are also material changes in the affairs of MFC; and
    - (v) other material contracts required by section 12.2 of NI 51-102.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

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The decision of the Decision Makers under the Legislation is that, provided concurrently herewith the relief requested under the MLI Application is granted, or has been granted, paragraph 1 of the first head of relief of the 2005 Decision is deleted and replaced with the following:

1. The decision of the Decision Makers under the Legislation is that the requirements contained in
  - (a) NI 51-102 to file:
    - (i) interim financial statements with the Decision Makers and to deliver such interim financial statements to Noteholders;
    - (ii) interim management's discussion and analysis of the financial condition and results of operations of the Trust with the Decision Makers and send such interim management's discussion and analysis to Noteholders; and
    - (iii) material change reports and issue and file press releases related to the Trust, only where such requirement relates solely to a material change in the affairs of MLI and which is the subject of a filing by MLI or, for so long as the MLI Exemptions remain effective, only where such requirement relates solely to a material change in the affairs of MFC and which is the subject of a filing by MFC; and
  - (b) MI 52-109 concerning the filing of interim certificates,  
  
shall not apply to the Trust, provided that, at the time that any such requirement would otherwise apply:
  - (c) the Trust has filed a current AIF on SEDAR;
  - (d) MLI and, for so long as the MLI Exemptions remain effective, MFC are each reporting issuers or the equivalent thereof;
  - (e) the Trust carries on no other business or activities other than those set out at paragraph 4 of the 2005 Decision;
  - (f) the Trust has issued press releases and filed material change reports in accordance with the requirements of the Legislation in respect of material changes in its affairs which do not relate solely to the affairs of MLI and which have not been the subject of a filing by MLI or, for

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so long as the MLI Exemptions remain effective, in respect of material changes in its affairs which do not relate solely to the affairs of MFC and which have not been the subject of a filing by MFC;

- (g) the Trust has (i) filed, or cause to be filed under its SEDAR profile, a notice to Noteholders that provides a reasonable description of the matters previously contemplated in the similar notice required under the 2005 Decision, together with a reasonable description of the MLI Exemptions, the entering into by MFC of the MFC Obligations and the consequences of this decision to Noteholders, and (ii) filed a notice to Noteholders under its SEDAR profile that it will undertake, upon the request of a Noteholder, to facilitate delivery to that Noteholder of, without duplication, the continuous disclosure documents of MLI filed by MLI on SEDAR and, for so long as the MLI Exemptions remain effective, the continuous disclosure documents of MFC filed by MFC on SEDAR;

provided further that this decision shall terminate:

- (h) within thirty (30) days of a material change in the affairs of the Trust, except where such material change relates solely to the affairs of MLI and which is the subject of a filing by MLI or, for so long as the MLI Exemptions remain effective, except where such material change relates solely to the affairs of MFC and which is the subject of a filing by MFC, unless the Trust satisfies the Decision Makers that the decision should continue, which satisfaction shall be evidenced in writing; or
- (i) on January 15, 2012.

Jo-Anne Matear  
Assistant Manager, Corporate Finance  
Ontario Securities Commission

The further decision of the Decision Makers under the Legislation is that, provided concurrently herewith the relief requested under the MLI Application is granted, or has been granted, paragraph 2 of the second head of relief of the 2005 Decision is deleted and replaced with the following:



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2. It is the further decision of the Decision Makers under the Legislation that the requirements contained in the Legislation for an insider of a reporting issuer to file:
- (a) reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer;
  - (b) disclosing any trade by the insider in such securities; and
  - (c) an insider profile report under National Instrument 55-102 *System for Electronic Disclosure by Insiders*,

shall not apply to the Trust or any insider of the Trust who is not otherwise an insider of MLI and, for so long as the MLI Exemptions remain effective, who is not otherwise an insider of MFC, and who does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning the Trust before the material facts or material changes are generally disclosed, provided that this decision shall terminate on January 15, 2012.

Robert L. Shirriff  
Ontario Securities Commission

Wendell S. Wigle  
Ontario Securities Commission