

# 2002 BCSECCOM 593

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the prohibition against investing in the securities of a person who is a substantial securityholder of the manager of mutual funds, subject to certain conditions – applicant manages mutual fund which tracks the performance of a specified target index – manager is a wholly-owned subsidiary of a company whose shares form part of the target index.

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 120(1), 120(2), 121(2)(a), and 123

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

**AND**

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

**AND**

## **IN THE MATTER OF CLARICA CANADIAN EQUITY INDEX FUND AND CLARICA BOND INDEX FUND**

## **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Clarica Diversico Ltd. ("Diversico"), in its capacity as manager and promoter of the Clarica Canadian Equity Index Fund and the Clarica Bond Index Fund (collectively the "Funds"), for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the following restrictions (the "Investment Restrictions") contained in the Legislation shall not apply to Diversico or the Funds in respect of investments made by the Funds in securities of Sun Life Financial Services of Canada Inc. ("Sun Life") or its subsidiaries (collectively the securities are referred to as "Sun Life Securities"):

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company;

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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 Diversico has represented to the Decision Makers as follows:

1. Diversico is a corporation amalgamated under the laws of Canada. Diversico is the manager and promoter of the Funds.
2. The Funds are open-end mutual fund trusts established under the laws of Ontario. The investment objective of each of the Funds is to track the performance of a specified target index as follows: the TSE 300 Composite Total Return Index in the case of the Clarica Canadian Equity Index, and the Scotia Capital Universe Bond Index in the case of the Clarica Bond Index Fund or, in each case, in the event that such index is modified or discontinued, a replacement for that index or an index that is substantially similar to that index (the "TSE Index" and "Bond Index", respectively).
3. The Funds are both index mutual funds as defined in National Instrument 81-102.
4. Units of the Funds are qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus/amended and restated simplified prospectus dated December 18, 2001 (the "Prospectus"). Each of the Funds is a reporting issuer under the securities legislation of each Jurisdiction.
5. TD Asset Management Inc. ("TDAM") is the portfolio adviser of each of the Funds. TDAM is a mutual fund dealer and an investment counsel and portfolio manager.
6. Diversico is a wholly-owned subsidiary of Clarica Life Insurance Company ("Clarica").
7. On December 17, 2001, Clarica and Sun Life entered into a transaction agreement, pursuant to which Sun Life has agreed to acquire all of the outstanding common shares of Clarica (the "Transaction"). The Transaction is proposed to be effected through a reorganization of Clarica's capital structure to provide for the exchange of each outstanding common share of Clarica ("Clarica Common Shares"), except those Clarica Common Shares beneficially owned by Sun Life as general fund assets, for 1.5135 common shares of Sun Life ("Sun Life Common Shares") through a series of transactions.

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8. The Transaction has been approved by holders of Clarica Common Shares and holders of Clarica voting insurance policies at a special meeting held on March 6, 2002. Subject to the satisfaction of all closing conditions and the receipt of all applicable regulatory approvals, it is anticipated that the Transaction will be completed during the second quarter of 2002.

9. Upon closing of the Transaction, Diversico will be an indirect wholly-owned subsidiary of Sun Life.

10. Among the securities comprising the TSE Index are Sun Life Common Shares. Among the securities comprising the Bond Index are Sun Life Exchangeable Capital Securities – Series A ("SLEECS"), issued by a special purpose trust created by a wholly-owned subsidiary of Sun Life.

11. The target index for each Fund is disclosed in the investment objectives in the Prospectus. It is part of the fundamental nature of the Funds that all the assets of the Funds are invested in securities of each of the companies included in the target index or instruments that provide exposure to such securities, and that the portfolios of the Funds are not actively managed.

12. The number of securities comprising the applicable target index of each Fund in which the Fund actually invests from time to time will depend upon the size and value of the assets of the Fund and the composition of the target index. Each Fund will therefore be periodically rebalanced to track its target index as closely as possible while minimizing trading costs.

13. The portfolios of the Funds are not actively managed. The portfolio of each Fund is passive and is comprised of securities comprising the target index of such Fund. All purchases and sales of the portfolios of the Funds will be determined by the composition of the applicable target index and the weighting therein of the constituent securities.

14. As a result of tracking the TSE Index, the Clarica Canadian Equity Index Fund holds 8,900 Sun Life Common Shares as at April 1, 2002. In order to track its target index following completion of the Transaction, the Clarica Canadian Equity Index Fund will have to continue to hold Sun Life Common Shares and may need to acquire additional Sun Life Securities in the future.

15. As a result of tracking the Bond Index, the Clarica Bond Index Fund holds 30,000 SLEECS as at April 1, 2002. In order to track its target index following completion of the Transaction, the Clarica Bond Index Fund will have to continue to hold SLEECS and may need to acquire additional Sun Life Securities in the future.

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16. The deviation from the Investment Restrictions will not be the result of any active decision of TDAM or Diversico to increase the investment of either Fund in Sun Life Securities, but rather it will be an indirect consequence of carrying out the investment objective of each Fund, to match the performance of its target index.

17. The investments of each Fund in its target index represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of each Fund.

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

AND WHEREAS the Decision Makers are 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 the Investment Restrictions do not apply to the investment or the holding of an investment by the Funds in Sun Life Securities.

PROVIDED THAT the portion of each Fund's assets invested in Sun Life Securities is determined according to each Fund's investment objective of tracking the performance of its specified target index, and not pursuant to the discretion of the portfolio adviser or the manager of each Fund.

DATED May 24, 2002

Paul M. Moore

Kerry D. Adams