2005 BCSECCOM 133

February 8, 2005

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 52-107, s. 9.1 - Acceptable Accounting Principles, Auditing Standards and Reporting Currency - Securities Rules, s. 3(7) - Preparation of Financial Statements - An issuer wants relief from the requirements to reconcile certain financial statements to Canadian GAAP and to prepare pro forma financial statements in accordance with Canadian GAAP in a prospectus - The issuer is an SEC issuer that has prepared and filed Canadian GAAP financial statements reconciled to U.S. GAAP; the issuer is a Canadian insurance company that acquired a large U.S. insurance company within its last financial year; the issuer cannot reconcile the U.S. GAAP financial statements of the acquired business to Canadian GAAP because the necessary historical information to prepare the reconciliation, which is particularly extensive for life insurance products, is not available and cannot be obtained; the issuer will provide disclosure stating why the acquired business' financial statements cannot be reconciled to Canadian GAAP, and describing the material differences between Canadian and U.S. GAAP

Applicable British Columbia Provisions
Securities Rules, B.C. Reg. 194/97, s. 2.1, 3(6) and 3(7)
National Instrument 52-107, ss. 3.1(1), 6.1, 7.1(1) and 9.1

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

and

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

and

In the Matter of
Manulife Financial Corporation (MFC) (the Filer)

<u>MRRS Decision Document</u>

Background
The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from MFC for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the following requirements contained in the Legislation shall not apply to MFC:

1. The requirement under the Legislation to reconcile the John Hancock Financial Statements to be included in a MFC Short Form Prospectus to Canadian GAAP and to provide certain note disclosure in the John Hancock Financial Statements; and

2. The requirement under the Legislation to prepare the MFC Pro Forma Financial Statements in accordance with Canadian GAAP (the "Requested Relief") (such exemption to be effected in Quebec by a revision of the general order that will provide the same result as an exemption order).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS Decision Document evidences the decision of each Decision Maker.

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

"Amended 2003 AIF" means the amended revised renewal annual information form of MFC filed on SEDAR on February 3, 2005, which incorporates by reference the John Hancock 10-K Excerpts;

"GAAP" means generally accepted accounting principles;

"ICA" means the *Insurance Companies Act* (Canada), as amended;

"John Hancock 10 K-Excerpts" means Parts I and II on pages 3 to 203 of John Hancock's annual report on Form 10-K for the year ended December 31, 2003 as filed on the SEC's System for Electronic Data Gathering, Analysis and Retrieval and filed by MFC on SEDAR on January 11, 2005;

"John Hancock Interim Financial Statements" means John Hancock's unaudited comparative interim consolidated financial statements for the three months ended

March 31, 2004, as set out on pages 2 to 34 of John Hancock's quarterly statement in Form 10-Q for the quarter ended March 31, 2004;

"John Hancock Financial Statements" means the financial statements of John Hancock required under the Significant Acquisition Rules;

"John Hancock" means John Hancock Financial Services, Inc.;

"Merger" means the merger of MFC and John Hancock on April 28, 2004;

"MFC Pro Forma Financial Statements" means the pro forma financial statements of MFC required under the Significant Acquisition Rules;

"MFC Short Form Prospectus" means a short form prospectus of MFC filed under NI 44-101 and includes a base shelf prospectus, a shelf prospectus supplement and a pricing supplement filed under NI 44-102;

"SEC" means the United States Securities and Exchange Commission;

"SEDAR" means the System for Electronic Document Analysis and Retrieval;

"NI 44-101" means National Instrument 44-101 *Short Form Prospectus Distributions*;

"NI 44-102" means National Instrument 44-102 *Shelf Distributions*;

"Significant Acquisition Financial Statements" means the John Hancock Financial Statements and the MFC Pro Forma Financial Statements; and

"Significant Acquisition Rules" means the disclosure required in a short form prospectus of financial statements for significant acquisitions under Part 4 of NI 44-101.

Representations
This decision is based on the following facts represented by MFC:

1. MFC was incorporated under the ICA on April 26, 1999.

2. On April 28, 2004, MFC completed the Merger with John Hancock and as a result MFC became the beneficial owner of all of the issued and outstanding shares of John Hancock common stock.

3. MFC is a reporting issuer or the equivalent in each of the provinces and territories of Canada. To the best of its knowledge, MFC is not in default of any applicable requirement under the Legislation.

4. John Hancock was incorporated under the Delaware General Corporation Law on August 26, 1999 to become the holding company for John Hancock Mutual Life Insurance Company.

5. The Merger has created a need for MFC to address the inclusion of John Hancock information in its continuous disclosure record. As a result of the Merger, any MFC Short Form Prospectus filed before MFC has completed a full financial year of operations with John Hancock reflected in its financial results and filed audited financial statements in respect of that year is required to contain the disclosure regarding John Hancock in accordance with the Significant Acquisition Rules.

6. MFC addressed the need to include information in respect of the acquisition of John Hancock in its continuous disclosure record by filing with the Jurisdictions the Amended 2003 AIF. The Amended 2003 AIF includes, directly and through incorporation by reference, the John Hancock 10-K Excerpts filed under MFC's SEDAR profile. The incorporation by reference into a MFC Short Form Prospectus of the Amended 2003 AIF will, in conjunction with the Significant Acquisition Financial Statements incorporated by reference in a MFC Short Form Prospectus, satisfy the information requirements under the Significant Acquisition Rules relating to John Hancock and the Merger.

7. MFC prepares its financial statements in accordance with Canadian GAAP, as required by the ICA. MFC's financial statements also comply with the accounting requirements of the Office of the Superintendent of Financial Institutions (Canada). MFC reconciles its annual financial statements to U.S. GAAP and it has reconciled its quarterly financial statements to U.S. GAAP when required to do so for U.S. regulatory purposes.

8. John Hancock's historical financial statements have been prepared in accordance with U.S. GAAP and, for the reasons summarized below, cannot be properly reconciled to Canadian GAAP. Consequently the MFC Pro Forma Financial Statements cannot be properly prepared according to Canadian GAAP or reconciled to Canadian GAAP.

9. Due to the general long term nature of insurance products, accounting by life insurers is necessarily complex. The primary difficulty in preparing historical Canadian GAAP financial statements for John Hancock relates to the necessity

for complete and accurate investment data (including transaction details) for each year as far back as twenty years from the period that the financial statements are being prepared. Such data impacts the carrying value of assets at any point in time and the recognition of investment income at any point in time. In addition, due to the inter-relationship between invested assets and actuarial liabilities, it is also crucial that investment activities, including the determination of realized gains and losses and credit related losses, be appropriately recorded between the participating and non-participating accounts, in order to record the proper change in actuarial liabilities and therefore the proper recognition of earnings.

10. As a result of the significant and complex differences between Canadian and U.S. GAAP for life insurers, together with the need for twenty years of historical data (the obtaining of such data itself being problematic), it is not possible to properly prepare a set of Canadian GAAP financial statements for John Hancock for periods prior to the Merger, thus precluding strict compliance with the Legislation.

Decision

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 Requested Relief is granted provided that any MFC Short Form Prospectus which is required to include the Significant Acquisition Financial Statements:

(a) is prepared in compliance with this decision;

(b) include the John Hancock Financial Statements, prepared in accordance with U.S. GAAP;

(c) include the MFC Pro Forma Financial Statements, prepared in accordance with U.S. GAAP;

(d) include the annual historical financial statements of MFC, prepared in accordance with Canadian GAAP, including a reconciliation to U.S. GAAP; and

(e) include disclosure explaining the absence of Canadian GAAP financial information in substantially the following form:

MATERIAL DIFFERENCES BETWEEN CANADIAN AND UNITED STATES GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

The Merger has created a need for MFC to address the inclusion of John Hancock information in its continuous disclosure record. MFC addressed this need in part by filing the Amended 2003 AIF under MFC's profile under SEDAR on February 3, 2005. The Amended 2003 AIF includes, directly and through incorporation by reference, specific elements of John Hancock's existing annual report on Form 10-K filed on the SEC's System for Electronic Data Gathering, Analysis and Retrieval (EDGAR). The John Hancock 10-K Excerpts were filed under MFC's SEDAR profile. The incorporation by reference into this prospectus of the Amended 2003 AIF will, in conjunction with the John Hancock Interim Financial Statements and the MFC Pro Forma Financial Statements incorporated by reference in this prospectus, satisfy the information requirements relating to John Hancock and the Merger.

In order to meet the SEC's requirements for domestic issuers, John Hancock has historically prepared and filed its financial statements in accordance with U.S. GAAP. MFC obtained a decision document dated February 8, 2005 under the Mutual Reliance Review System for Exemptive Relief Applications (the "MRRS Decision"), exempting MFC from certain requirements to reconcile the John Hancock Financial Statements to Canadian GAAP and to provide certain note disclosure in the John Hancock Financial Statements and permitting MFC to prepare the MFC Pro Forma Financial Statements in accordance with U.S. GAAP. As a result of the MRRS Decision, subject to certain conditions, MFC is permitted to include in this prospectus historic John Hancock financial statements prepared in accordance with U.S. GAAP and the MFC Pro Forma Financial Statements prepared in accordance with U.S. GAAP.

The material differences between U.S. and Canadian GAAP for a life insurance company relate to the treatment of invested assets, deferred acquisition costs, value of business acquired and actuarial liabilities. Generally, these differences will result in materially different earnings emergence patterns between statements of operations prepared in accordance with Canadian GAAP as compared to statements of operations prepared in accordance with U.S. GAAP.

Specifically, Canadian GAAP requires that the investment return in the actuarial liability calculation be directly linked to the projected investment return on assets supporting actuarial liabilities. Therefore realization of investment gains and losses or adjustments to invested asset carrying values in the policyholder liability segment does not impact net income as the reported investment income amount would be offset by a commensurate change in actuarial liabilities, provided there is no underlying change in the economic value to be realized. Although these adjustments would not have a material impact on net income, they would have a material impact on investment income and changes in actuarial liabilities, which are disclosed separately on the statement of operations. In addition, realization of investment gains and losses and adjustments to equity and real estate carrying values in the surplus segment would have an impact on investment income and net income.

The following provides additional information on the significant differences between Canadian GAAP and U.S. GAAP as it related to accounting for invested assets.

Realized Gains and Losses

Canadian GAAP requires all realized gains and losses be deferred and amortized into investment income at a rate of 5% and 3% per quarter respectively for investments in equities and real estate and that non-credit related gains and losses be amortized over the lesser of the remaining term to maturity and twenty years for bonds and mortgages. In contrast, U.S. GAAP requires recognition of 100% of realized gains and losses in the period in which it occurs for all of these investments.

Unrealized Gains and Losses

Canadian GAAP requires investments in equities and real estate to be recorded on a basis of moving to fair market value at the quarterly rate of 5% and 3% respectively. In contrast, U.S. GAAP provides that there is no impact on earnings for unrealized gains and losses on investments in equities and real estate, except to the extent that the unrealized loss is considered other than temporary. In addition, U.S. GAAP requires real estate to be depreciated.

As a result, had John Hancock prepared its financial statements in accordance with Canadian GAAP, investment income, and its impact on the change in actuarial liabilities on the statement of operations may have been materially impacted. The available financial data is not sufficient to allow John Hancock's historic financial statements to be properly reconciled to Canadian GAAP for the period prior to the Merger.

> Accordingly, the MFC Pro Forma Financial Statements for the combined operations of MFC and John Hancock incorporated by reference in this prospectus have been prepared in accordance with U.S. GAAP.

Iva Vranic
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Ontario Securities Commission