

# 2007 BCSECCOM 744

November 14, 2007

## **Headnote**

### **Mutual Reliance Review System for Exemptive Relief Applications**

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – continuous disclosure requirements - General - A credit support issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its credit supporter - The issuer is a credit support issuer as contemplated in s. 13.4 of NI 51-102 except that certain of its outstanding securities do not carry a full and unconditional guarantee, as required by the definition of “designated credit support securities”; both the issuer and its credit supporter are and will continue to be regulated by OSCFI; the limitations on the guarantee cannot be overcome without negatively impacting the capital treatment of the securities for insurance regulatory purposes; the issuer will provide additional financial disclosure to that required by s. 13.4

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*, s. 4.5 – certification requirements - An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

*Securities Act* s. 171 – revocation of previous 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**

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, s. 4.5

*Securities Act*, R.S.B.C. 1996, c. 418, s. 171

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan,  
Manitoba, Ontario, Quebec, New Brunswick,  
Nova Scotia, Newfoundland and Labrador, Nunavut,  
the Northwest Territories and the Yukon Territory

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(the “Jurisdictions”)

and

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

and

In the Matter of  
Sun Life Financial Inc. (“SLF”),  
Sun Life Assurance Company of Canada (“SLA”)  
and Sun Life Capital Trust  
(the “Trust” and collectively with SLF and SLA, the “Filers”)

## 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 Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- SLA and the Trust be granted an exemption from the Continuous Disclosure Requirements pursuant to section 13.1 of NI 51-102 (a “Continuous Disclosure Exemption”); and
- SLA and the Trust be granted an exemption from the Certification Requirements pursuant to section 4.5 of MI 52-109 (a “Certification Exemption”).

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. In this decision, the following terms have the following meanings:

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“2002 CD Relief” means the relief from the then applicable Continuous Disclosure Requirements granted to the Trust on March 14, 2002;

“2004 Certification Relief” means the relief from the Certification Requirements granted to the Trust on May 14, 2004;

“Affiliate” has the meaning given to such term in NI 51-102;

“AIF” means an annual information form;

“Annual Certificates” has the meaning given to such term in MI 52-109;

“Annual Filings” means an issuer’s AIF, annual financial statements and annual MD&A filed pursuant to NI 51-102;

“At Par Redemption Date” means December 31, 2011;

“Automatic Exchange” means the automatic exchange of SLEECs – Series A for SLA Preferred Shares Series Y upon the occurrence of certain events relating to the solvency of SLA or actions taken by the Superintendent in respect of the financial strength of SLA;

“Certification Requirements” means the requirements to file Annual Certificates under section 2.1 of MI 52-109 and Interim Certificates under section 3.1 of MI 52-109;

“Continuous Disclosure Filings” means:

- (a) annual financial statements required by section 4.1 of NI 51-102;
- (b) interim financial statements required by section 4.3 of NI 51-102;
- (c) AIFs required by section 6.1 of NI 51-102;
- (d) annual and interim MD&A required by section 5.1 of NI 51-102;
- (e) 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 SLF; and
- (f) material contracts required by section 12.2 of NI 51-102;

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“Continuous Disclosure Requirements” means the requirements contained in NI 51-102 to file and deliver, as applicable, the Continuous Disclosure Filings;

“Credit Facilities” means the unsecured, non-interest bearing credit facilities provided to the Trust by SLA or its Affiliates in connection with the offerings of the SLEECs;

“Credit Support Issuer” has the meaning given to such term in NI 51-102;

“Credit Support Issuer Exemptions” means the exemption from the Continuous Disclosure Requirements in section 13.4 of NI 51-102 and the exemption from the Certification Requirements in section 4.4 of MI 52-109;

“Debt Guarantee” means the subordinated guarantee by SLF of SLA’s payment obligations in respect of the SLA Subordinated Debentures;

“Deficiency Payment” means a payment calculated as follows:

- (a) if at the date of determination a winding-up order has been made with respect to SLF, then the Deficiency Payment shall be the amount that, when paid to the holders of the SLA Preferred Shares outstanding as of the Triggering Event, will result in:
  - (i) the holders of SLA’s Class A Shares, Class B Shares, Class C Shares and Class E Shares outstanding as of the Triggering Event receiving payment of the same proportion of the unpaid amounts on such shares as the holders of such shares would have received had their claim to such unpaid amounts on the final distribution of surplus of SLF, if any, pursuant to section 95(1) of the WURA ranked on a parity with the claims of the holders of SLF’s Class A Shares; and
  - (ii) the holders of SLA’s Class D Shares outstanding as of the Triggering Event receiving payment of the same proportion of the unpaid amounts on such shares as the holders of such shares would have received had their claim to such unpaid amounts on the final distribution of surplus of SLF, if any, pursuant to section 95(1) of the WURA ranked on a parity with the claims of the holders of SLF’s Class B Shares; and
- (b) in all circumstances other than those listed above, the Deficiency Payment shall be the amount equal to the aggregate unpaid amounts attributable to all classes of SLA Preferred Shares outstanding as of the Triggering Event;

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“Designated Credit Support Securities” has the meaning given to such term in NI 51-102;

“Distribution Date” has the meaning given to such term in the SLEECs – Series A Prospectus;

“Dividend Reference Period” has the meaning given to such term in the SLEECs – Series A Prospectus;

“Dividends” has the meaning given to such term in the SLEECs – Series A Prospectus;

“Dividend Stopper Undertaking” has the meaning given to such term in the SLEECs – Series A Prospectus;

“Early Redemption Price” has the meaning given to such term in the SLEECs – Series A Prospectus;

“GAAP” means Canadian generally accepted accounting principles as in effect from time to time;

“Holder Exchange Right” means the right of holders of SLEECs – Series A to exchange their SLEECs – Series A for SLA Preferred Shares Series Z;

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

“ICA Financial Statements” means the audited annual financial statements of SLA prepared in compliance with section 331 of the ICA;

“Indicated Yield” means each fixed, semi-annual, non-cumulative cash distribution distributed to holders of a particular series of SLEECs;

“Interim Certificates” has the meaning given to such term in MI 52-109;

“Interim Filings” means an issuer’s interim financial statements and interim MD&A filed pursuant to NI 51-102;

“Liquidation Preference” means any amount to which holders of a particular class or series of SLA Preferred Shares are entitled in priority to any amounts which may be payable in respect of any class of shares of SLA which rank junior to such class or series in the event of a distribution of assets upon the liquidation, dissolution or winding-up of SLA;

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“MD&A” means management’s discussion and analysis of the financial condition and results of operations;

“MI 52-109” means Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*;

“NI 45-106” means National Instrument 45-106 – *Prospectus and Registration Exemptions*;

“NI 51-102” means National Instrument 51-102 – *Continuous Disclosure Obligations*;

“Preferred Share Guarantee” means the subordinated guarantee by SLF of the amount of any declared and unpaid dividends on the SLA Preferred Shares, the Redemption Price of the SLA Preferred Shares, and the Liquidation Preference of the SLA Preferred Shares;

“Public Preferred Shares” has the meaning given to such term in the SLEECs – Series A Prospectus;

“Redemption Price” means the amount payable by SLA following presentation and surrender of any SLA Preferred Shares which have been redeemed by SLA or which are then redeemable by the holder pursuant to the terms of such SLA Preferred Shares;

“SEDAR” means the System for Electronic Document Analysis and Retrieval;

“Series A Share Exchange Agreement” has the meaning given to the term “Share Exchange Agreement” in the SLEECs – Series A Prospectus;

“Series B Share Exchange Agreement” means the share exchange agreement between the Trust, SLF, SLA and CIBC Mellon Trust Company, as exchange trustee, with respect to the SLEECs – Series B;

“SLA A Debenture” means the senior debenture issued by SLA to the Trust in respect of the SLEECs – Series A;

“SLA B Debenture” means the senior debenture issued by SLA to the Trust in respect of the SLEECs – Series B;

“SLA Debentures” means the SLA A Debenture and the SLA B Debenture;

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“SLA Dividend Restricted Shares” has the meaning given to such term in the SLEECs – Series A Prospectus;

“SLA Preferred Shares” means the Class A Shares, Class B Shares, Class C Shares, Class D Shares and Class E Shares of SLA;

“SLA Preferred Shares Series W” means the Class A Shares – Series W of SLA;

“SLA Preferred Shares Series X” means the Class A Shares – Series X of SLA;

“SLA Preferred Shares Series Y” means the Class A Shares – Series Y of SLA;

“SLA Preferred Shares Series Z” means the Class A Shares – Series Z of SLA;

“SLA Subordinated Debentures” means the \$150,000,000 principal amount of 6.30% subordinated debentures due 2028, the \$300,000,000 principal amount of 6.65% subordinated debentures due 2015, and the \$800,000,000 principal amount of 6.15% subordinated debentures due 2022;

“SLEECs” means the Sun Life Exchangeable Capital Securities of the Trust;

“SLEECs Redemption Price” has the meaning given to the term “Redemption Price” in the SLEECs – Series A Prospectus;

“SLEECs – Series A Prospectus” means the final prospectus of the Trust dated October 11, 2001;

“SLF Dividend Restricted Shares” has the meaning given to such term in the SLEECs – Series A Prospectus;

“SLF Guarantees” means the Debt Guarantee and the Preferred Share Guarantee;

“SLF Preferred Shares” means, collectively, the outstanding Class A Shares and Class B Shares of SLF from time to time;

“SLF Responsible Issuer Undertaking” means the undertaking delivered by SLF to the Ontario Securities Commission confirming that:

- (a) following SLF providing the SLF Guarantees and for as long as SLA and the Trust qualify for the Continuous Disclosure Exemption, SLF will be considered a “responsible issuer” for the purposes of determining its liability under Part XXIII.1 of the *Securities Act* (Ontario) as if the

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SLEECs were an “issuer’s security” of SLF for the purposes of such part;  
and

- (b) for the avoidance of doubt, pursuant to the definition of “issuer’s security” in section 138.1 of the *Securities Act* (Ontario), the SLA Preferred Shares, the SLA Subordinated Debentures and designated credit support securities of SLA guaranteed by SLF constitute issuer’s securities of SLF for purposes of determining its liability under Part XXIII.1 of the *Securities Act* (Ontario);

“Special Trust Securities” means the Special Trust Securities of the Trust;

“Summary Financial Information” has the meaning given to such term in NI 51-102;

“Superintendent” means the Superintendent of Financial Institutions (Canada);

“Triggering Event” means if SLA:

- (a) fails to make full payment of any dividend declared on any SLA Preferred Shares on the date required for such payment;
- (b) fails to make full payment of the Redemption Price when due; or
- (c) becomes subject to a winding-up order (as defined in the WURA or any order of similar effect made under applicable laws for the winding-up, liquidation or dissolution of SLA);

“Trust Securities” means the Special Trust Securities and the SLEECs;

“TSX” means the Toronto Stock Exchange; and

“WURA” means the *Winding-up and Restructuring Act* (Canada).

### **Representations**

This decision is based on the following facts represented by the Filers:

#### *SLF*

1. SLF was incorporated on August 5, 1999 under the ICA and became the sole shareholder of SLA in 2000 pursuant to SLA’s demutualization. SLF is a reporting issuer or the equivalent in each province and territory of Canada that provides for a reporting issuer regime and is not, to the best of its knowledge,



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in default of any applicable requirement under the securities legislation of the Jurisdictions. SLF's head office is located in Ontario.

2. SLF's authorized capital consists of unlimited numbers of Class A Shares and Class B Shares, each issuable in series, and an unlimited number of Common Shares.
3. As of July 27, 2007 SLF had outstanding 568,028,811 Common Shares, 16,000,000 Class A Shares – Series 1, 13,000,000 Class A Shares – Series 2, 10,000,000 Class A Shares – Series 3, 12,000,000 Class A Shares – Series 4, and 10,000,000 Class A Shares – Series 5. SLF also had outstanding three series of senior unsecured debentures in an aggregate principal amount of \$1,800,000,000 and one series of subordinated unsecured debentures in a principal amount of \$400,000,000.

### *SLA*

4. SLA was formed by the amalgamation of its predecessor, Sun Life Assurance Company of Canada, and Clarica Life Insurance Company on December 31, 2002 and its governing statute is the ICA. SLA is a reporting issuer or the equivalent in each province and territory of Canada that provides for a reporting issuer regime and is not, to the best of its knowledge, in default of any applicable requirement under the securities legislation of the Jurisdictions. SLA's head office is located in Ontario.
5. SLA's authorized capital consists of unlimited numbers of Class A Shares, Class B Shares, Class C Shares, Class D Shares and Class E Shares, each issuable in series, and an unlimited number of common shares.
6. As of July 27, 2007 SLA had outstanding 357,179,546 common shares, 40,000 Class B Shares – Series A, and 28,000,000 Class C Shares – Series 1, all of which are held by SLF. None of SLA's outstanding shares are SLA Dividend Restricted Shares or Public Preferred Shares.
7. SLA has created and authorized the issuance of up to 38,000,000 SLA Preferred Shares Series Y and 38,000,000 SLA Preferred Shares Series Z to satisfy its obligations if the Holder Exchange Right is exercised or the Automatic Exchange is triggered. SLA has created and authorized the issuance of up to 8,000,000 SLA Preferred Shares Series W and 8,000,000 SLA Preferred Shares Series X for issuance if the equivalent exchange rights are exercised or triggered with respect to the SLEECs – Series B. The terms of these shares each provide, among other things, that they are exchangeable at

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the option of the holder into Common Shares of SLF in certain circumstances and after certain dates.

### *The Trust*

8. The Trust is an open-end trust established under the laws of Ontario by The Canada Trust Company as trustee pursuant to a declaration of trust dated as of August 9, 2001. The Trust is a reporting issuer or the equivalent in each province and territory of Canada that provides for a reporting issuer regime and is not, to the best of its knowledge, in default of any applicable requirement under the securities legislation of the Jurisdictions.
9. The capital of the Trust consists of an unlimited number of units divided into one class of voting Special Trust Securities issuable in series and one class of non-voting SLEECS issuable in series.
10. As of July 27, 2007 the outstanding Trust Securities consisted of 2,000 Special Trust Securities, 9,500,000 SLEECS – Series A and 20,000,000 SLEECS – Series B. The outstanding Special Trust Securities are all held by SLA. The outstanding SLEECS – Series A were issued pursuant to a public offering in October 2001 and are listed on the Toronto Stock Exchange. The outstanding SLEECS – Series B were issued pursuant to a public offering in June 2002 and are not listed on any exchange.
11. The Trust is a special purpose issuer established solely for the purpose of offering the SLEECS in order to provide SLA (and, indirectly, SLF) with a cost-effective means of raising capital for Canadian insurance company regulatory purposes by creating and selling the Trust Securities and acquiring and holding trust assets. The trust assets consist primarily of the SLA Debentures. The Trust used the proceeds of the offerings of SLEECS to purchase the SLA Debentures. The SLA Debentures generate income for distribution to holders of the Trust Securities on a semi-annual, non-cumulative basis.
12. Each of the SLA Debentures bears interest that is distributed to holders of SLEECS – Series A and SLEECS – Series B, respectively, by way of payment of the Indicated Yield and any excess net income, after such distributions are made, is distributed to SLA as the holder of the Special Trust Securities.
13. Representations 14 through 24 only refer to the SLEECS – Series A, SLA Preferred Shares Series Y, SLA Preferred Shares Series Z, the SLA A Debenture and the Series A Share Exchange Agreement because the features of the SLEECS – Series B, SLA Preferred Shares Series W, SLA Preferred

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Shares Series X, the SLA B Debenture and the Series B Share Exchange Agreement are the same as those described herein except for the following:

- (a) the Indicated Yield payable on the SLEECs – Series A is \$34.325 per \$1,000 initial issue price, which is equivalent to an annual yield of 6.8650% and which corresponds to the interest rate payable on the SLA A Debenture, whereas the Indicated Yield payable on the SLEECs – Series B is \$35.465 per \$1,000 initial issue price, which is equivalent to an annual yield of 7.093% and which corresponds to the interest rate payable on the SLA B Debenture;
- (b) the dates on which various rights arise are different due to the different offering dates of the SLEECs – Series A and the SLEECs – Series B; and
- (c) the SLEECs – Series A may be exchanged for SLA Preferred Shares Series Y or SLA Preferred Shares Series Z in certain circumstances, whereas the SLEECs – Series B may be exchanged for SLA Preferred Shares Series W or SLA Preferred Shares Series X in those circumstances (such SLA Preferred Shares Series W and SLA Preferred Shares Series X having the same attributes as the SLA Preferred Shares Series Y and the SLA Preferred Shares Series Z, respectively, except for the dates upon which various rights arise and the rate of dividends payable on the SLA Preferred Shares Series X as compared to that of the SLA Preferred Shares Series Z).

14. The Trust will not pay the Indicated Yield on the SLEECs – Series A if:

- (a) SLA has Public Preferred Shares outstanding and fails to declare Dividends on any of the Public Preferred Shares in accordance with their respective terms; or
- (b) SLA fails to declare Dividends on its Class B Shares – Series A,

in either case, in the Dividend Reference Period.

15. Pursuant to the Series A Share Exchange Agreement, SLF and SLA have agreed, for the benefit of the holders of SLEECs – Series A, that if the Trust fails, on any applicable Distribution Date, to pay the Indicated Yield on the SLEECs – Series A:

- (a) SLA will not pay Dividends on the SLA Dividend Restricted Shares; or

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(b) if SLA Dividend Restricted Shares are not outstanding, SLF will not pay Dividends on the SLF Dividend Restricted Shares,

in either case until a specific period of time has elapsed unless the Trust first pays such Indicated Yield (or the unpaid portion thereof) to holders of the SLEECs – Series A.

16. Pursuant to the terms of the SLEECs – Series A and the Series A Share Exchange Agreement, the SLEECs – Series A:

(a) may be exchanged at the option of a holder for SLA Preferred Shares Series Z pursuant to the Holder Exchange Right; and

(b) will be automatically exchanged for SLA Preferred Shares Series Y pursuant to the Automatic Exchange.

Upon the exercise of the Holder Exchange Right or the triggering of the Automatic Exchange, the Trust will convert the corresponding principal amount of the SLA A Debenture into SLA Preferred Shares Series Y or SLA Preferred Shares Series Z, as the case may be.

17. The SLA Preferred Shares Series Y and the SLA Preferred Shares Series Z will be redeemable after certain dates, at the option of SLA and subject to regulatory approval, by the payment of a cash amount or by the delivery of Common Shares of SLF.

18. On any Distribution Date the Trust has the right, subject to regulatory approval and on not less than 30 nor more than 60 days' prior written notice, to redeem the SLEECs – Series A at the greater of the SLEECs Redemption Price and the Early Redemption Price, if the SLEECs – Series A are redeemed prior to the At Par Redemption Date, and at the SLEECs Redemption Price if the SLEECs – Series A are redeemed on or after the At Par Redemption Date.

19. SLA, as the holder of the Special Trust Securities, may require the termination of the Trust, subject to regulatory approval, provided that holders of SLEECs – Series A receive the Early Redemption Price or the SLEECs Redemption Price, as applicable.

20. Upon the occurrence of certain regulatory or tax events affecting SLA or the Trust, the Trust has an additional right, subject to regulatory approval and on not less than 30 nor more than 90 days' prior written notice, to redeem at any time all but not less than all of the SLEECs – Series A at the Early Redemption Price if the SLEECs – Series A are redeemed prior to the At Par

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Redemption Date and at the SLEECS Redemption Price if the SLEECS – Series A are redeemed on or after the At Par Redemption Date.

21. In certain circumstances, including at a time when SLA's financial condition is deteriorating or proceedings for the winding-up of SLA have been commenced, the SLEECS – Series A will be automatically exchanged for SLA Preferred Shares Series Y without the consent of the holders.
22. The exchange rights and procedures applicable to the SLEECS – Series A were accurately described in the SLEECS – Series A Prospectus.
23. The return to holders of SLEECS is dependent on the financial condition of SLA rather than the Trust. Holders of SLEECS are ultimately concerned about the affairs and financial performance of SLA as opposed to that of the Trust.
24. The SLEECS are treated for insurance regulatory capital purposes as if they are SLA Preferred Shares and, as a result, if any circumstance arose where the solvency or financial strength of SLA was threatened, the Superintendent would be expected to move to ensure that the Automatic Exchange is triggered prior to the occurrence of any potential insolvency event at SLA.

### *Prior Continuous Disclosure and Certification Relief Granted to the Trust*

25. On March 14, 2002 the Trust was granted the 2002 CD Relief and on May 14, 2004 the Trust was granted the 2004 Certification Relief. The 2002 CD Relief and the 2004 Certification Relief exempt the Trust from the Continuous Disclosure Requirements and the Certification Requirements provided that, among other things:
  - (a) SLF and SLA file their financial statements, AIF and MD&A under the Trust's SEDAR profile at the same time that they are required to be filed by SLF and SLA;
  - (b) SLF and SLA send their financial statements and MD&A to holders of Trust Securities at the same time and in the same manner as if the holders of Trust Securities were holders of SLF Common Shares or SLA common shares; and
  - (c) SLF and SLA file their Annual Certificates and Interim Certificates under the Trust's SEDAR profile at the same time that they are required to be filed by SLF and SLA.

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### *SLF Guarantees*

26. SLF intends to provide the SLF Guarantees which will cover certain securities issued, or to be issued, by SLA.
27. The Debt Guarantee will result in holders of the SLA Subordinated Debentures being entitled to receive payment from SLF within 15 days of any failure by SLA to make a payment due under the SLA Subordinated Debentures.
28. SLF intends to provide a similar guarantee in respect of any non-convertible debt securities issued by SLA in the future, other than debt securities issued to and held by SLF or its Affiliates, debt securities issued to the types of entities described in section 13.4(2)(c)(iii) of NI 51-102, and debt securities issued under exemptions from the registration and prospectus requirements in section 2.35 of NI 45-106. Such a guarantee will be described in the applicable prospectus or prospectus supplement filed by SLA in connection with a distribution of such debt securities.
29. The amount payable by SLF under the Preferred Share Guarantee will be limited such that the claims of holders of the SLA Preferred Shares under the Preferred Share Guarantee will, in effect, rank equally with the claims of holders of the corresponding class of SLF Preferred Shares. To accomplish this, the Preferred Share Guarantee will provide that if a Triggering Event occurs, SLF will pay the Deficiency Payment to SLA in trust for the benefit of holders of SLA Preferred Shares outstanding as of the Triggering Event.
30. The Preferred Share Guarantee will apply in respect of any SLA Preferred Shares outstanding from time to time, including SLA Preferred Shares issued upon a conversion of SLEECs pursuant to the Holder Exchange Right or the Automatic Exchange and the equivalent exchange rights applicable to the SLEECs – Series B. The Preferred Share Guarantee will be described in the applicable prospectus or prospectus supplement filed by SLA in connection with any future distribution of SLA Preferred Shares.
31. The Preferred Share Guarantee will rank subordinate to any and all outstanding liabilities of SLF unless otherwise provided by the terms of the instrument creating or evidencing any such liability. However, since the Preferred Share Guarantee will be a debt obligation of SLF and, therefore, will rank ahead of the claims of holders of the SLF Preferred Shares, the calculation of the amount payable under the Preferred Share Guarantee is subject to reduction such that on the distribution of assets upon a winding-up

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of SLF, claims under the Preferred Share Guarantee will, in effect, rank equally with the claims of holders of the SLF Preferred Shares. Otherwise, the Preferred Share Guarantee would negatively impact the capital treatment of the SLA Preferred Shares for SLF for insurance regulatory purposes.

32. Each of the SLF Guarantees will terminate (subject to any existing rights or claims at the time of such termination) upon the earlier to occur of:
- (a) unless SLF and SLA agree to the contrary, the date that no SLA securities which are the subject of such guarantee (or securities convertible into or exchangeable for such securities, including, in the case of the Preferred Share Guarantee, SLEECs) are outstanding;
  - (b) the date that SLF no longer owns all of the outstanding common shares of SLA;
  - (c) the date that the relief contemplated by this decision is no longer available to SLA; or
  - (d) the date SLA commences filing its own Continuous Disclosure Filings with the Decision Makers,

provided that SLF may not terminate the Preferred Share Guarantee in respect of the SLA Preferred Shares Series W, the SLA Preferred Shares Series X, the SLA Preferred Shares Series Y and the SLA Preferred Shares Series Z pursuant to clauses (b), (c) or (d) above at any time after the occurrence of an Automatic Exchange or during a period when SLA has failed to make full payment when due of any dividend declared on any SLA Preferred Shares or has failed to make full payment when due of the Redemption Price and, in either case, such failure has not been remedied by the payment of such amounts by SLA or SLF.

### *Requested Relief*

33. Preparing and, where applicable, printing and distributing Continuous Disclosure Filings at both SLF and SLA has been inconvenient, costly and a strain on management resources. It is also potentially confusing to investors. SLA is seeking the relief requested pursuant to this decision to substantially simplify its continuous disclosure obligations. The Trust is seeking the relief requested pursuant to this decision because the conditions of the 2002 CD Relief and the 2004 Certification Relief will not be fulfilled if SLA does not make Continuous Disclosure Filings and does not file Annual Certificates and Interim Certificates.

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34. The relief requested pursuant to this decision is substantially similar to the Credit Support Issuer Exemptions.
35. Section 13.4(2) of NI 51-102 provides an automatic exemption from the Continuous Disclosure Requirements for a Credit Support Issuer provided that certain conditions are satisfied. With the implementation of the SLF Guarantees, SLA would be able to satisfy each of the criteria of section 13.4(2) of NI 51-102 other than the requirement set out in section 13.4(2)(c) due to the terms of the Preferred Share Guarantee.
36. The Preferred Share Guarantee will be structured such that, in a circumstance where SLA fails to make payment for 15 days of either declared dividends or the Redemption Price, or there exists insufficient assets to pay the Liquidation Preference upon the liquidation or winding-up of SLA, and at such time a winding-up order has been made in respect of SLF, payment of such amounts to holders of the SLA Preferred Shares will not be made until the final distribution of surplus of SLF, if any, to shareholders of SLF pursuant to section 95(1) of the WURA. This provision of the Preferred Share Guarantee is necessary in order to preserve the appropriate priority of claims (*i.e.*, so that claims of holders of the SLA Preferred Shares under the Preferred Share Guarantee do not rank ahead of the claims of holders of SLF Preferred Shares by virtue of crystallizing earlier). In circumstances where SLF is not the subject of a winding-up order, payment will be made on the date immediately following the 15-day period permitted for the payment of dividends and the Redemption Price and, in the case of the Liquidation Preference, the later of:
- (a) the date of the final distribution of property of SLA to creditors pursuant to section 93 of the WURA; and
  - (b) the date of the final distribution of surplus of SLA to shareholders, if any, pursuant to section 95(1) of the WURA.
37. With the implementation of the SLF Guarantees, the only outstanding securities of SLA that will not satisfy the criteria of section 13.4(2)(c) of NI 51-102 are the SLA Preferred Shares because the Preferred Share Guarantee will not be a full and unconditional guarantee as required to comply with the definition of Designated Credit Support Securities.
38. The Trust is not able to rely on section 13.4 of NI 51-102 due to the fact that the SLEECs cannot be guaranteed by SLF without adverse consequences on the capital treatment for Canadian insurance company regulatory purposes.



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39. Section 4.4 of MI 52-109 provides an automatic exemption from the Certification Requirements for a Credit Support Issuer provided that it qualifies for, and is in compliance with, the requirements and conditions set out in section 13.4 of NI 51-102. For the reasons described above, neither SLA nor the Trust meet all of the conditions of section 13.4 of NI 51-102.

### *Liability for Secondary Market Disclosure*

40. SLF has delivered to the Ontario Securities Commission the SLF Responsible Issuer Undertaking and will file the SLF Responsible Issuer Undertaking on its SEDAR profile following SLF providing the SLF Guarantees.

### **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 a Continuous Disclosure Exemption be granted to SLA provided that:

- (a) SLF and SLA continue to be regulated by the Office of the Superintendent of Financial Institutions (Canada) or any successor;
- (b) SLF remains the beneficial owner of all the outstanding voting securities (as defined in the Legislation) of SLA;
- (c) SLF and SLA remain reporting issuers or the equivalent thereof under the Legislation;
- (d) SLF enters into the SLF Guarantees within 15 business days of the date of this decision and continues to provide the SLF Guarantees;
- (e) SLF and SLA announce the implementation of the SLF Guarantees by press release;
- (f) a copy of the Debt Guarantee is filed under SLF's and SLA's SEDAR profiles and a copy of the Preferred Share Guarantee is filed under SLF's, SLA's and the Trust's SEDAR profiles;
- (g) SLF complies with the requirements of the Legislation and the requirements of the TSX in respect of making public disclosure of material information on a timely basis;

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- (h) SLF issues in Canada and files any news release that discloses a material change in its affairs;
- (i) SLF concurrently sends to all holders of guaranteed debt securities of SLA, in the manner and at the time required by the Legislation and the TSX, all disclosure materials that are sent to holders of similar debt of SLF;
- (j) SLF concurrently sends to all holders of guaranteed SLA Preferred Shares, and to holders of SLEECs, in the manner and at the time required by the Legislation and the TSX, all disclosure materials that are sent to holders of similar SLF Preferred Shares;
- (k) SLA files, for the periods covered by any annual or interim financial statements of SLF, either in the notice referred to in (l) below or in or with such SLF financial statements, consolidating Summary Financial Information for SLF presented with a separate column for each of the following:
  - (i) SLF;
  - (ii) SLA;
  - (iii) any other subsidiaries of SLF on a combined basis;
  - (iv) consolidating adjustments; and
  - (v) the total consolidated amounts;
- (l) SLA files a notice indicating that it is relying on the Continuous Disclosure Filings of SLF and setting out where those documents can be found for viewing in electronic format;
- (m) SLA issues in Canada a news release and files a material change report for all material changes in respect of the affairs of SLA that are not also material changes in the affairs of SLF;
- (n) SLA files its annual financial statements in accordance with Canadian GAAP concurrently with the filing of the ICA Financial Statements with the Superintendent in accordance with the ICA;
- (o) SLA does not issue or have outstanding any securities other than Designated Credit Support Securities, securities issued to and held by SLF

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or its Affiliates, debt securities issued to the types of entities described in section 13.4(2)(c)(iii) of NI 51-102, securities issued under exemptions from the registration and prospectus requirements in section 2.35 of NI 45-106, or SLA Preferred Shares that are subject to the Preferred Share Guarantee; and

- (p) such Continuous Disclosure Exemption will cease to apply on January 15, 2012.

The further decision of the Decision Makers under the Legislation is that a Continuous Disclosure Exemption be granted to the Trust provided that:

- (a) SLA qualifies for the relief contemplated by, and SLF and SLA are in compliance with the requirements and conditions set out in, SLA's Continuous Disclosure Exemption;
- (b) for so long as any SLEECs are outstanding, SLF and SLA continue to provide the Dividend Stopper Undertaking;
- (c) the Trust does not issue or have outstanding any securities other than SLEECs and Special Trust Securities;
- (d) the Trust does not have any material assets other than the SLA Debentures and has no material liabilities other than the Credit Facilities;
- (e) the Trust files a notice indicating that it is relying on the Continuous Disclosure Filings of SLF and setting out where such filings can be found for viewing in electronic format;
- (f) the Trust issues in Canada a news release and files a material change report for all material changes in respect of the affairs of the Trust that are not also material changes in the affairs of SLF or SLA;
- (g) all of the outstanding Special Trust Securities are beneficially owned by SLA or any of its Affiliates and all of the outstanding voting securities (as defined in the Legislation) of SLA or of its Affiliates which own the Special Trust Securities are beneficially owned by SLF;
- (h) the rights and obligations, other than the economic terms thereof, of holders of any additional SLEECs that may be issued by the Trust are the same in all material respects as the rights and obligations of holders of SLEECs – Series A and SLEECs – Series B at the date of this decision; and

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- (i) such Continuous Disclosure Exemption will cease to apply on January 15, 2012.

The further decision of the Decision Makers is that a Certification Exemption be granted to SLA provided that:

- (a) SLA qualifies for the relief contemplated by, and SLF and SLA are in compliance with the requirements and conditions set out in, SLA's Continuous Disclosure Exemption;
- (b) SLA and the Trust are not required to, and do not, file their own Annual Filings and Interim Filings; and
- (c) such Certification Exemption will cease to apply on January 15, 2012.

The further decision of the Decision Makers is that a Certification Exemption be granted to the Trust provided that:

- (a) the Trust qualifies for the relief contemplated by, and SLF, SLA and the Trust are in compliance with the requirements and conditions set out in, the Trust's Continuous Disclosure Exemption;
- (b) the Trust is not required to, and does not, file its own Annual Filings and Interim Filings; and
- (c) such Certification Exemption will cease to apply on January 15, 2012.

The further decision of the Decision Makers is that the 2004 Certification Relief is revoked.

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

The further decision of the Decision Makers is that the 2002 CD Relief is revoked.

Robert L. Shirriff  
Commissioner  
Ontario Securities Commission

Lawrence E. Richie  
Vice-Chair  
Ontario Securities Commission