

# **2004 BCSECCOM 625**

October 1, 2004

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 123 - Relief from self dealing restrictions in ss. 121 and 122 of the Act - A mutual fund(s) wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person or company which is a substantial security holder of the mutual fund. - An independent review committee will review the mutual fund's purchases, sales, and continued holdings of securities of the issuers, and will determine whether the investments are in the best interests of the investors of the mutual funds

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 123

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, NOVA SCOTIA,  
NEW BRUNSWICK 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 ASSANTE ASSET MANAGEMENT LTD.  
(the Filer)**

**AND**

**OPTIMA STRATEGY SHORT TERM INCOME POOL  
OPTIMA STRATEGY CANADIAN FIXED INCOME POOL  
OPTIMA STRATEGY GLOBAL FIXED INCOME POOL  
OPTIMA STRATEGY CANADIAN EQUITY VALUE POOL  
OPTIMA STRATEGY CANADIAN EQUITY DIVERSIFIED POOL  
OPTIMA STRATEGY CANADIAN EQUITY GROWTH POOL  
OPTIMA STRATEGY CANADIAN EQUITY SMALL CAP POOL  
OPTIMA STRATEGY US EQUITY VALUE POOL  
OPTIMA STRATEGY US EQUITY DIVERSIFIED POOL  
OPTIMA STRATEGY US EQUITY GROWTH POOL  
OPTIMA STRATEGY INTERNATIONAL EQUITY VALUE POOL**

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## **OPTIMA STRATEGY INTERNATIONAL EQUITY DIVERSIFIED POOL OPTIMA STRATEGY INTERNATIONAL EQUITY GROWTH POOL OPTIMA STRATEGY REAL ESTATE INVESTMENT POOL (the Current Funds)**

### **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 Filer in respect of the Current Funds together with such other mutual funds for which the Filer hereafter becomes the manager (individually a Fund and collectively the Funds), for a decision under the securities legislation of the Jurisdictions (the Legislation) that the provisions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company shall not apply to investments made by the Funds in common shares (the SLF Shares) of Sun Life Financial Inc. (SLF) (the Requested Relief);

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.

#### **Representations**

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

1. The Filer is a corporation subsisting under the laws of Manitoba and is or will be the manager of each Fund. The Filer's registered office is located in Winnipeg, Manitoba.
2. Each Fund is or will be a mutual fund subject to the requirements of National Instrument 81-102 and is a reporting issuer under the securities legislation in all of the provinces and territories of Canada.
3. The Filer is a wholly-owned subsidiary of CI Fund Management Inc. (CIX). CIX is a corporation incorporated under the laws of Ontario. CIX is a

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reporting issuer under the securities legislation in all the provinces of Canada and the common shares of CIX are listed and posted for trading on the Toronto Stock Exchange.

4. SLF is a corporation incorporated under the laws of Canada with its registered office located in Toronto, Ontario. SLF is a reporting issuer under the securities legislation in all of the provinces and territories of Canada. The SLF Shares are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange and other stock exchanges. SLF owns approximately 34% of the outstanding shares of CIX.
5. Sun Life Assurance Company of Canada (Sun Life) is a wholly-owned subsidiary of SLF.
6. On November 14, 2003, CIX completed a transaction in which it acquired all of the Filer's outstanding shares (the Transaction).
7. As a result of the Transaction, SLF became a "substantial security holder" of the Filer because it is deemed by the Legislation to own approximately 34% of the outstanding shares of the Filer. The Legislation prohibits a mutual fund from knowingly making an investment in a company which is a substantial security holder of the mutual fund, its management company or distribution company (a Related Company). Accordingly, the Funds are prohibited from acquiring SLF Shares because SLF is a substantial security holder of the management company of the Funds.
8. The Filer believes that it would be in the best interests of investors of the Funds to be permitted to invest in SLF Shares, in keeping with the investment objectives of the Funds, up to the limit allowed by applicable Legislation.
9. The Filer will establish an independent review committee (the IRC), comprised entirely of individuals who are wholly independent of the Filer and SLF, to oversee the holdings, purchases or sales of SLF Shares for the Funds.
10. The IRC shall review the holdings, purchases or sales of SLF Shares to ensure that they have been made free from any influence by SLF and without taking into account any consideration relevant to SLF.
11. The IRC will take into consideration the best interests of securityholders of the Funds and no other factors.
12. Compensation to be paid to members of the IRC will be paid by the Funds. Members of the IRC currently are paid a fixed amount per annum in

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consideration for the services they provide as members of the IRC and as members of the board of governors or as independent directors of the Funds and other mutual funds managed by the Filer or its affiliates. Such compensation generally is allocated to such mutual funds pro rata based upon the relative net asset values of all such mutual funds.

### **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 this decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

1. the provisions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company shall not apply to investments made by the Funds in SLF Shares; provided that:
  - (a) the Filer has appointed the IRC to review the Funds' purchases, sales and continued holdings of SLF Shares;
  - (b) the IRC has at least three members, each of whom is independent. A member of the IRC is not independent if the member has a direct or indirect material relationship with the manager of the Funds, the Funds, or an entity related to the manager of the Funds. A material relationship is any relationship that a reasonable person would consider might interfere with the exercise of the member's independent judgement regarding conflicts of interest facing the manager of the Funds;
  - (c) the IRC has a written mandate describing its duties and standard of care which, as a minimum, sets out the conditions of this Decision;
  - (d) the members of the IRC exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
  - (e) none of the Funds relieves the members of the IRC from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) above;

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- (f) none of the Funds indemnifies the members of the IRC against legal fees, judgments and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph (d) above;
- (g) none of the Funds incurs the cost of any portion of liability insurance that insures a member of the IRC for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) above;
- (h) the cost of any indemnification or insurance coverage paid for by the Filer, any portfolio advisor of the Funds, or any associate or affiliate of the Filer or the portfolio advisors of the Funds to indemnify or insure the members of the IRC in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) above is not paid either directly or indirectly by the Funds;
- (i) the IRC reviews the Funds' purchases, sales and continued holdings of SLF Shares on a regular basis, but not less frequently than once every calendar quarter;
- (j) the IRC forms the opinion at any time, after reasonable inquiry, that the decisions made on behalf of each Fund by the Filer or the Fund's portfolio advisor to purchase, sell or continue to hold SLF Shares were and continue to be in the best interests of the Fund, and:
  - (i) represent the business judgement of the Filer or the Fund's portfolio advisor, uninfluenced by considerations other than the best interests of the Fund;
  - (ii) have been made free from any influence by SLF and without taking into account any consideration relevant to SLF; and
  - (iii) do not exceed the limitations of the applicable legislation;
- (k) the determination made by the IRC pursuant to paragraph (j) above is included in detailed written minutes provided to the Filer not less frequently than once every calendar quarter;
- (l) in respect of the relevant Fund, within 30 days after the end of each month in which the manager of the Funds purchases or sells SLF Shares on behalf of one or more Funds, the Filer will file on SEDAR reports disclosing (i) the name of each Fund that purchased or sold SLF Shares during the month, (ii) the date of each purchase, (iii) the volume weighted average price paid or received for the SLF Shares by each Fund, and (iv) whether the trades were disapproved by the IRC and, if so, why the trades were completed in spite of such disapproval. Such report will be filed for each

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Fund and the report will show the trades of all Funds. Such report will also contain a certificate from the Filer that (i) the trades represented the business judgement of the Filer or the portfolio advisor of the Fund uninfluenced by considerations other than the best interest of the Funds and were, in fact, in the best interests of the Funds, (ii) the trades were made free from any influence by SLF or any affiliate or associate thereof and without taking any consideration relevant to SLF or any associate or affiliate thereof, and (iii) the trades were not part of a series of transactions aiming to support or otherwise influence the price of the SLF Shares or related to another form of misconduct. The report also will disclose any subsequent determination by the IRC that a past decision of the Filer or a Fund's portfolio advisor to purchase, sell or continue to hold SLF Shares failed or fails to satisfy the conditions in paragraph (j);

(m) the IRC advises the Decision Makers in writing of:

- (i) any determination by it at any time that the condition set out in paragraph (j) has not been satisfied with respect to any purchase, sale or holding of SLF Shares;
  - (ii) any determination by it at any time that any other condition of this decision has not been satisfied;
  - (iii) any action it has taken or proposes to take following the determinations referred to above; and
  - (iv) any action taken, or proposed to be taken, by the Filer or a portfolio advisor of the Funds in response to the determinations referred to above; and
- (n) the existence, purpose, duties and obligations of the IRC, the names of its members, whether and how they are compensated by the Funds, and the fact that they meet the requirements of the condition set out in paragraph (b) are disclosed:
- (i) in a press release issued, and a material change report filed, prior to reliance on this decision;
  - (ii) in item 12 of Part A of the simplified prospectus of the Funds; and
  - (iii) on the Filer's internet website; and

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2. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provision of this Decision.

Paul M. Moore  
Vice Chair

Paul K. Bates  
Commissioner  
ONTARIO SECURITIES COMMISSION