

## **2002 BCSECCOM 682**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades in securities underlying trust units where the trust units are qualified by prospectus – underlying securities to be issued by companies other than the trust – relief granted for first trades of underlying securities provided a prospectus qualifying the trust units is filed and receipted

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
NOVA SCOTIA, BRITISH COLUMBIA, MANITOBA, NEWFOUNDLAND  
AND LABRADOR, PRINCE EDWARD ISLAND, NEW BRUNSWICK,  
YUKON, NORTHWEST TERRITORIES AND NUNAVUT**

**AND**

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

**AND**

**IN THE MATTER OF CANADA LIFE FINANCIAL CORPORATION,  
THE CANADA LIFE ASSURANCE COMPANY AND  
CANADA LIFE CAPITAL TRUST**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Nova Scotia, British Columbia, Manitoba, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Yukon, Northwest Territories and Nunavut (collectively, the “Jurisdictions”) has received an application (the “Application”) on behalf of Canada Life Financial Corporation (“CLF”), The Canada Life Assurance Company (“CLA”) and Canada Life Capital Trust (the “Trust”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that certain trades in securities of CLF and CLA are exempt from the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), subject to certain conditions;

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Nova Scotia Securities Commission is the principal regulator for this application;

AND WHEREAS CLF, CLA and the Trust have represented to the Decision Makers that:

1. The Trust is an open-end trust established under the laws of the Province of Ontario by The Canada Trust Company (“Trustee”), as trustee, pursuant to a declaration of trust made as of February 6, 2002, (the “Declaration of Trust”).
2. Following completion of the Offering described below, the authorized capital of the Trust will consist of an unlimited number of: (i) Special Trust Securities (the “Special Trust Securities”); (ii) Canada Life Capital Securities -Series A (“CLiCS- Series A”); and (iii) Canada Life Capital Securities-Series B (“CLiCS-Series B” and, collectively with the CLiCS-Series A, the “CLiCS”). The Special Trust Securities and the CLiCS are collectively referred to herein as the “Trust Securities”.
3. The Trust was established solely for the purpose of effecting a public offering of CLiCS (the “Offering”) and possible future offerings of securities in order to provide CLA (and, indirectly, CLF) with a cost effective means of raising capital for Canadian insurance company regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which on completion of the Offering, will consist primarily of two senior debentures issued by CLA (the “CLA Debentures”). The CLA Debentures will generate income for distribution to holders of the Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.
4. Subject to regulatory approval, the CLiCS will constitute Tier 1 Capital of CLA. The Trust will also issue and sell Special Trust Securities, which are voting securities of the Trust, to CLA in connection with the Offering.
5. CLA was established on August 21, 1847 and incorporated on April 15, 1849. On November 4, 1999, CLA demutualized pursuant to Letters Patent of Conversion issued under the *Insurance Companies Act* (Canada) (the “ICA”).
6. CLA is a reporting issuer or the equivalent in each of the provinces and territories of Canada 1 that provides for a reporting issuer regime and is not, to its knowledge, in default of any reporting requirement under the Legislation.

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7. The authorized share capital of CLA consists of an unlimited number of: (i) common shares; (ii) Class A Shares; (iii) Class B Shares; (iv) Class C Shares; (v) Class D Shares; (vi) Class E Shares; and (vii) Class F Shares (the Class A Shares through the Class F Shares being collectively referred to as the “CLA Preferred Shares”). CLF holds all of the outstanding common shares of CLA and no CLA Preferred Shares are currently outstanding.
8. CLF was incorporated under the ICA on June 21, 1999. CLF carries on no active business operations and is the holding company for all of the outstanding CLA common shares.
9. The authorized share capital of CLF consists of an unlimited number of: (i) common shares (“CLF Common Shares”); and (ii) Preferred Shares issuable in series, of which approximately 164,400,000 CLF Common Shares and 6,000,000 Preferred Shares Series B were issued and outstanding as at December 31, 2001. The CLF Common Shares are listed and posted for trading on The Toronto Stock Exchange (the “TSE”) and The New York Stock Exchange. The CLF Preferred Shares Series B are listed and posted for trading on the TSE.
10. CLF is a reporting issuer or the equivalent in each of the provinces and territories of Canada that provides for a reporting issuer regime and is not, to its knowledge, in default of any reporting requirement under the Legislation.
11. CLF has no material assets or liabilities other than the common shares of CLA.
12. Pursuant to the terms of the CLiCS and a Share Exchange Agreement (the “Share Exchange Agreement”) to be entered into among CLF, CLA, the Trust and a party acting as exchange trustee, the CLiCS may be exchanged, at the option of the holders of CLiCS (the “Holder Exchange Right”), for CLA Class A Shares Series 2 (in the case of the CLiCS-Series A) and CLA Class A Shares Series 4 (in the case of the CLiCS-Series B). The CLiCS will be automatically exchanged, without the consent of the holder, for CLA Class A Shares Series 3 (in the case of the CLiCS-Series A) or CLA Class A Shares Series 5 (in the case of the CLiCS-Series B) upon the occurrence of certain stated events relating to the solvency of CLA or actions taken by the Superintendent of Financial Institutions (the “Superintendent”) in respect of CLA (the “Automatic Exchange”). The CLA Class A Shares Series 2 through Series 5 are collectively referred to as the “CLA Class A Shares”.
13. Pursuant to the terms of the CLA Debentures, the Trust will be granted the right to convert the CLA Debentures into CLA Class A Shares of the

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appropriate series to give effect to the Holder Exchange Right and the Automatic Exchange (the “Conversion Right”).

14. Pursuant to the Share Exchange Agreement, CLA will grant to the Trust the right to subscribe, if necessary following the maturity of each CLA Debenture, for CLA Class A Shares of the appropriate series to enable the Trust to give effect to the Holder Exchange Right and the Automatic Exchange following such maturity (the “Subscription Right”).
15. The terms of the CLA Class A Shares and the Share Exchange Agreement provide, among other things, that such shares are exchangeable at the option of the holder for CLF Common Shares at certain times and in certain circumstances (the “CLF Common Share Exchange Right”). These exchange rights are not operative at any time that an event giving rise to the Automatic Exchange in respect of the CLiCS has occurred and is continuing.
16. CLA will have the right to redeem the CLA Class A Shares and to pay the redemption price thereof through the delivery of CLF Common Shares to holders of CLA Class A Shares called for redemption. Pursuant to the Share Exchange Agreement, CLF will grant to CLA the right to subscribe for CLF Common Shares in connection with any such redemption (such right being the “CLA Preferred Share Redemption Right”).
17. In addition to qualifying the CLiCS for distribution, the (final) prospectus in respect of the Offering (the “Prospectus”) will also qualify the Holder Exchange Right, the Automatic Exchange, the Conversion Right, the Subscription Right, the CLA Preferred Share Redemption Right and the CLF Common Share Exchange Right (collectively, the “Conversion and Exchange Rights”). Information concerning the Trust, CLF and CLA will be included, or incorporated by reference, in the Prospectus.
18. There may be no registration or prospectus exemptions available under the Legislation for certain of the trades contemplated by the Conversion and Exchange Rights (the “Trades”).

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

AND WHEREAS 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;

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THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that the first trade in CLA Class A Shares and CLF Common Shares acquired pursuant to the Decision, other than a trade by the Trust or CLA pursuant to the Conversion and Exchange Rights, shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the “Applicable Legislation”) unless:

- (a) CLF and CLA have filed and obtained a receipt for the Prospectus under the Applicable Legislation;
- (b) CLA or CLF, as the case may be, is a reporting issuer or the equivalent under the Applicable Legislation at the time of the trade, to the extent that the Applicable Legislation provides a reporting issuer regime; and
- (c) the trade is not a control distribution as defined in Multilateral Instrument 45-102 Resale of Securities.

DATED this 7th day of March, 2002.

H. Leslie O’Brien