

2002 BCSECCOM 405

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief from the requirements to file interim financial statements and audited financial statements and send such statements to security holders, and to make an annual filing in lieu of filing an information circular granted to a trust on specified conditions - security holder's return depends upon the financial condition of the parent company and the holding company and not that of the trust - trust offered trust units to the public in order to provide the parent company with a cost effective means of raising capital for Canadian insurance company regulatory purposes - no distributions are payable on the trust units if the parent company fails to pay dividends on its preferred shares and if distributions are not paid the parent company is prevented from paying dividends on its preferred shares - trust units are not redeemable but are exchangeable at the option of the holder after a fixed term for shares of the parent company

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 91(1) and 119(2)

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149 and 184(2)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUÉBEC, 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 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", and collectively the "Decision Makers") in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application (the "Application") from 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

2002 BCSECCOM 405

Jurisdictions (the “Legislation”), that the requirements contained in the Legislation to:

- (a) file interim financial statements and audited annual financial statements (collectively, “Financial Statements”) with the Decision Makers and deliver such statements to the security holders of the Trust;
- (b) make an annual filing (“Annual Filing”) with the Decision Makers in lieu of filing an information circular, where applicable;
- (c) file an annual report (“Annual Report”) and an information circular with the Decision Maker in Québec and deliver such report or information circular to the security holders of the Trust resident in Québec; and
- (d) file under Ontario Securities Commission (“OSC”) Rule 51-501 AIF and MD&A, section 159 of the Regulation to the *Securities Act* (Québec) and the Saskatchewan Instrument 51-501, an annual information form (“AIF”), including an annual and interim management’s discussion and analysis (“MD&A”) of the financial condition and results of operation of the Trust and send such MD&A to security holders of the Trust (collectively “the AIF and MD&A Requirements”);

shall not apply to the Trust, subject to certain terms and conditions;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the OSC is the Principal Regulator for this application;

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

CLF

1. CLF was incorporated under the *Insurance Companies Act* (Canada) (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.
2. The authorized share capital of CLF consists of an unlimited number of: (i) common shares; and (ii) Preferred Shares issuable in series, of which approximately 164,400,000 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.

2002 BCSECCOM 405

3. CLF is a reporting issuer (or the equivalent) in each of the provinces and territories of Canada and is not, to its knowledge, in default of any requirement of the Legislation.
4. CLF has no material assets or liabilities other than the common shares of CLA.

CLA

5. CLA was established on August 21, 1847 and incorporated on April 15, 1849. On November 4, 1999 CLA demutualized and became a stock life insurance company under Letters Patent of Conversion issued under the ICA.
6. CLA is a reporting issuer (or the equivalent) in each of the provinces and territories of Canada and is not, to its knowledge, in default of any requirement of the Legislation.
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.
8. CLA obtained decision documents dated July 8, 1999, June 14, 2001, September 8, 2000 and June 13, 2001 (“CLA Decision Documents”) under which the requirements to file and deliver interim and annual financial statements and MD&A, and file an AIF, an annual filing in lieu of a management information circular and an annual report in Québec, shall not apply to CLA, subject to certain conditions, including that CLF makes all applicable continuous disclosure filings, that CLA remains a direct or indirect wholly-owned subsidiary of CLF and that CLF have no material assets or liabilities other than its holding of shares in CLF.

The Trust

9. The Trust is an open-end trust established under the laws of the Province of Ontario by The Canada Trust Company (“Trustee”), as trustee, under a declaration of trust made as of February 6, 2002, (the “Declaration of Trust”).
10. The outstanding securities of the Trust consist 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

2002 BCSECCOM 405

as the “Trust Securities”. The CLiCS and the Special Trust Securities are not quoted or listed on any exchange or organized market.

11. 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 consist primarily of two 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.
12. The Trust is a reporting issuer, or the equivalent, in each of the Jurisdictions as a result of the filing of a final prospectus in connection with the Offering dated March 7, 2002 (the “Prospectus”) and the issuance of a final MRRS Decision Document in relation to the Prospectus.

CLiCS

13. The Trust distributed CLiCS in the Jurisdictions under the Prospectus. The Trust also issued and sold 1,000 Special Trust Securities, which are voting securities of the Trust, to CLA in connection with the Offering.
14. Holders of CLiCS are entitled to receive fixed, semi-annual non-cumulative distributions (each, an “Indicated Yield”) on the basis described below (“Distributions”). Each semi-annual payment date for the Indicated Yield in respect of the CLiCS (a “Distribution Date”) will be either a “Regular Distribution Date” or a “Distribution Diversion Date”. A Distribution Date will be a Distribution Diversion Date, with the result that the Indicated Yield will not be paid in respect of the CLiCS but, instead, the Trust will pay the net distributable funds of the Trust to the holder of Special Trust Securities, if: (i) CLA has failed in the period described in the Prospectus to declare regular quarterly dividends (“Dividends”) on its Class A Shares Series 1 in accordance with their terms; or (ii) if “Public Preferred Shares” of CLA are then outstanding, CLA has failed to declare Dividends on such Public Preferred Shares. In all other cases, a Distribution Date will be a Regular Distribution Date, in which case holders of CLiCS will be entitled to receive the Indicated Yield. “Public Preferred Shares” of CLA means CLA Preferred Shares which: (i) have been issued to the public (excluding any CLA Preferred shares held beneficially by affiliates of CLA); (ii) are listed on a recognized stock exchange; and (iii) have an aggregate liquidation entitlement of at least \$100 million provided, however, that if there is more than one class of Public

2002 BCSECCOM 405

Preferred Shares outstanding, then the most senior class or classes of outstanding Public Preferred Shares shall, for all purposes, be the Public Preferred Shares.

15. Under Share Exchange Agreements entered into among CLF, CLA, the Trust and a party acting as Exchange Trustee (the “Share Exchange Agreements”), CLF and CLA have agreed, for the benefit of the holders of CLiCS, that in the event that the Trust fails on any Regular Distribution Date to pay the Indicated Yield on the CLiCS in full: (i) CLA will not declare or pay Dividends on the Public Preferred Shares; or (ii) if no Public Preferred Shares are then outstanding, CLF will not declare or pay Dividends on any of its preferred shares or on its common shares, in each case, until a specified period of time has elapsed, unless the Trust first pays such Indicated Yield (or the unpaid portion thereof) to holders of CLiCS. Accordingly, it is in the interest of CLA and CLF to ensure, to the extent within their control, that the Trust complies with its obligation to pay the Indicated Yield on each Regular Distribution Date.
16. Under the terms of the CLiCS and the Share Exchange Agreement, the CLiCS may be exchanged, at the option of the holders of CLiCS, for newly issued CLA Class A Shares Series 2 (in the case of the CLiCS-Series A) and newly issued 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”).
17. The terms of the CLA Class A Shares Series 2, Series 3, Series 4 and Series 5 each provide, among other things, that such shares are exchangeable at the option of the holder for Common Shares of CLF at certain times and in certain circumstances, but in any event the CLA Class A Shares Series 2 and Series 3 are not exchangeable into CLF common shares until December 31, 2012 and the CLA Class A Shares Series 4 and Series 5 are not exchangeable into CLF common shares until December 31, 2032. 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.
18. The Trust may, subject to regulatory approval, on June 30, 2007 and on any Distribution Date thereafter, redeem the CLiCS. The price payable in respect of any such redemption will include an early redemption compensation component (such price being the “Early Redemption Price”) in the event of a

2002 BCSECCOM 405

redemption of CLiCS–Series A prior to June 30, 2012 or a redemption of CLiCS–Series B prior to June 30, 2032 (in either case, the “Early Redemption Date”). The price payable in all other cases will be \$1,000 per CLiCS together with any unpaid Indicated Yield thereon (the “Redemption Price”).

19. Upon the occurrence of certain regulatory or tax events affecting CLA or the Trust, the Trust may, subject to regulatory approval, redeem at any time all but not less than all of the CLiCS at the Early Redemption Price (if the CLiCS are redeemed prior to the applicable Early Redemption Date) and at the Redemption Price (if the CLiCS are redeemed on or after the applicable Early Redemption Date).
20. CLA and CLF have covenanted, under the Share Exchange Agreements, that CLA or its affiliates will maintain ownership, directly or indirectly, of 100% of the outstanding Special Trust Securities. As a result, the financial results of the Trust will be consolidated with those of CLA. Since all of the outstanding common shares of CLA are held by CLF, the financial results of CLA are consolidated with those of CLF. Subject to regulatory approval, the CLiCS will constitute Tier 1 Capital of CLA.
21. As long as any CLiCS are outstanding, the Trust may only be terminated with the approval of the holder of Special Trust Securities and with the approval of the Superintendent: (i) upon the occurrence of a Special Event prior to June 30, 2007; or (ii) for any reason on June 30, 2007 or any Distribution Date thereafter. Holders of Trust Securities rank pari passu in the distribution of the property of the Trust in the event of a termination of the Trust, after the discharge of any creditor claims. As long as any CLiCS are outstanding, neither CLA nor CLF will approve the termination of the Trust unless the Trust has sufficient funds to pay the Early Redemption Price in the case of a termination prior to the applicable Early Redemption Date, or the Redemption Price in the case of any other termination.
22. As set forth in the Declaration of Trust, the CLiCS are non voting except in limited circumstances and Special Trust Securities entitle the holders to vote.
23. Except to the extent that the Distributions are payable to CLiCS holders and, other than in the event of termination of the Trust (as set forth in the Declaration of Trust), CLiCS holders have no claim or entitlement to the income of the Trust or the assets held by the Trust.
24. Under an Administration Agreement entered into between the Trustee and CLA, the Trustee will delegate to CLA certain of its obligations in relation to the administration of the Trust. CLA, as administrative agent, will provide

2002 BCSECCOM 405

advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.

25. The Trust has not requested relief for the purposes of filing a short form prospectus pursuant to National Instrument 44-101 — Short Form Prospectus Distributions (“NI 44-101”) (including, without limitation, any relief which would allow the Trust to use CLF’s AIF as a current AIF of the Trust) and no such relief is provided by this Decision Document from any of the requirements of NI 44-101.
26. The Trust may, from time to time, issue further series of Canada Life Capital Securities, the proceeds of which would be used to acquire additional debentures from CLA.
27. Because of the terms of the CLiCS, the Share Exchange Agreements and the various covenants CLA and CLF, information about the affairs and financial performance of CLA and CLF, as opposed to that of the Trust, is meaningful to holders of CLiCS. Under the CLA Decision Documents, CLA does not have to file and deliver interim and annual financial statements and MD&A nor file an AIF, an annual filing in lieu of a management information circular or an annual report as long as CLF makes its continuous disclosure filings on behalf of CLA on the basis that holders of CLA securities receive adequate disclosure from the CLF filings. CLF’s filings and the delivery of the same material delivered to shareholders of CLF will provide holders of CLiCS and the general investing public with all information required in order to make an informed decision relating to an investment in CLiCS. Information regarding CLF is relevant both to an investor’s expectation of being paid the Indicated Yield on the CLiCS as well as the return of the investor’s principal.

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

AND WHEREAS the Decision Makers are satisfied that the tests 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 requirement contained in the Legislation:

- (a) to file Financial Statements with the Decision Makers and deliver such statements to holders of Trust Securities;

2002 BCSECCOM 405

- (b) to make an Annual Filing, where applicable, with the Decision Makers in lieu of filing an information circular; and
- (c) to file an Annual Report and an information circular with the Decision Maker in Québec and deliver such report or information circular to holders of Trust Securities resident in Québec;

shall not apply to the Trust for so long as:

- (i) CLF remains a reporting issuer under the Legislation;
- (ii) CLA remains a reporting issuer under the Legislation;
- (iii) CLF files with the Decision Makers, in electronic format under the Trust's SEDAR profile, the documents listed in clauses (a) to (c) above of this Decision, at the same time as they are required under the Legislation to be filed by CLF;
- (iv) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the documents referred to in clauses (a) to (c) above of this Decision;
- (v) CLF sends its Financial Statements and Annual Filing, where applicable, to holders of Trust Securities and its Annual Report to holders of Trust Securities resident in the Province of Québec at the same time and in the same manner as if the holders of Trust Securities were holders of CLF common shares;
- (vi) all outstanding securities of the Trust are either CLiCS or Special Trust Securities or are additional series of Canada Life Capital Trust Securities where the rights and obligations (other than the economic terms) of the holders of such additional securities are the same in all material respects as the rights and obligations of the holders of the CLiCS at the date hereof;
- (vii) the rights and obligations (other than the economic terms thereof) of holders of additional series of Canada Life Capital Trust Securities are the same in all material respects as the rights and obligations of the holders of CLiCS at the date hereof; and
- (viii) CLA or its affiliates are the beneficial owners of all Special Trust Securities and CFL or its affiliates are the beneficial owners of all the issued and outstanding voting shares of CLA.

2002 BCSECCOM 405

and provided that this Decision shall expire 30 days after:

(A) the date that CLA can no longer rely on the CLA Decision Documents; or

(B) the date a material adverse change occurs in the affairs of the Trust.

DATED this 14th day of May, 2002.

Theresa McLeod
A Commissioner

Robert L. Shirriff
A Commissioner

AND THE FURTHER DECISION of the Decision Makers in Ontario, Québec and Saskatchewan is that the AIF and MD&A Requirements shall not apply to the Trust for so long as:

- (i) the conditions set out in clauses (i), (ii), (vi), (vii) and (viii) of the Decision above are complied with;
- (ii) CLF files the AIF and the annual and interim MD&A with the Decision Makers, in electronic format under the Trust's SEDAR profile at the same time as they are required under the Legislation to be filed by CLF;
- (iii) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the documents referred to in clauses (a) to (c) above of this Decision;
- (iv) CLF sends its annual and interim MD&A and its AIF, as applicable, to holders of Trust Securities at the same time and in the same manner as if the holders of Trust Securities were holders of CLF Common Shares;

and provided that this Decision shall expire 30 days after:

(A) the date that CLA can no longer rely on the CLA Decision Documents; or

(B) the date a material adverse change occurs in the affairs of the Trust.

DATED this 14th day of May, 2002.

John Hughes
Manager, Corporate Finance