



DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

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March 22, 1999

Ellen Lieberman
Debevoise & Plimpton
875 Third Ave.
New York, NY 10022

Re: The Manufacturers Life Insurance Company, File # 006-6860-08/B000115570

Dear Ms. Lieberman:

The Utah Division of Securities (the "Division") is responding to your March 8, 1999 request for a no-action letter, pursuant to authority granted by § 61-1-25(5) and § 61-1-24 of the Utah Uniform Securities Act and Utah Administrative Code ("UAC") R164-25-5. In your request you describe the demutualization of The Manufacturers Life Insurance Company ("Manulife") where demutualization refers to "Manulife's proposed conversion from a mutual life insurance company to an investor-owned, publicly traded company with common shares." You opine that the Associates of Manulife should not be required to be licensed as agents in Utah in order to discuss the demutualization process with clients of Manulife. We agree.

Based on the facts presented in your request, the Staff of the Utah Division of Securities ("Division") will not recommend any enforcement or administrative action should the transaction proceed as outlined in your request. To avoid unnecessary restatement or summarization of the facts set forth in your request, the Division's response is attached to a photocopy of your request.

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division Staff on enforcement or other administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter relates only to the transaction described above and will have no value for future similar transactions and does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Respectfully,

David H.T. Wayment
Senior Legal Counsel

enclosure

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March 8, 1999

BY FEDEX

State of Utah
Department of Commerce
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Demutualization of The Manufacturers Life Insurance Company

Dear Sir/Madam:

We are special counsel to The Manufacturers Life Insurance Company, a Canadian mutual life insurance company ("Manulife"), in connection with Manulife's proposed conversion from a mutual life insurance company to an investor-owned, publicly traded company with common shares. This process is referred to as "demutualization."

We write to request either your confirmation that agent registration is not required in your jurisdiction, or your no-action position to such effect, if the demutualization occurs in the manner described. The HoldCo Shares (as defined below) to be distributed in the demutualization will not be registered under the Securities Act of 1933, as amended (the "Securities Act") in reliance on exemption under Section 3(a)(10) thereof. In addition, the HoldCo Shares will be covered securities as defined in Section 18(b)(1) in that they will be listed on the New York Stock Exchange at the completion of the transaction. We enclose a fee in the amount of \$120 with respect to the confirmation that agent registration is not required. For your convenience, we note your recent order dated January 21, 1999, under similar circumstances with respect to the distribution of securities of StanCorp Financial Group, Inc. in connection with the demutualization of Standard Insurance Company, File #006-6284-83/B--1-5-66.

Demutualization.

The demutualization will occur through a transaction in which certain holders of participating insurance contracts issued by Manulife (the "Eligible Policyholders") will receive common shares (the "HoldCo Shares") of Manulife Financial Corporation

("HoldCo"), a holding company to be incorporated by Manulife under the Insurance Companies Act (Canada) (the "ICA"), in exchange for their membership rights in Manulife. After the demutualization, HoldCo will own all of Manulife's common shares ("Manulife Shares").

The terms and conditions of Manulife's Plan of Demutualization (the "Plan") are subject to approval by the Michigan Commissioner of Insurance after a public hearing, and by the *Canadian Minister of Finance, as well as a policyholder vote and the satisfaction of certain other conditions*. Under the ICA, adoption of the Plan requires the affirmative vote of two-thirds of all votes cast by policyholders eligible to vote on the Plan.

Associates/ Agents.

Limited Role of Associates/Agents. Manulife's relations with Eligible Policyholders resident in the United States (the "U.S. Policyholders") generally are handled by life insurance agents licensed in various states of the United States (the "Agents"), some but not all of whom are registered representatives of U.S. registered broker-dealers. The Agents serve as Manulife's principal means of communication with the U.S. Policyholders. Manulife is not a U.S. registered broker-dealer.

Manulife has three associated broker-dealers in the United States: ManEquity, Inc., Wood Logan Associates, Inc. ("Wood Logan") and Manufacturers Securities Services LLC ("MSS"). It also has four primary life insurance subsidiaries in the United States: Manulife U.S.A., Manulife America, Manulife North America and Manulife New York.²⁹

- Manulife U.S.A. continues to market participating policies in the U.S. and manages the relationship between Manulife and the Agents who deal with the Eligible Policyholders resident in the United States. Manulife U.S.A. does not sell any products that are required to be registered under the Securities Act, the Investment Company Act of 1940 (the "1940 Act") or the Securities Exchange Act of 1934 (the "Exchange Act").

29. The full names of these companies are The Manufacturers Life Insurance Company (U.S.A.), The Manufacturers Life Insurance Company of America, The Manufacturers Life Insurance Company of North America and The Manufacturers Life Insurance Company of New York.

- Manulife America primarily sells variable life insurance products that are registered under the Securities Act and the 1940 Act.
- Manulife North America and its subsidiary Manulife New York primarily sell variable annuity products that are registered under the Securities Act and the 1940 Act.
- Wood Logan is a registered broker-dealer under the Exchange Act, but its functions are confined to "wholesale" activities -- maintaining relationships with securities firms that distribute registered products of Manulife North America and Manulife New York. It does not supervise any registered representatives who are actively engaged in personal sales.
- ManEquity, Inc. is a limited registered broker-dealer and was originally the supervising broker-dealer for many of the agents who distribute the registered products of Manulife America. Over time the supervisory responsibility has been shifted from ManEquity to the independent broker-dealers with which the Agents are associated, and today ManEquity has supervisory responsibility for only approximately 200-300 agents who distribute Manulife America's products.
- MSS is a limited registered broker-dealer and is the principal distributor of variable annuities issued by Manulife North America and Manulife New York. MSS does not supervise any registered representatives who are actively involved in personal sales.

It is agents of Manulife U.S.A. who primarily have relationships with the Eligible Policyholders who will receive HoldCo Shares in the demutualization. Because Manulife U.S.A. sells no registered products, it has no associated broker-dealer that supervises, or makes arrangements for other broker-dealers to supervise, its Agents. Although a substantial portion of its Agents are probably registered representatives, that is because of their activities with companies (including the Manulife life insurance subsidiaries listed above) other than Manulife U.S.A.

Manulife intends to use the Agents, including Agents who are not licensed to engage in equity securities transactions, and certain of the officers, directors and employees, or any other member of Manulife's sales force (collectively with the Agents, the "Associates") to inform Eligible Policyholders of the Plan. The Agents will not be prohibited from giving advice on how Eligible Policyholders should vote on the Plan, but will not be instructed to advise Eligible Policyholders to vote in favor of the Plan. Associates other than Agents will be educated by Manulife about the Plan and instructed to (i) answer any questions Eligible Policyholders may have in connection with the notice

of the Hearing, the notice of the Special Meeting, the Information Circular, the mechanics of the Plan, or the Special Meeting, (ii) discuss with Eligible Policyholders the demutualization of Manulife and (iii) recommend to Eligible Policyholders that they vote to approve the Plan. The Associates will not be compensated, directly or indirectly, for their efforts in connection with such activities, except temporary employees will receive compensation specifically for answering questions relating to the demutualization through an 800 telephone number.

In discussions with Eligible Policyholders concerning the Plan, the Associates will be specifically instructed in writing and through other procedures to be implemented by Manulife to refrain from:

(a) using written materials other than the notice of the Hearing, notice of the Special Meeting, Information Circular or other documents prepared by Manulife for use in connection with the Special Meeting, or making any revisions to such documents;

(b) making any statements not derived from the Information Circular or other documents approved by Manulife for use in connection with the Special Meeting;

(c) discussing the potential market value of HoldCo Shares or a concurrent underwritten initial public offering of HoldCo Shares;

(d) discussing whether a policyholder should make a cash election; or

(e) discussing with policyholders their personal plans to invest or not invest in HoldCo Shares.

Manulife will communicate these restrictions to the Associates through official bulletins to the Associates from Manulife's senior management. Where Agents are employed by a securities firm or other organization, including one of the six major broker-dealers with which Manulife deals, these restrictions will be communicated to the broker-dealers with instructions that they be distributed to the Agents. In addition, Manulife will designate persons to assist Agents with inquiries related to the demutualization, and provide special training to such persons about issues related to the demutualization, including adherence to the above restrictions.

Registration of Associates Should Not Be Required. We suggest that registration of the Associates as agents is not required in your jurisdiction in that the demutualization is similar to, and within the intent of, §61-1-14(2)(p) of the securities laws

Registration of Associates Should Not Be Required. We suggest that registration of the Associates as agents is not required in your jurisdiction in that the demutualization is similar to, and within the intent of, §61-1-14(2)(p) of the securities laws of your state, which provides a transactional exemption from securities registration (and a corresponding issuer-agent exclusion) for a transaction or series of transactions involving a reorganization, recapitalization, if consideration in whole or in part is the issuance of securities of a person or persons and if incident to a vote of securities holders of each *person involved under the applicable controlling statute and one person involved is an insurance company which is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934 and has filed proxy or informational materials with the appropriate regulatory agency or official of its domiciliary state, and appropriate notice and fee are filed and materials are distributed to all securities holders entitled to vote.* We note the highly regulated nature of the insurance industry and the demutualization process in particular under Canadian and state insurance laws; the opportunity for Eligible Policyholders to appear at a public hearing and to vote on the Plan; the approval required by insurance regulators (which is thereafter subject to judicial review); the anticipated listing of the HoldCo Shares on the New York Stock Exchange; the continuation of certain rights of policyholders in Manulife, including certain rights to vote for director, that, in effect, will be reclassified as or exchanged for comparable rights of holders of HoldCo Shares; and Manulife's becoming a wholly-owned subsidiary of HoldCo, which in some respects is similar to a merger or consolidation of the two entities or the acquisition of Manulife in consideration of the issuance of HoldCo Shares.

We further suggest that the vote taking place at the Special Meeting will not involve a transaction in securities because that vote will not require Eligible Policyholders to make any investment decision. The decision before Eligible Policyholders is not whether they should acquire HoldCo Shares, but whether they should approve the conversion of the issuer of their life insurance policies to a more flexible ownership structure that will facilitate raising additional equity capital from sources unavailable to it as a mutual company. This is the central focus of the Plan, the hearing and the vote on the Plan.

We suggest as well that if the Associates recommend voting in favor of the Plan, they will not be effecting transactions in securities. The Associates' primary function will be to help Eligible Policyholders understand the Plan and the consequences of the demutualization. No Associate will receive any compensation in connection with activities related to the vote on the Plan, or be in a position to handle customer funds or securities. Importantly, the Associates' activities will be strictly limited and supervised. While discussing the Plan with Eligible Policyholders, the Associates will be instructed by

documents. In effect, the Associates will be mere conduits of public information about the Plan and the demutualization between Manulife and Eligible Policyholders for purposes of a vote of corporate reorganization, and will not be effecting any transaction in securities.

Based on the foregoing, we request your confirmation that registration of the Associates as agents is not required in your jurisdiction, or your no-action position to such effect, if the demutualization occurs in the manner described. Because of the importance of the demutualization to Manulife, we would appreciate hearing from you at your earliest convenience. If you have any questions or require additional items or fee, please feel free to contact Ellen Lieberman, Esq. at (212) 909-6096. If the enclosed fee is not required to be paid or is more than the required amount, please return the excess fee care of the undersigned. Kindly acknowledge receipt of this letter and the enclosures by stamping the enclosed copy of this letter with your usual form of receipt acknowledgment and returning it in the enclosed postage-paid envelope.

Very truly yours,



Ellen Lieberman

Enclosures

1. \$120
2. Draft of Policyholder Information Circular
3. Consent to service of process will follow separately