

# 2006 BCSECCOM 208

March 15, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 171 - Revoke or Vary Decision - 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 13.4 of NI 51-102 except the issuer's securities do not have an approved rating; the issuer's securities have a rating from an approved rating organization and otherwise meet the definition of "designated credit support securities"

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 91, 119, and 171  
National Instrument 51-102, ss. 13.1 and 13.4

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

and

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

and

In the Matter of  
Ford Motor Credit Company  
and Ford Credit Canada Limited

## MRRS Decision Document

## **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Ford Motor Credit Company (Ford Credit) and its subsidiary Ford Credit Canada Limited (the Issuer, and together with Ford Credit, the Filer) for a decision (the Decision) by each

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Decision Maker under the securities legislation of the Jurisdictions (the Legislation) to amend the decision document issued by the Decision Makers dated May 21, 2004 (the Original Decision) such that the Issuer can continue to rely on the exemption in the Original Decision (the Continuous Disclosure Exemption) if the Issuer issues securities that do not have an “approved rating” as defined in National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102);

Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):

- (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 otherwise defined in this decision.

### **Representations**

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

1. All representations contained in the Original Decision remain true and complete except as follows:
  - (a) Paragraph 6 of the Original Decision is deleted and replaced with the following:

“As at January 31, 2006, Ford Credit had in excess of US\$73.9 billion in long-term debt outstanding.”
  - (b) Paragraph 11 of the Original Decision is deleted and replaced with the following:

“The Issuer has previously established a program in Canada for the issuance from time to time of its medium term notes (“Notes”) and its commercial paper notes maturing not more than one year from the date of issue (“Commercial Paper Notes”), as well as a program for the issuance of medium term debt securities outside of Canada, issued under a separate series of program documents and unrelated to the medium term notes issued in Canada (“Euro Notes” and, together with Notes and Commercial Paper Notes, “Debt Securities”). Each of the Notes, Commercial Paper

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Notes and Euro Notes are fully and unconditionally guaranteed by Ford Credit as to payment of principal, premium, if any, and interest, if any, such that the holders thereof will be entitled to receive payment from Ford Credit upon and within 15 days of the failure by the Issuer to make any such payment.”

(c) Paragraph 11A is added to the Original Decision as follows:

“At the time of the establishment of such programs for the issuance of Notes, Commercial Paper Notes and Euro Notes, each such Debt Security had an “approved rating” and therefore constituted a “designated credit support security” (as such terms are defined in NI 51-102).”

(d) Paragraph 12 of the Original Decision is deleted and replaced with the following:

“As at January 31, 2006, the Issuer had approximately Cdn\$3.08 billion of Notes outstanding.”

(e) Paragraph 13 of the Original Decision is deleted and replaced with the following:

“The Issuer lost its investment grade rating from each of the rating agencies on the following dates:

- (i) S&P – May 5, 2005;
- (ii) Fitch – December 19, 2005;
- (iii) Moody’s – January 11, 2006; and
- (iv) DBRS – January 16, 2006.”

2. As of January 16, 2006, the Issuer ceased to have an approved rating for any of its Debt Securities.
3. Since January 16, 2006, the Issuer has not issued any Debt Securities.
4. As a result of the Issuer ceasing to have an approved rating, it will be unable to continue to rely on the Continuous Disclosure Exemption if it issues debt securities, other than to the investors contemplated in section 13.4(2)(c) of NI 51-102.
5. The Issuer will not issue or sell any securities other than:

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- (a) non-convertible debt that has a rating from an “approved rating organization” (as that term is defined in NI 51-102) and in respect of which Ford Credit has provided a guarantee in accordance with the requirements of the definition of “designated credit support securities” in NI 51-102; or
  - (b) securities issued to Ford Credit or an affiliate of Ford Credit.
- 6. The amendments to the Original Decision will enable the Issuer to continue to rely on the Continuous Disclosure Exemption if the Issuer issues securities that do not have an approved rating.
- 7. Although the Debt Securities no longer have an approved rating, investors will continue to have the benefit of:
  - (a) Ford Credit’s guarantee in accordance with the requirements set out in NI 51-102; and
  - (b) any information regarding the Debt Securities that will continue to be disseminated by the approved rating organization(s).

### **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 (other than the Decision Maker in the Northwest Territories) under the Legislation is that the Original Decision is modified such that paragraph (a) of the Decision is deleted and replaced with the following:

- (a) the Issuer is in compliance with the requirements and conditions of section 13.4 of NI 51-102, other than (i) the requirement of section 13.4(2)(c) of NI 51-102, and (ii) the requirements in subsection 13.4(2)(g);
- (a.1) the Issuer does not issue or sell any securities other than:
- (i) non-convertible debt that has a rating from an “approved rating organization” (as defined in NI 51-102) and in respect of which Ford Credit has provided a guarantee in accordance with the requirements of the definition of “designated credit support securities” in NI 51-102; or

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- (ii) securities issued to Ford Credit or an affiliate of Ford Credit.

Iva Vranic  
Manager, Corporate Finance  
Ontario Securities Commission