

# 2007 BCSECCOM 118

December 6, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 71-101 *The Multijurisdictional Disclosure System*, s. 21.1 – exemption from requirement to be a “US issuer” - A wholly-owned subsidiary of an MJDS-eligible issuer wants to rely on the instrument for a distribution of debt securities under s. 3.2 - The subsidiary is a single purpose entity whose business is limited to financing the operations of the parent company’s Canadian subsidiaries; the subsidiary satisfies all of the alternative eligibility criteria for offerings under s. 3.2 except for the requirement to be a “US issuer”; the parent fully guarantees the repayment of principal, interest and any other amounts due under the debt securities

## **Applicable British Columbia Provisions**

National Instrument 71-101, ss. 3.2 and 21.1

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia, Manitoba, New Brunswick,  
Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island,  
Quebec, and Saskatchewan

and

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

and

In the Matter of  
Textron Financial Corporation  
and Textron Financial Canada Funding Corp.

## MRRS Decision Document

## **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and

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Labrador (the “Jurisdictions”) has received an application from Textron Financial Corporation (“TFC”) and its subsidiary Textron Financial Canada Funding Corp. (the “Issuer”, and together with TFC, the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in section 3.2(b) of NI 71-101 (defined below) that the Issuer comply with the eligibility criteria in section 3.1 (a) (i) that the Issuer be a “U.S. Issuer” (as defined in NI 71-101) shall not apply so that it is eligible to offer certain securities in the Jurisdictions under NI 71-101 (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Nova Scotia Securities Commission is the principal regulator for this application.

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

“MJDS” means the multi-jurisdictional disclosure system.

“NI 71-101” means National Instrument 71-101 – The Multijurisdictional Disclosure System.

“Prospectus” means a MJDS prospectus and prospectus supplements issued thereunder and filed from time to time.

“SOX” means the Sarbanes-Oxley Act.

### **Representations**

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

1. TFC was incorporated under the laws of the State of Delaware on February 5, 1962 and is a reporting issuer in all of the Jurisdictions that provide for a reporting issuer regime and has filed all documents required to be filed by it under the 1934 Act and when filed, each document complied in all material respects with the 1934 Act and the rules and regulations thereunder.
2. TFC has been a reporting company under the 1934 Act since 1999 with respect to its debt securities. TFC has filed with the SEC all filings required to be made with the SEC under sections 13 and 15 (d) of the 1934 Act since it first became a reporting company.
3. As at December 31, 2005, TFC had approximately US\$4.2 billion in long term debt and US\$1.2 billion in commercial paper and short term debt

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outstanding. All of TFC's outstanding long-term debt is rated "A-" by Standard & Poor's and "A3" by Moody's Investors Service.

4. The common stock in the capital of TFC is owned by Textron Inc., a publicly owned Delaware corporation. TFC derives a portion of its business from financing the sale and lease of products manufactured and sold by Textron Inc.
5. TFC is a diversified commercial finance company with core operations in aircraft finance, asset-based lending, distribution finance, golf finance, resort finance and structured capital.
6. TFC's total assets as at December 31, 2005 were approximately US\$7.4 billion and its net profit for the year ended December 31, 2005 was approximately US\$111 million.
7. TFC satisfies all the criteria set out in paragraph 3.1(a) of NI 71-101 (the "General Eligibility Criteria") and, should it choose to do so, would be eligible to use MJDS for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
8. The Issuer was incorporated under the *Companies Act* (Nova Scotia) as an unlimited liability company on October 31, 2000, and is a wholly-owned subsidiary of TFC.
9. The registered office of the Issuer is in Nova Scotia and the Issuer's principal executive office is located in Burlington, Ontario.
10. The Issuer is a reporting issuer or its equivalent in all of the Jurisdictions that provide for a reporting issuer regime, it is reporting company under the 1934 Act and is not in default under the Legislation.
11. The Issuer is a financing subsidiary of TFC with no operations, revenues or cash flows other than those related to the issuance, administration and repayment of debt securities that are and will be fully and unconditionally guaranteed by TFC.
12. The Issuer's business activities are limited to financing the business activities of Textron Financial Canada Limited, TFC's Canadian based operating subsidiary.

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13. It is proposed that the Issuer will offer, on a continuous basis in Canada and the United States, non-convertible approved rating debt securities that are fully and unconditionally guaranteed by TFC. TFC will offer, on a continuous basis in the United States, non-convertible approved rating debt securities.
14. The Issuer is planning to distribute in each of the Jurisdictions non-convertible approved rating debt securities that are fully and unconditionally guaranteed by TFC under a Prospectus. The Prospectus will be prepared in accordance with U.S. securities laws and filed as part of a registration statement with the SEC under the *United States Securities Act of 1933*, as amended.
15. The Prospectus is proposed to be filed with the Decision Makers in accordance with the provisions of NI 71-101, which are available to offerings which meet the alternative eligibility criteria for offerings of guaranteed non-convertible debt that have an investment grade rating as set out in paragraph 3.2 of NI 71-101 (the "Alternative Eligibility Criteria").
16. The Issuer meets all of the requirements of the Alternative Eligibility Criteria except the requirement that it be a "U.S. issuer" (as defined in NI 71-101).
17. The Issuer obtained similar relief pursuant to its distributions of convertible approved rating debt securities which were fully and unconditionally guaranteed by TFC under a MJDS prospectus dated November 30, 2001 and prospectus supplement dated November 30, 2001 as well as a MJDS prospectus dated September 26, 2003 and prospectus supplement dated September 26, 2003.

### **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 in the Jurisdictions under the Legislation is that the Requested Relief is granted provided that:

- (a) TFC satisfies the General Eligibility Criteria;
- (b) the Issuer complies with all of the filing requirements and procedures set out in NI 71-101, except as varied by the Decision; and

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- (c) TFC remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer.

J. William Slattery  
Deputy Director Corporate Finance and Administration  
Nova Scotia Securities Commission