

## 2004 BCSECCOM 43

### **Headnote**

Mutual Reliance Review System for Exemption Relief Applications - relief from eligibility requirements to permit wholly-owned Canadian subsidiary of MJDS-eligible U.S. issuer to issue approved rating debt fully and unconditionally guaranteed by the parent company; relief also granted from Canadian GAAP reconciliation requirements, Canadian GAAS reconciliation requirements, prospectus requirements of NI 44-101; and continuous disclosure requirements and insider reporting requirements for the Canadian subsidiary, subject to conditions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85, 87, 91, 117(2), 119(2)(b)

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145 and 149

National Instrument 44-101 *Short Form Prospectus Distributions*

National Instrument 44-102 *Shelf Distributions*.

**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 CATERPILLAR FINANCIAL SERVICES  
CORPORATION AND CATERPILLAR FINANCIAL SERVICES  
LIMITED**

### **MRRS DECISION DOCUMENT**

WHEREAS 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 Labrador (the “Jurisdictions”) has received an application (the “Application”) from Caterpillar Financial Services Corporation (“Caterpillar Financial”) and its subsidiary Caterpillar Financial Services Limited (the “Issuer”, and together with Caterpillar Financial, the “Filer”) for decisions under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation:

## 2004 BCSECCOM 43

- a) that, under National Instrument 44-101 (“NI 44-101”) and National Instrument 44-102 (“NI 44-102”), a person or company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current annual information form (the “Eligibility Requirement”) in order to permit the Issuer to issue non-convertible debt securities, in particular medium term notes (the “Notes”) with an Approved Rating (as such term is defined in NI 44-101) which will be fully and unconditionally guaranteed by Caterpillar Financial;
- b) that, under NI 44-101, a short form prospectus filed by the Issuer include a reconciliation to Canadian generally accepted accounting principles (“GAAP”) of the consolidated financial statements of Caterpillar Financial included in or incorporated by reference into such prospectus which have been prepared in accordance with foreign GAAP and that, where such financial statements are audited in accordance with foreign generally accepted auditing standards (“GAAS”), the Issuer provide a statement by the auditor disclosing any material differences in the auditor’s report and confirming that the auditing standards of the foreign jurisdiction are substantially similar to Canadian GAAS (collectively, the “Reconciliation Requirements”);
- c) that,
  - i) the Issuer file with the Decision Makers and send, where applicable, to its security holders audited annual financial statements and annual reports, including without limitation, management’s discussion and analysis thereon (the “Annual Financial Statement Requirements”),
  - ii) the Issuer file with the Decision Makers and send, where applicable, to its security holders unaudited interim financial statements, including without limitation, management’s discussion and analysis thereon (the “Interim Financial Statement Requirements”),

## 2004 BCSECCOM 43

- iii) the Issuer issue and file with the Decision Makers press releases and file with the Decision Makers material change reports (together, the “Material Change Requirements”), and
- iv) the Issuer comply with the proxy and proxy solicitation requirements, including filing with the Decision Makers an information circular or report in lieu thereof (the “Proxy Requirements”, and collectively with the Annual Financial Statement Requirements, the Interim Financial Statement Requirements, the Material Change Requirements, and the Proxy Requirements, the “Continuous Disclosure Requirements”);
- d) that the Issuer have a current annual information form and file renewal annual information forms with the Decision Makers under NI 44-101 and under the legislation of Ontario, Quebec and Saskatchewan (the “AIF Requirements”)
- e) that Insiders of the Issuer file with the Decision Makers insider reports (the “Insider Reporting Requirement”); and
- f) that a short form prospectus include the information set forth in items 7, 12.1(1), 12.2, and 13.1(1)2 of Form 44-101F3 (the “Prospectus Requirements”);

shall not apply;

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

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Issuer and Caterpillar Financial have represented to the Decision Makers that:

1. Caterpillar Financial was incorporated under the laws of the State of Delaware in 1981 and is not a reporting issuer or the equivalent in any of the Jurisdictions.

## 2004 BCSECCOM 43

2. Caterpillar Financial has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the “1934 Act”) since 1994 with respect to its debt securities. Caterpillar Financial has filed with the United States Securities and Exchange Commission (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, 2002, Caterpillar Financial had approximately US\$9.952 billion in notes and debentures outstanding. All of Caterpillar Financial’s outstanding long-term debt is rated “A” by Standard & Poor’s and “A2” by Moody’s Investors Service.
4. The common stock in the capital of Caterpillar Financial is owned by Caterpillar Inc. (“Caterpillar”), a publicly owned Delaware corporation.
5. Caterpillar Financial provides retail financing choices to customers of Caterpillar and its subsidiaries and to dealers world-wide for Caterpillar and non-competitive related equipment. Caterpillar Financial also provides wholesale financing to Caterpillar dealers and purchases short-term dealer receivables from Caterpillar. Caterpillar Financial’s total assets at December 31, 2002 were US\$17.105 billion and its net profit for the year ended December 31, 2002 was US\$193 million.
6. The registered and principal office of the Issuer is in Ontario.
7. The Issuer was incorporated under the *Business Corporations Act* (Ontario) on December 12, 1985, and is an indirect wholly-owned subsidiary of Caterpillar Financial.
8. The Issuer is a direct wholly-owned finance subsidiary of Caterpillar Financial Nova Scotia Corporation (“Caterpillar Nova Scotia”), which is a direct wholly-owned subsidiary of Caterpillar Financial. Caterpillar Financial has no present intention of commencing any operations out of Caterpillar Nova Scotia or to sell any of its interest in the shares of Caterpillar Nova Scotia. The Issuer provides retail and wholesale financing of Caterpillar earthmoving, construction, and materials handling machinery, compact construction equipment and engines sold in Canada. The equipment financed or used as collateral is generally insured against physical damage.
9. The Issuer became a reporting issuer or its equivalent in the Jurisdictions by virtue of it filing a short form shelf prospectus dated July 17, 2001 (the

## 2004 BCSECCOM 43

“2001 Prospectus”) in each of the Jurisdictions in connection with the establishment of the prior offering of Notes (the “2001 Offering”).

10. In connection with the establishment of the 2001 Offering, the Filer obtained a decision document entitled *In the Matter of Caterpillar Financial Services Corporation and Caterpillar Financial Services Limited*, dated June 8, 2001 (the “Previous Decision”), in which the Decision Makers granted relief, substantially similar to that granted herein, from the Eligibility Requirement, the Reconciliation Requirements, the Continuous Disclosure Requirements, and the AIF Requirements, as applicable, in connection with the 2001 Offering.
11. In reliance on the Previous Decision, the Issuer filed and received a receipt for the 2001 Prospectus in each of the Jurisdictions for Notes in an aggregate principal amount of up to CDN\$750,000,000 (or the equivalent in other currencies). Notes in an aggregate principal amount of CDN\$725,000,000 were offered under the 2001 Prospectus. The 2001 Prospectus lapsed on August 17, 2003 in all Jurisdictions but New Brunswick, where it lapsed on July 17, 2003.
12. The Issuer proposes to establish a new program to raise up to CDN\$750,000,000 (or the equivalent in other currencies) in Canada through its issuance of non-convertible Notes by short form shelf prospectus from time to time over a 25-month period (the “Proposed Offering”) and may in the future issue non-convertible Notes by filing additional short form shelf prospectuses in each of the Jurisdictions (a “Future Offering”, and together with the Proposed Offering, “Offerings” and each, an “Offering”).
13. The Notes will be fully and unconditionally guaranteed by Caterpillar Financial as to payment of principal, interest and all other amounts due thereunder and the holders will be entitled to receive payment from Caterpillar Financial within 15 days of failure by the Issuer to make any such payment.
14. It is expected by the Issuer that the Notes offered pursuant to an Offering will receive an Approved Rating.
15. It is possible that, following or concurrent with an Offering, the Issuer would from time to time access the Canadian debt capital markets other than by way of an Offering, subject to conditions set out in this Decision.

## 2004 BCSECCOM 43

16. Caterpillar Financial satisfies all the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 (“NI 71-101”) and is eligible to use the multi-jurisdictional disclosure system (“MJDS”) (as set out in NI 71-101) 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.
17. Except for the fact that the Issuer is not incorporated under United States law, an Offering would comply with the alternative eligibility criteria for offerings of non-convertible debt having an approved rating under the MJDS as set forth in paragraphs 3.1 and 3.2 of NI 71-101.
18. The Issuer is ineligible to issue Notes by way of a prospectus in the form of a short form prospectus under NI 44-101 for an Offering as Caterpillar Financial, the guarantor of the securities to be issued in an Offering, does not satisfy the Eligibility Requirement.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (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;

THE DECISION of the Decision Maker in each of Ontario, Québec and Saskatchewan is that the AIF Requirements shall not apply to the Issuer, so long as the Issuer and Caterpillar Financial comply with all of the requirements of each of the two Decisions below.

DATED this 16th day of January, 2004

Charlie MacCready

THE DECISION of the Decision Makers under the Legislation is that the Eligibility Requirement, the Reconciliation Requirements and the Prospectus Requirements shall not apply to an Offering so long as:

- a) The Issuer complies with all of the other requirements of NI 44-101, except as varied in the Decision or as permitted by NI 44-102;
- b) prior to the filing of a preliminary short form prospectus for an Offering (a “Prospectus”), Caterpillar Financial has filed

## 2004 BCSECCOM 43

with the Decision Makers, in electronic format under the Issuer's SEDAR profile, the following documents that Caterpillar Financial has filed under sections 13 and 15(d) of the 1934 Act since its last fiscal year-end:

- i) Caterpillar Financial's then most recent annual report filed on Form 10-K or an equivalent form ("Form 10-K"),
  - ii) all of Caterpillar Financial's quarterly reports filed on Form 10-Q or an equivalent form ("Form 10-Q") for the then most recently completed fiscal quarter, and
  - iii) any current reports of Caterpillar Financial filed on Form 8-K or an equivalent form ("Form 8-K") during the then current fiscal year;
- c) the Prospectus is prepared pursuant to the procedures contained in NI 44-101 and complies with the requirements set out in Form 44-101F3;
- i) with the disclosure required by item 12.1(1) of Form 44-101F3 being addressed by incorporating by reference the then most recent annual report on Form 10-K of Caterpillar Financial filed with the SEC, all quarterly reports on Form 10-Q and current reports on Form 8-K of Caterpillar Financial filed with the SEC in respect of the financial year following the year that is the subject of Caterpillar Financial's most recently filed annual report on Form 10-K, and any material change reports filed by the Issuer,
  - ii) with the disclosure required by item 12.2 of Form 44-101F3 being addressed by incorporating by reference the following documents filed with the SEC or the Decision Makers, as applicable, subsequent to the date of the particular prospectus but prior to the termination of the particular Offering:

## 2004 BCSECCOM 43

- (A) any annual report on Form 10-K of Caterpillar Financial filed with the SEC,
  - (B) any quarterly report on Form 10-Q and current report on Form 8-K of Caterpillar Financial filed with the SEC,
  - (C) any annual comparative selected financial information of the Issuer filed with the Decision Makers in the manner specified in paragraph (k) of the Further Decision below,
  - (D) any interim comparative selected financial information of the Issuer filed with the Decision Makers in the manner specified in paragraph (l) of the Further Decision below, and
  - (E) any material change reports filed by the Issuer,
- iii) with the summary financial information disclosure required by item 13.1(1)2 of Form 44-101F3 in respect of the Issuer being addressed in the manner specified in paragraphs (k) and (l) of the Further Decision below, and
  - iv) with the disclosure required by item 7 of Form 44-101F3 being addressed by disclosure with respect to Caterpillar Financial in accordance with United States requirements;
- d) the Prospectus includes or incorporates by reference all material disclosure concerning the Issuer and Caterpillar Financial;
  - e) the Prospectus incorporates by reference disclosure made in Caterpillar Financial's then most recent Form 10-K (as filed under the 1934 Act) together with all Form 10-Qs for the then most recently completed fiscal quarter and any current reports on Form 8-Ks filed under the 1934 Act in respect of the financial year following the year that is the subject of Caterpillar Financial's then most recently filed Form 10-K



## 2004 BCSECCOM 43

and incorporates by reference any documents of the foregoing type filed after the date of the Prospectus and prior to termination of the particular Offering and states that purchasers of Notes will not receive separate continuous disclosure information regarding the Issuer;

- f) Caterpillar Financial continues to fully and unconditionally guarantee the payments to be made by the Issuer as stipulated in the terms of the Notes or in an agreement governing the rights of holders of the Notes such that the holder of the Notes is entitled to receive payment from Caterpillar Financial within 15 days of any failure by the Issuer to make a payment as stipulated;
- g) the Notes have an Approved Rating (as defined in NI 44-101);
- h) Caterpillar Financial signs each Prospectus as credit supporter and promoter;
- i) Caterpillar Financial remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- j) Caterpillar Financial continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) 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;
- k) Caterpillar Financial undertakes to file with the Decision Makers, in electronic format under the Issuer's SEDAR profile, the following documents that it files under sections 13 and 15(d) of the 1934 Act: Caterpillar Financial's annual report on Form 10-K, all quarterly reports on Form 10-Q and any current reports on Form 8-K until such time as the Notes are no longer outstanding; and
- l) The consolidated annual and interim financial statements of Caterpillar Financial that will be included or incorporated by reference in any Prospectus will be prepared in

## 2004 BCSECCOM 43

conformity with generally accepted accounting principles in the United States that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act (“US GAAP”), and, in the case of audited consolidated annual financial statements will be audited in accordance with generally accepted auditing standards in the United States as supplemented by the SEC’s rules on auditor independence (“US GAAS”).

DATED this 16th day of January, 2004

Charlie MacCready

THE FURTHER DECISION of the Decision Makers under the Legislation is that, in connection with an Offering, the Annual Financial Statement Requirements, the Interim Financial Statement Requirements, the Material Change Requirements, the Proxy Requirements and the Insider Reporting Requirements shall not apply to the Issuer, so long as:

- a) Caterpillar Financial files with each of the Decision Makers, in electronic format under the Issuer’s SEDAR profile, copies of the following documents filed by it with the SEC under sections 13 and 15(d) of the 1934 Act, on the same day on which they are filed with the SEC, or as soon as practicable thereafter: annual reports on Form 10-K, quarterly reports on Form 10-Q, any current reports on Form 8-K, and any proxy materials relating to any meeting of Caterpillar Financial’s noteholders filed by it with the SEC under section 14 of the 1934 Act;
- b) the documents referred to in paragraph (a) above are provided to holders of Notes whose last address as shown on the books of the Issuer is in Canada in the manner, at the time and only if required by applicable United States law;
- c) insiders of the Issuer file with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder;

## 2004 BCSECCOM 43

- d) Caterpillar Financial remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- e) Caterpillar Financial maintains a class of securities registered pursuant to section 12 of the 1934 Act;
- f) Caterpillar Financial forthwith issues in each Jurisdiction and the Issuer files with the Decision Makers, any press release that discloses material information and which is required to be issued in connection with the Form 8-K requirements applicable to Caterpillar Financial;
- g) if there is a material change in respect of the business, operations or capital of the Issuer that is not a material change in respect of Caterpillar Financial, the Issuer will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not be a material change in respect of Caterpillar Financial;
- h) Caterpillar Financial continues to fully and unconditionally guarantee the payments to be made by the Issuer as stipulated in the terms of the Notes or in an agreement governing the rights of holders of the Notes such that the holder of the Notes is entitled to receive payment from Caterpillar Financial within 15 days of any failure by the Issuer to make a payment as stipulated;
- i) the Issuer does not issue additional securities other than the Notes issued pursuant to an Offering (or any Notes which hereinafter may be issued), debt securities ranking *pari passu* to the Notes, any debentures issued in connection with the security granted by the Issuer to the holders of Notes or debt ranking *pari passu* with the Notes, and those securities currently issued and outstanding, other than to Caterpillar Financial or to wholly owned subsidiaries of Caterpillar Financial;
- j) if Notes or debt securities ranking *pari passu* with the Notes are hereinafter issued by the Issuer, Caterpillar Financial shall fully and unconditionally guarantee such Notes or debt

## 2004 BCSECCOM 43

securities as to the payments required to be made by the Issuer to holders of such Notes or debt securities;

- k) the Issuer files, in electronic format, annual comparative selected financial information for its then most recently completed financial year and the financial year immediately preceding such financial year, prepared in accordance with Canadian GAAP and accompanied by a specified procedures report of the auditors to the Issuer. The Issuer's annual comparative selected financial information shall define and include the following line items:
  - i) total revenues;
  - ii) income/loss from continuing operations (if applicable), income/loss from discontinued operations (if applicable) and net income/loss;
  - iii) finance receivables, together with a descriptive note on the dollar amount of the allowance for credit losses;
  - iv) total assets;
  - v) commercial paper;
  - vi) term debt;
  - vii) all other liabilities; and
  - viii) total shareholders' equity;
- l) the Issuer files, in electronic format, interim comparative selected financial information for its then most recently completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP. The Issuer's interim comparative selected financial information shall define and include the following line items:
  - i) total revenues;

## 2004 BCSECCOM 43

- ii) income/loss from continuing operations (if applicable), income/loss from discontinued operations (if applicable) and net income/loss;
- iii) finance receivables, together with a descriptive note on the dollar amount of the allowance for credit losses;
- iv) total assets;
- v) commercial paper;
- vi) term debt;
- vii) all other liabilities; and
- viii) total shareholders' equity;
- m) such filings as are referred to in (k) and (l) above are to be made within the time limits required by the Legislation in respect of such financial information;
- n) Caterpillar Financial continues to comply with the requirements of the 1934 Act and the rules and regulations made thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meetings of its noteholders (if any);
- o) Any consolidated annual and interim financial statements of Caterpillar Financial that will be filed separately or in another document with the Decision Makers in accordance with paragraph (a) above will be prepared in conformity with US GAAP and, in the case of audited consolidated annual financial statements will be audited in accordance with US GAAS;
- p) Caterpillar Financial continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) 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; and

## **2004 BCSECCOM 43**

- q) all filing fees that would otherwise be payable by the Issuer in connection with the Continuous Disclosure Requirements, or in connection with the Issuer's participation as a reporting issuer in any Jurisdiction, are paid.

DATED this 16th day of January, 2004

Robert L. Shirriff

H. Lorne Morphy