

2005 BCSECCOM 539

August 11, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - NI 51-102 s. 13.1 - Continuous Disclosure Obligations - 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 that complies with all of the conditions for continuous disclosure relief in section 13.4 of National Instrument 51-102 Continuous Disclosure Obligations except that it prepares a non-classified balance sheet and so cannot provide the selected financial information required under subsection 13.4(2)(g); the issuer will provide alternate selected financial information based on its non-classified balance sheet; the relief will terminate if the presentation of a non-classified balance sheet ceases to be permissible under generally accepted accounting principles

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 85, 91, 117, and 119
Securities Rules, ss. 144 and 145
NI 51-102, ss. 13.1 and 13.4

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador,
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 General Motors Acceptance Corporation of Canada, Limited (the
Issuer) and General Motors Acceptance Corporation (GMAC)
(Collectively, the Filer)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for decisions under the securities legislation of the Jurisdictions (the Legislation) that the Issuer:

- (a) except in the Northwest Territories, be exempted from the application of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) pursuant to section 13.1 of NI 51-102 (the CD Relief); and
- (b) except in British Columbia, be exempted from the application of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) pursuant to section 4.5 of MI 52-109 (the Certification Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (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 defined in this decision.

Representations

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

1. GMAC is a wholly-owned subsidiary of General Motors Corporation (GM) and was incorporated in 1997 under the laws of the State of Delaware. On January 1, 1998, GMAC merged with its predecessor, which was originally incorporated in New York in 1919. GMAC is not a reporting issuer or the equivalent in any of the Jurisdictions.
2. GMAC or its predecessor has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the 1934 Act), for more than six years with respect to its debt securities. GMAC or its predecessor 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 under the 1934 Act.
3. GMAC has, for a period of more than 12 months, filed its annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K in Canada under the System for Electronic Document Analysis and Retrieval

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(SEDAR) established by National Instrument 13-101, under the SEDAR profile of the Issuer. GMAC is a “credit supporter” for the purposes of section 13.4 of NI 51-102.

4. The common stock in the capital of GMAC is indirectly owned by GM, a publicly traded Delaware corporation.
5. In conducting its primary line of business, namely financing, GMAC and its affiliated companies have a presence in 41 countries and offer a wide variety of automotive financial services to and through franchised GM dealers throughout the world. GMAC also offers financial services to other automobile dealerships and to the customers of those dealerships. Additionally, GMAC provides commercial financing for real estate, equipment and working capital to automobile dealerships, GM suppliers and customers of GM affiliates. GMAC also provides commercial financing and factoring services for companies in the apparel, textile, automotive supplier and numerous other industries. GMAC’s other financial services include insurance and mortgage banking. For the year ended December 31, 2004, the net income of GMAC was approximately US\$2.9 billion.
6. As at December 31, 2004, GMAC had in excess of US\$212 billion in long-term debt outstanding. GMAC is one of the world’s largest non-governmental, non-bank issuers of debt securities, measured by principal amount outstanding.
7. The Issuer was incorporated under the laws of Canada on October 15, 1953. On February 12, 1975, the Issuer’s name was changed by adding a French version (General Motors Acceptance Corporation du Canada, Limitée). The Issuer was continued under the *Canada Business Corporations Act* by Articles of Continuance effective December 3, 1979. The Issuer is a wholly-owned subsidiary of GMAC.
8. The principal business carried on by the Issuer is to offer a wide variety of automotive financial services to over 780 franchised GM dealers in Canada, their affiliates and their customers. The Issuer also offers a range of other financial services. In particular, the Issuer provides wholesale financing and capital loans to authorized General Motors Corporation of Canada, Limited vehicle dealers and purchases retail installment sale contracts and retail leases from such dealers. The Issuer also makes loans to vehicle leasing companies, the majority of which are affiliated with such dealers. The Issuer employs over 570 people in Canada.
9. The Issuer is, and has been for more than 12 months, a reporting issuer or the equivalent thereof in all Jurisdictions and will continue to be a reporting issuer

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or the equivalent thereof in the Jurisdictions. The Issuer is not in default of any of its obligations under the Legislation. The Issuer is a “credit support issuer” for the purposes of section 13.4 of NI 51-102, and has been filing its continuous disclosure documents in accordance with the provisions of that section, as modified by the MRRS Decision Document *In the Matter of General Motors Acceptance Corporation and General Motors Acceptance Corporation of Canada, Limited* dated April 21, 2004, since April 2004.

10. The Issuer has established programs in Canada for the issuance of its unsecured debt securities (Notes), including by way of medium term notes, and its variable denomination adjustable rate demand notes (Demand Notes) from time to time. The Notes are fully and unconditionally guaranteed by GMAC as to payment of principal and interest when and as the same become due and payable, such that the holders thereof will be entitled to receive payment from GMAC upon the failure by the Issuer to make any such payment.
11. As of December 31, 2004, the Issuer had approximately Cdn.\$10.7 billion of Notes outstanding. As at April 29, 2005, there were 8,200 investors in Canada holding \$396 million principal amount of Demand Notes. The Issuer believes that, measured by principal amount outstanding, it is the largest non-government, non-bank issuer of debt securities in the Canadian capital markets.
12. The Notes and the Demand Notes currently have an approved rating (as defined in NI 51-102) and it is expected by the Issuer that its long-term debt will continue to receive an approved rating.
13. In accordance with accepted accounting practice in the finance industry, the Issuer prepares its balance sheet without segregating its assets and liabilities between the current and non-current portions (a Non-Classified Balance Sheet). As a result, it cannot provide the information otherwise required by subsection 13.4(2)(g) of NI 51-102 and must instead file complete financial statements with the Decision Makers in lieu of the selected financial information that is permitted to be filed by a credit support issuer.
14. To the extent the Issuer cannot rely upon the exemption in section 13.4 of NI 51-102, the Issuer cannot rely upon the exemption from MI 52-109 contained in section 4.4 of that instrument.

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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 CD Relief is granted provided that:

- (a) the Issuer is in compliance with the requirements and conditions of section 13.4 of NI 51-102, other than the requirement in subsection 13.4(2)(g);
- (b) the Issuer files, in electronic format, within 90 days of the Issuer's then most recently completed financial year either (i) audited consolidated financial statements, prepared in accordance with Canadian GAAP and accompanied by a report of the auditors to the Issuer thereon, or (ii) annual comparative financial information, derived from the Issuer's audited consolidated financial statements, prepared in accordance with Canadian GAAP and accompanied by a specified procedures report of the auditors to the Issuer and including the following line items for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year:
 - (i) total financing revenue;
 - (ii) net income/loss and, if applicable, income/loss from continuing operations and income/loss from discontinued operations;
 - (iii) finance receivables and loans, net;
 - (iv) allowance for credit losses (included in (iii) above);
 - (v) investment in operating leases, net;
 - (vi) all other assets;
 - (vii) total assets;
 - (viii) short-term debt;
 - (ix) long-term debt;

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- (x) all other liabilities; and
- (xi) total shareholder's equity;
- (c) the Issuer files, in electronic format, within 45 days of its then most recently completed interim period, either (i) interim comparative financial statements, prepared in accordance with Canadian GAAP, or (ii) interim comparative selected financial information prepared in accordance with Canadian GAAP and including the following line items for the most recently completed interim period (for financial years beginning on or after January 1, 2005) and for items (i) and (ii) below, the corresponding interim period in the previous financial year and for items (iii) through to and including (x) below, as at the end of the previous financial year:
 - (i) total financing revenue;
 - (ii) net income/loss and, if applicable, income/loss from continuing operations and income/loss from discontinued operations;
 - (iii) finance receivables and loans, net;
 - (iv) allowance for credit losses (included in (iii) above);
 - (v) investment in operating leases, net;
 - (vi) all other assets;
 - (vii) total assets;
 - (viii) short-term debt;
 - (ix) long-term debt;
 - (x) all other liabilities; and
 - (xi) total shareholder's equity; and
- (d) the Issuer's presentation of a Non-Classified Balance Sheet remains permissible under Canadian GAAP.

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The Further Decision of the Decision Makers (other than the Decision Maker in British Columbia) under the Legislation is that the Certification Relief is granted provided that the Issuer is in compliance with the conditions set out in paragraphs (a) through (d) of the Decision above.

John Hughes
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