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Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the qualification criteria in NI 44-101 to permit an issuer that will be the successor issuer following a restructuring to file a short form prospectus as part of the restructuring

Applicable British Columbia Provisions

National Instrument 44-101 – *Short Form Prospectus Distributions*, ss. 2.1 and 15.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF THE
PROVINCES OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEWFOUNDLAND
AND LABRADOR, PRINCE EDWARD ISLAND AND NEW BRUNSWICK**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

**IN THE MATTER OF AIR CANADA AND
ACE AVIATION HOLDINGS INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Prince Edward Island and New Brunswick (collectively the “Jurisdictions”) have received an application (the “Application”) from ACE Aviation Holdings Inc. (“ACE”) and Air Canada (collectively, the “Applicants”) and certain of Air Canada’s subsidiaries for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) Other than in British Columbia, Alberta, Ontario, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, trades in New Securities (as defined below) of the Applicants to the creditors of the Air Canada Parties (as defined below) (the “Creditors”) and Air Canada’s shareholders in exchange for their claims and shares, respectively, made under or in connection with the consolidated plan of reorganization, compromise and arrangement (the “Plan”) be exempt from the

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requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file a preliminary prospectus and a prospectus and obtain receipts therefor (the “Prospectus Requirement”) to the extent that there are no specific statutory exemptions from the Registration Requirement or the Prospectus Requirement, as applicable, in the Legislation in respect of any of such trades in New Securities (as defined below);

- (b) In Québec, ACE be authorized, to benefit from the period of time during which Air Canada was a reporting issuer and complied with the continuous disclosure requirements in the Legislation;
- (c) In Québec, the first trade in New Securities (as defined below) of the Applicants issued under or in connection with the Plan, shall not be subject to the Prospectus Requirement;
- (d) ACE be exempted from the provisions of section 2.1 of National Instrument 44-101 – *Short Form Prospectus Distributions* (“NI 44-101”) so as to permit ACE to file a short form prospectus pursuant to NI 44-101 to qualify the distribution of the rights and the shares of ACE issuable upon the exercise of the rights pursuant to the Offering (as defined below);

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

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Agence nationale d’encadrement du secteur financier (also known as “l’Autorité des marchés financiers”) is the principal regulator for this application;

AND WHEREAS the Applicant has represented to the Decision Makers that:

I. AIR CANADA

1. Air Canada is Canada’s largest domestic and international full-service airline and the largest provider of scheduled passenger services in the domestic market, the Canada-United States market, as well as in the Canada-Europe and Canada-Pacific markets. Air Canada also operates Aeroplan, one of Canada’s largest loyalty programs, and provides other services such as groundhandling, technical, cargo and tourism related services.

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2. The registered and principal office of Air Canada is located at the Air Canada Headquarters Building, Air Canada Centre, 7373 Côte Vertu Boulevard West, Saint-Laurent, Québec, H4Y 1H4.
3. Air Canada is, and has been for the last 12 months, a reporting issuer (or equivalent) in each of the provinces of Canada. Air Canada is also subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended, and to the best of its knowledge, is not in default of any requirement of the Legislation or of the federal securities laws of the United States of America.
4. The issued and outstanding share capital of Air Canada currently consists of common shares (the “Existing AC Common Shares”), Class A non-voting shares (the “Existing AC Class A Shares”) and Class A convertible participating non-voting preferred shares, series 1 and series 2 (the “Existing AC Preferred Shares”).
5. The Existing AC Common Shares and the Existing AC Class A Shares are currently listed on the Toronto Stock Exchange (the “TSX”), under the symbols “AC” and “AC.A”, respectively.
6. As a result of the implementation of the Plan, Air Canada’s authorized share capital will consist of four classes of shares: (i) common shares, which are voting and participating; (ii) Class A non-voting shares, which are non-voting and participating; (iii) non-voting shares (the “AC Non-Voting Shares”), which will be non-voting and participating and exchangeable for ACE Variable Voting Shares or ACE Voting Shares; and (iv) exchangeable distressed preferred shares (the “EDP Shares”), which will be non-voting and participating and will be exchangeable for, in the case of non-Canadian holders, ACE Variable Voting Shares (as defined herein) or, in the case of Canadian holders, ACE Voting Shares (as defined herein) at any time by holders thereof or by Air Canada at any time on or before the date immediately before the fifth anniversary date of issuance of the EDP Shares. There is a possibility that the EDP Shares will not be utilized once the tax structure for the restructuring of Air Canada will be finalized (which is anticipated shortly). In addition, there is a possibility that non-voting shares will be used instead of variable voting shares.

II. ACE

7. ACE will be incorporated under the *Canada Business Corporations Act* (“CBCA”) prior to the filing of the preliminary prospectus with the

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Jurisdictions for the purpose of, among other things, effecting an exchange of the claims of the Creditors with proven claims in accordance with the provisions of the Plan and to proceed with the offering of rights (the “Offering”) described herein.

8. Following the implementation of the Plan, Air Canada will be the main operating company in a consolidated group of which ACE will be the parent holding company.
9. Subject to any changes that could result from the equity solicitation process, ACE’s authorized share capital is expected to consist of two classes of shares: (i) an unlimited number of variable voting shares (the “ACE Variable Voting Shares”), which are variable voting and participating; and (ii) an unlimited number of voting shares (the “ACE Voting Shares”), which are voting and participating.

III. Background and summary of the Plan

CCAA Filing

10. On April 1, 2003, Air Canada obtained an order from the Ontario Superior Court of Justice (the “Court”) providing for debtor protection under the *Companies’ Creditors Arrangement Act* (Canada) (“CCAA”). Through the Court-appointed monitor, Ernst & Young Inc. (the “Monitor”), Air Canada also made a concurrent petition for recognition and ancillary relief under Section 304 of the United States Bankruptcy Code. The CCAA and U.S. proceedings cover Air Canada and the following of its wholly-owned subsidiaries: 3838722 Canada Inc., Air Canada Capital Ltd., Jazz Air Inc., Manoir International Finance Inc., Simco Leasing Ltd., Wingco Leasing Inc. and Zip Air Inc. (collectively, the “Air Canada Parties”).

Equity Financing

11. On July 16, 2003, Air Canada commenced an equity investment solicitation process to raise approximately \$700 million of its overall equity financing needs in connection with the Plan. Following a lengthy equity investment solicitation process, Trinity Time Investments Limited (“Trinity”) was initially selected as the equity sponsor for the Plan. On April 2, 2004, Trinity announced that it was not going to seek an extension of its investment agreement with Air Canada upon its expiry on April 30, 2004.

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12. Consequently, after having held numerous discussions with Air Canada's stakeholders, including labour unions, Financial Creditors (as defined below), advisors to the unsecured creditors committee, General Electric Capital Corporation ("GECC") and GE Capital Aviation Services, the Monitor and Air Canada developed a revised equity process consisting of: (i) the expansion of the Offering to \$850 million with the continued support of Deutsche Bank Securities Inc. ("Deutsche Bank") through the Amended Standby Agreement (as defined below), and (ii) the design of a new equity solicitation process to potentially raise an additional \$250 million with a short due diligence period and low conditionality provisions so as to mitigate closing risk. The equity raised pursuant to the Amended Standby Agreement (as defined below) will be sufficient to fund Air Canada's exit from CCAA Proceedings in the event the new equity solicitation process does not result in raising an additional \$250 million. The terms of the revised equity process were approved by the Court on May 4, 2004.
13. Proposed investment agreements will be evaluated by Air Canada and the Monitor who have until June 20 2004 to make a selection and, if a potential equity investor is selected, Air Canada and the Monitor will seek Court approval on June 25, 2004.
14. The successful conclusion of an equity investment further to the new equity solicitation process is not a condition of the Amended Standby Agreement, the Offering or the Plan. Failure to complete an investment pursuant to the equity solicitation process will not affect the emergence by the Applicants from the CCAA proceedings.

Offering

15. In the context of the original equity solicitation process, informal expressions of interest were received from certain of Air Canada's Financial Creditors in connection with a possible offering of rights. Negotiations between Air Canada, its advisors and certain Financial Creditors resulted in the announcement, on October 24, 2003, that Air Canada had entered into a standby purchase agreement with Deutsche Bank pursuant to which Air Canada would offer the Creditors the opportunity to subscribe for equity of ACE for an aggregate amount up to \$450 million.
16. Further to Trinity's announcement on April 2, 2004 that it was not to seek an extension of the investment agreement with Air Canada upon its expiry on April 30, 2004, Deutsche Bank indicated its willingness to

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continue to support Air Canada through a possible expansion of its commitment to back-stop a larger offering of rights. On April 29, 2004, an amended and restated standby purchase agreement (the “Amended Standby Agreement”), increasing the size of the offering of rights from \$450 million to \$850 million was entered into between Air Canada and Deutsche Bank and was approved by the Court on May 5, 2004. Deutsche Bank is entitled to terminate the Amended Standby Agreement if, among other things (i) Air Canada fails to file the Plan with the Court on or before June 30, 2004; (ii) the Creditors’ meeting does not take place on or prior to August 15, 2004; or (iii) the completion of the restructuring does not occur on or before September 30, 2004.

17. Under the terms of the Offering, Creditors will have the right to subscribe for up to \$850 million of equity of ACE. Pursuant to the Amended Standby Agreement, Deutsche Bank will act as the exclusive standby purchaser and, in that capacity, will purchase all the equity not purchased at a price equal to the price paid by the Creditors plus a premium of 7.5%. Under the terms of the Amended Standby Agreement, Deutsche Bank has the right to participate out its right (but not its direct obligations to Air Canada) to purchase any equity not purchased by other Creditors under the Offering.

The Plan

18. The Plan is designed to be implemented over a three-day implementation period (the “Closing”) through a series of transactions pursuant to which, *inter alia*:
 - (a) the Existing AC Preferred Shares will be converted into redeemable shares in the capital of Air Canada (the “AC Redeemable Shares”);
 - (b) an exchange feature will be added to Existing AC Class A Shares and Existing AC Common Shares providing for their exchange, at Air Canada’s option, pursuant to which ACE, at any time after the redemption of the AC Redeemable Shares (referred to in paragraph above), on exercise of the option, shall deliver ACE Variable Voting Shares to the holders of Existing AC Class A Shares, and ACE Voting Shares to the holders of Existing AC Common Shares, in exchange for ACE receiving all of the outstanding and issued Existing AC Common Shares and Existing AC Class A Shares, such exchange to occur on a one-for-one basis;

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- (c) Air Canada shall redeem the AC Redeemable Shares for a consideration equal to \$1.00;
- (d) Air Canada shall exercise the exchange right and cause ACE to effect the exchange of Existing AC Class A Shares and Existing AC Common Shares for ACE Variable Voting Shares and ACE Voting Shares, respectively, on a one-for-one basis;
- (e) all of the issued and outstanding shares in the capital of Air Canada will be consolidated at a conversion ratio resulting in the Existing AC Common Shares and Existing AC Class A Shares being equal in number to that number of ACE Variable Voting Shares and ACE Voting Shares which will exist immediately after their consolidation pursuant to the Plan;
- (f) the EDP Shares and AC Non-Voting Shares shall be created;
- (g) Air Canada will issue EDP Shares to Creditors with proven financial debt claims ("Financial Creditors") and to Creditors having disputed claims on the Initial Determination Date (as defined herein) (in the latter case, to be held in escrow by the Monitor and distributed when disputed claims are resolved) in accordance with each holder's pro rata share of the available EDP Shares;
- (h) Air Canada will issue AC Non-Voting Shares to Creditors (other than Financial Creditors) with proven claims on the Initial Determination Date in accordance with each holder's pro rata share of the available AC Non-Voting Shares;
- (i) Subscription rights for ACE Variable Voting Shares (or, in the case of Canadians, ACE Voting Shares) shall be offered to Creditors with claims, proven or not, participating in the Offering in accordance with the terms of the Offering;
- (j) contemporaneously with the following step, holders of AC Non-Voting Shares will exchange their shares for ACE Variable Voting Shares or, in the case of Canadians, ACE Voting Shares, on a one-for-one basis (the ACE Variable Voting Shares and the ACE Voting Shares issued pursuant to the exchange will not be affected by the consolidation provided in the following step);

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- (k) the ACE Variable Voting Shares and ACE Voting Shares will be consolidated as per the terms of the articles of incorporation of ACE;
 - (l) contemporaneously with the preceding step, the equity investor, if there is one, would subscribe and pay for the equity of ACE;
 - (m) fractional ACE Variable Voting Shares and ACE Voting Shares issued pursuant to the consolidation of the equity of ACE will be cancelled without any consideration; and
 - (n) Creditors who exercise their rights under the Offering and Deutsche Bank, as standby purchaser under the Offering, will subscribe for ACE Variable Voting Shares, or, in the case of Canadians, ACE Voting Shares, the whole in accordance with the terms of the Offering.
19. Following the implementation of the Plan, Air Canada expects that the ACE Variable Voting Shares and the ACE Voting Shares of ACE and the AC Non-Voting Shares and the EDP Shares of Air Canada will be listed on the TSX.
20. The Plan contemplates a number of trades of securities in the Jurisdictions, including, but not limited to:
- (a) the issue by Air Canada of AC Redeemable Shares to all holders of Existing AC Preferred Shares;
 - (b) the issue by ACE of ACE Variable Voting Shares, to all the holders of Existing AC Class A Shares, and ACE Voting Shares to all the holders of Existing AC Common Shares, in exchange for ACE receiving all of the outstanding and issued Existing AC Common Shares and Existing AC Class A Shares;
 - (c) the issue by Air Canada of EDP Shares to (i) Financial Creditors, and (ii) Creditors with disputed claims on the Initial Determination Date, the whole in accordance with each holder's pro rata share of the available EDP Shares;
 - (d) the issue by Air Canada of AC Non-Voting Shares to Creditors with proven claims in accordance with each holder's pro rata share of the available AC Non-Voting Shares;

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- (e) the issue by ACE of ACE Variable Voting Shares or, in the case of Canadians, ACE Voting Shares, to holders of AC Non-Voting Shares in exchange for their AC Non-Voting Shares;
- (f) the issue by Air Canada of EDP Shares to the Monitor on account of disputed claims, to be held in escrow and to be distributed as detailed above as disputed claims are resolved; and
- (g) the issue by ACE of ACE Variable Voting Shares or, in the case of Canadians, ACE Voting Shares, to holders of EDP Shares upon the exchange of such EDP Shares.

(such securities being collectively, the “New Securities”).

Allocations of ACE Shares to Canadians and Non-Canadians

- 21. ACE Voting Shares will be distributed to Creditors with proven claims who are Canadians and to holders of Existing AC Common Shares. ACE Variable Voting Shares will be distributed to Creditors with proven claims who are not Canadians and to holders of Existing AC Class A Shares.

Approval of the Plan, Information Circular and Court Hearings

- 22. The Plan is subject to approval by Air Canada’s Creditors, voting as a single class, as well as approval by the Court following a sanction hearing at which the Creditors and Air Canada’s shareholders will have the right to appear and be heard (the “Hearing”), and the satisfaction of certain other conditions. Among other things, the Court must make an affirmative determination that the terms and conditions of the Plan are fair and reasonable. Air Canada expects the Hearing to occur shortly after the meeting of the Creditors, which is scheduled to be held on or about August 13, 2004.
- 23. The information circular (the “Information Circular”) containing prospectus-level disclosure is being prepared in connection with the Plan and will also constitute the prospectus (the “Prospectus”) to qualify the distribution of the rights and shares of ACE pursuant to the Offering. Prior to its mailing, the Information Circular will be submitted to the Court on June 30, 2004. Since the interests of Air Canada’s existing shareholders will be essentially eliminated under the Plan, Air Canada’s existing shareholders will not be entitled to vote on the Plan. Pursuant to the CCAA and the CBCA, and as contemplated by the Plan, the Court

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will be asked to issue an order providing that only the Creditors will be permitted to vote on the Plan and setting forth the notice procedures with respect to the meeting of Creditors (the "Meeting"). The Information Circular and notice of the Meeting will be mailed to all Creditors whose claims have not been rejected as of the time of mailing. Pursuant to the CCAA, in order for the Plan to be binding on Air Canada's Creditors, the resolution to approve the Plan (the "Resolution") must first be accepted by a majority in number of the Creditors voting on the Resolution (in person or by proxy) at the Meeting and representing not less than 66 2/3% in value of the claims of the Creditors voting at the Meeting.

24. If the Plan is approved by the Creditors, its implementation will be subject to the further approval of the Court at the Hearing. As stated above, notice of the Hearing will be provided to the Creditors and Air Canada's shareholders, and Creditors and shareholders will have the right to appear and be heard at the Hearing.

Issuance of Securities in Exchange for Creditor Claims and Air Canada Shares

25. As part of the Plan, the Court has issued a claims procedure order setting forth a procedure for resolving and establishing the level of proven claims of Creditors. The claims resolution process is likely to continue beyond the time of Closing. When the amount of disputed claims has been reduced to an amount specified in the Plan (the "Initial Determination Date"), the initial distributions to be made under the Plan will be calculated. The equity securities to be distributed to Creditors per dollar of proven claim will be based upon the total amount of proven and disputed claims as of the Initial Determination Date. The first distribution of securities will be made on the Initial Distribution Date only to Creditors with proven claims as of the Initial Determination Date. The balance of the securities will be issued but held in escrow by the Monitor, pending resolution of the disputed claims. It is expected that there will be one or more subsequent distributions of securities as disputed claims are resolved. To the extent that disputed claims are resolved in favour of the Creditors, distributions of securities will be made to such Creditors. To the extent that the disputed claims are rejected, the Creditors with previously proven claims will receive additional securities. Each subsequent distribution of securities will be purely a mechanical exercise, with the identity of Creditors receiving securities and the number received by each determined solely by the results of the claims resolution process.

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26. The Offering will follow a similar timeline. Creditors holding disputed claims will be permitted to participate in the Offering pending the resolution of their claims. Under the Amended Standby Agreement, Deutsche Bank will purchase the equity securities of ACE that are not purchased by Creditors pursuant to the Offering. The equity securities of ACE issued pursuant to the Offering (including those issued to Deutsche Bank as standby purchaser) will be qualified by the Prospectus in Canada. The equity securities of ACE issued pursuant to the Offering (excluding those issued to Deutsche Bank as standby purchaser) will be registered by registration statement on Form F-10 in the United States under the Canada United States of America multi-jurisdictional disclosure system ("MJDS").
27. A final closing will be held several months after the Closing, once the disputed claims will have been resolved or reduced to a nominal amount. At that time, to the extent that disputed claims are resolved in favor of the Creditors, such Creditors will receive their entitlement pursuant to the Plan, as well as equity securities of ACE subscribed for pursuant to the Offering. To the extent that disputed claims are rejected, Creditors with previously proven claims will receive additional distributions and, to the extent that they submitted subscriptions pursuant to the Offering, will receive additional equity securities of ACE. As standby purchaser, Deutsche Bank will also receive additional equity securities of ACE that were not ultimately subscribed for by Creditors pursuant to the Offering.
28. One of the conditions to the implementation of the Plan is the obtaining of all applicable approvals and orders of applicable Canadian and U.S. securities regulatory authorities and the TSX with respect to the issuance, listing and posting for trading of all securities to be issued under or in connection with the Plan to permit holders of such securities to freely trade and dispose of all securities in the ordinary course.
29. Pursuant to the restructuring, Air Canada will contribute 100% of the consolidated assets, and revenues from continuing operations of ACE. All the financial results and information of Air Canada will be reflected in ACE's financial statements.
30. Air Canada was, before its filing for protection under the CCAA and will be on the date of the filing of the Prospectus, entitled to use the short form prospectus system under the qualification criteria in Section 2.2 of NI 44-101. Upon the completion of the restructuring, the business of ACE will essentially be the current business of Air Canada and ACE will comply upon the completion of the restructuring with Sections 2.3 and

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2.8 of NI 44-101, including in connection with ACE's aggregate market value which is expected to be over \$300 million as of that time. ACE will also adopt as its own Air Canada's public documents including Air Canada's annual information form. Upon the completion of the restructuring, ACE will be qualified to use NI 44-101.

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 Makers pursuant to the Legislation is that:

- (i) Other than in British Columbia, Alberta, Ontario, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, the Registration Requirements and Prospectus Requirements contained in the legislation shall not apply to the issuance or trades in the New Securities of the Applicants made under or in connection with the Plan.
- (ii) In Québec, ACE shall be authorized to benefit from the period of time during which Air Canada was a reporting issuer and complied with the continuous disclosure requirements in the Legislation.
- (iii) In Québec, the first trade in New Securities of the Applicants issued under or in connection with the Plan shall not be deemed to be a distribution or a primary distribution to the public under the Legislation to the extent that, at the time of the trade:
 - (a) the issuer or one of the parties to the Plan (including, for greater certainty, Air Canada) is and has been a reporting issuer in Québec and has complied with the applicable requirements for 4 months; (b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade; (c) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and (d) if the selling securityholder is an insider of the issuer, the selling securityholder has no reasonable ground to believe that the issuer is in default under the Act.
- (iv) ACE be exempted from the provisions of section 2.1 of NI 44-101 so as to permit ACE to file a short form prospectus pursuant to NI 44-101, to

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qualify the distribution of the rights and the Shares of ACE issuable upon the exercise of the rights pursuant to the Offering.

DATED June 30, 2004

Daniel Laurion
Surintendant de la Direction de
l'encadrement des marchés de valeurs