

2003 BCSECCOM 726

Headnote

Mutual Reliance Review System for Exemptive Relief Application - relief from eligibility requirements to allow wholly-owned Canadian subsidiary of an 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 and certain continuous disclosure 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 and 119

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 15.1

National Instrument 44-102 *Shelf Distributions*, s. 11.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, NEWFOUNDLAND AND
LABRADOR, NOVA SCOTIA, PRINCE EDWARD ISLAND, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT**

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

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Yukon, Northwest Territories and Nunavut (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 under the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements contained in the Legislation shall not apply:

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- (a) the requirement under National Instrument 44-101 *Short Form Prospectus Distributions* (“NI 44-101”) and National Instrument 44-102 *Shelf Distributions* (“NI 44-102”) that Ford Credit must be a reporting issuer with a 12-month reporting history in a Jurisdiction (the “Eligibility Requirement”) in connection with the issuance by the Issuer of non-convertible debt securities (“Notes”) with an Approved Rating (as such term is defined in NI 44-101) which are and will continue to be fully and unconditionally guaranteed by Ford Credit pursuant to the Prospectus (as defined below) and any subsequently filed short form base shelf prospectus, and, if applicable, prospectus supplement and pricing supplement filed under NI 44-101 and NI 44-102 (collectively, a “Renewal Prospectus”);
- (b) the requirements under NI 44-101 that (i) the financial statements of Ford Credit that are incorporated or included in the Prospectus and any Renewal Prospectus of the Issuer which are prepared in accordance with U.S. generally accepted accounting principles and audited in accordance with U.S. generally accepted auditing standards be reconciled to Canadian generally accepted accounting principles, and (ii) that the report of Ford Credit’s auditor be reconciled to Canadian standards by disclosing any material differences in form and content from a Canadian auditor’s report and by confirming that the auditing standards applied are substantially equivalent to Canadian generally accepted auditing standards (the “Reconciliation Requirements”);
- (c) the requirement under clause 13.1(1)2 of Form 44-101F3 under NI 44-101 that a summary of financial information relating to the Issuer’s operations be included in a note to Ford Credit’s annual financial statements that are incorporated or included in the Prospectus and any Renewal Prospectus (the “Summary Financial Information Requirement”);
- (d) the requirements that the Issuer:
 - (i) issue and file with the Decision Makers press releases and file with the Decision Makers material change reports (together, the “Material Change Requirements”);
 - (ii) comply with the proxy and proxy solicitation requirements, including filing with the Decision Makers of an information circular or, if not applicable, a report in the prescribed form (the “Proxy Requirements”); and

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- (iii) in Ontario, Quebec and Saskatchewan, the Issuer file with the applicable Decision Maker an annual information form, and, where applicable, interim and annual management discussion and analysis (collectively the “Annual Information Form and MD&A Requirements”).

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 or in Québec Commission Notice 14-101;

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

1. Ford Credit was incorporated under the laws of the State of Delaware in 1959 and is not a reporting issuer or the equivalent in any of the Jurisdictions.
2. Ford Credit has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the “1934 Act”), for more than 20 years with respect to its debt securities. Ford Credit 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. As at December 31, 2002, Ford Credit had in excess of US\$124 billion in long-term debt outstanding. All of Ford Credit’s outstanding long-term debt is rated “BBB” by Standard & Poor’s, “A3” by Moody’s Investors Service, and “BBB+” by Fitch, Inc.
4. Ford Credit has, for a period of more than 12 months, filed its annual reports on Form 10K, quarterly reports on Form 10Q, and current reports on Form 8K in Canada under the System for Electronic Document Analysis and Retrieval (“SEDAR”) established by National Instrument 13-101, under the SEDAR profile of the Issuer.
5. The common stock in the capital of Ford Credit is indirectly owned by Ford Motor Company (“Ford”), a publicly traded Delaware corporation.
6. Ford Credit offers a wide variety of automotive financial services to and through automotive dealers throughout the world under the Ford Credit brand name and through dealers of Ford vehicles and non-Ford dealers. For the year

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ended December 31, 2002, the net income of Ford Credit was approximately US\$1.2 billion.

7. The registered and principal office of the Issuer is in Ontario.
8. The Issuer was incorporated under the federal laws of Canada on July 23, 1962 and was continued under the *Canada Business Corporations Act* on December 5, 1980. The Issuer is an indirect wholly-owned subsidiary of Ford Credit.
9. The Issuer provides wholesale financing and capital loans to authorized Ford Motor Company 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.
10. 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 or the equivalent thereof in the Jurisdictions. As of the date hereof, the Issuer is not in default of any requirements under the Legislation.
11. The long-term debt of the Issuer is currently rated “BBB(High)” by Dominion Bond Rating Service Limited, “BBB” by Standard & Poor’s, “A3” by Moody’s Investors Service, and “BBB+” by Fitch, Inc.
12. As of June 12, 2003, the Issuer had approximately Cdn.\$4.19 billion of Notes outstanding.
13. Ford Credit 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.
14. Except for the fact that the Issuer is not incorporated under United States law, Future Offerings (as defined below) 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.
15. In the circumstances, were Ford Credit to effect an offering of the Notes under the MJDS it would be unnecessary for it to reconcile to Canadian GAAP its

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financial statements included in or incorporated by reference into the prospectus in connection with the issuance of the Notes.

16. Part 7 of NI 44-101 and Item 20.1 of Form 44-101F3 of NI 44-101 require the reconciliation to Canadian GAAP of financial statements prepared in accordance with foreign GAAP that are included in a short form prospectus.
17. The Issuer does not satisfy the alternative qualification criteria for issuers of guaranteed non-convertible debt securities, as set out in section 2.5 of NI 44-101, solely because Ford Credit (as guarantor of Future Offerings) is not a reporting issuer or the equivalent in any Jurisdiction notwithstanding that Ford Credit has filed in the Jurisdictions for more than 12 months its continuous disclosure documents filed with the SEC in the U.S.
18. The Issuer has established a program to raise up to approximately Cdn.\$3 billion in Canada through the issuance of Notes from time to time during the currency of the Prospectus (as defined below), pursuant to a short form base shelf prospectus dated December 6, 2002, prospectus supplement dated December 6, 2002 and applicable pricing supplements (collectively, the "Prospectus"), and the Issuer intends to effect future offerings ("Future Offerings") of Notes by filing a Renewal Prospectus upon the lapse of the Prospectus and each Renewal Prospectus.
19. The Issuer was exempted from the Reconciliation Requirements and the Summary Financial Information Requirement in respect of the Prospectus as was evidenced by the issuance of a receipt therefor by the Decision Makers.
20. The Notes are and will continue to be 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 the failure by the Issuer to make any such payment. All Notes are and will continue to have an Approved Rating (as defined in 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 in Ontario, Québec and Saskatchewan is that the Annual Information Form and MD&A Requirements shall not apply to the

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Issuer, so long as the Issuer and Ford Credit comply with all of the requirements of the Decisions below.

Dated September 30, 2003.

Cameron McInnis

THE DECISION of the Decision Makers under the Legislation is that the Eligibility Requirement, the Reconciliation Requirements and the Summary Financial Information Requirement shall not apply to offerings of Notes under the Prospectus or to Future Offerings under any Renewal Prospectus provided that:

- (a) the Issuer complies with all of the other requirements of NI 44-101 and NI 44-102, except as varied in paragraph (c) below;
- (b) at all times during the currency of the Prospectus and each Renewal Prospectus:
 - (i) Ford Credit files with the Decision Makers an annual information form in the form of an annual report on Form 10-K (“Ford Credit’s AIF”) for each of its subsequently completed fiscal years ended December 31, in electronic format through SEDAR (as defined in National Instrument 13-101) under the Issuer’s SEDAR profile on the same date as, or as soon as practicable after, the date on which Ford Credit files or furnishes the material to the SEC; and
 - (ii) Ford Credit files with the Decision Makers, in electronic format under the Issuer’s SEDAR profile, the Form 10Qs and the Form 8Ks that Ford Credit has filed under sections 13 and 15(d) of the 1934 Act on the same date as, or as soon as practicable after, the date on which Ford Credit files or furnishes the material to the SEC;
- (c) each Renewal Prospectus is prepared pursuant to the procedures contained in NI 44-101 and NI 44-102 and complies with the requirements set out in Form 44-101F3, with the disclosure required by Item 12 of Form 44-101F3 being addressed by incorporating by reference Ford Credit’s public disclosure documents as well as Ford Credit’s AIF, and instead of the financial information disclosure required by item 13.1(1)2 of Form 44-101F3, the Issuer will incorporate by reference in each Renewal Prospectus the applicable documents set forth in paragraphs (j) and (k) of the Further Decision below;

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- (d) each Renewal Prospectus includes all material disclosure concerning the Issuer;
- (e) each Renewal Prospectus incorporates by reference disclosure made in Ford Credit's most recent Form 10-K (as filed under the 1934 Act) together with all Form 10-Qs and Form 8-Ks filed under the 1934 Act in respect of the financial year following the year that is the subject of Ford Credit's most recently filed Form 10-K and incorporates by reference any documents of the foregoing type filed after the date of such Renewal Prospectus and prior to termination of the applicable Future Offering;
- (f) the consolidated annual and interim financial statements of Ford Credit that will be included in or incorporated by reference into the Prospectus and each Renewal Prospectus are prepared in accordance with U.S. GAAP as supplemented by the SEC and otherwise comply with the requirements of U.S. law, and in the case of audited financial statements, such financial statements are audited in accordance with U.S. GAAS;
- (g) Ford Credit continues to fully and unconditionally guarantee the Notes as to the payments required to be made by the Issuer to holders of the Notes;
- (h) the Notes have an Approved Rating (as defined in NI 44-101);
- (i) Ford Credit signs each Renewal Prospectus as credit supporter;
- (j) Ford Credit or an affiliate thereof remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- (k) Ford Credit 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; and
- (l) Ford Credit undertakes to file with the Decision Makers, in electronic format under the Issuer's SEDAR profile, all documents that it files under sections 13 and 15(d) of the 1934 Act until such time as the Notes are no longer outstanding.

Dated September 30, 2003.

Cameron McInnis

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THE FURTHER DECISION of the Decision Makers under the Legislation is that the Material Change Requirements and the Proxy Requirements (collectively, the “Continuous Disclosure Requirements”), in all Jurisdictions having Continuous Disclosure Requirements, shall not apply to the Issuer, so long as:

- (a) in place of the Material Change Requirements: (i) Ford Credit files with the Decision Makers the mandatory reports on Form 8-K (including press releases) filed by Ford Credit with the SEC on the same date as, or as soon as practicable after, the date on which Ford Credit files the report with the SEC; (ii) Ford Credit forthwith issues in each Jurisdiction any press release that discloses material information and which is required to be issued in connection with the mandatory Form 8-K requirements applicable to Ford Credit; (iii) 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 Ford Credit, 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 material in respect of Ford Credit; and (iv) such documents are provided, as soon as practicable, to holders of Notes whose last address as shown on the books of the Issuer is in Canada, in the manner and if required by applicable US law to be sent to Ford Credit debt holders resident in the US;
- (b) in the place of the Proxy Requirements: (i) Ford Credit shall comply with the requirements of the 1934 Act and the rules and regulations thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meetings of its noteholders (if any); (ii) Ford Credit shall file with the Decision Makers the materials relating to any such meeting filed by Ford Credit within one business day after they are filed by Ford Credit with the SEC; and (iii) such documents are provided, as soon as practicable, to holders of Notes whose last address as shown on the books of the Issuer is in Canada, in the manner and if required by applicable US law to be sent to Ford Credit debt holders resident in the US;
- (c) Ford Credit or an affiliate thereof remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer;
- (d) Ford Credit maintains a class of securities registered pursuant to the 1934 Act;
- (e) Ford Credit signs each Renewal Prospectus as credit supporter;
- (f) Ford Credit 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

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any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada;

- (g) the Notes have an Approved Rating (as defined in NI 44-101);
- (h) Ford Credit continues to fully and unconditionally guarantee the Notes as to the payments required to be made by the Issuer to holders of the Notes;
- (i) the Issuer does not issue additional securities other than Notes and debt securities ranking *pari passu* or junior to the Notes, and other than securities issued to Ford Credit or Ford or to wholly owned subsidiaries of Ford Credit or Ford;
- (j) the Issuer continues to file, in electronic format on SEDAR, annual audited comparative financial statements for each completed financial year, prepared in accordance with generally accepted accounting principles in Canada ("Canadian GAAP"), accompanied by a report of the auditors of the Issuer;
- (k) the Issuer continues to file, in electronic format on SEDAR, interim comparative consolidated financial statements for each completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP, together with earnings coverage ratios as and if required by the Legislation;
- (l) such filings as are referred to in (j) and (k) above are provided, as soon as practicable, to holders of Notes whose last address as shown on the books of the Issuer is in Canada, in the manner and if required by applicable US law to be sent to Ford Credit debt holders resident in the US;
- (m) Ford Credit provides, as soon as practicable, copies of all continuous disclosure documents filed by it with the SEC under sections 13 and 15(d) of the 1934 Act, including, but not limited to, copies of any Form 10-K and Form 10-Q to holders of Notes whose last address as shown on the books of the Issuer is in Canada, in the manner and if required by applicable US law to be sent to Ford Credit debt holders resident in the US;
- (n) such filings as are referred to in (j) and (k) above are made within the time limits required by the Legislation in respect of such financial statements; and

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- (o) all filing fees that would otherwise be payable by the Issuer in connection with the Continuous Disclosure Requirements are paid.

Dated September 30, 2003

Paul M. Moore

Wendell S. Wigle