

# 2005 BCSECCOM 480

June 30, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - 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 its parent issuer is not incorporated in the United States and the credit support issuer has issued securities that differ in some ways from those described in the credit support issuer exemption

National Instrument 44-101, s. 15.1 – exemption granted to credit support issuer from the requirement that its credit supporter have a 12-month reporting issuer history in a Canadian jurisdiction and that it includes certain information in its prospectus

National Instrument 44-102, s. 11.1 – exemption granted to a credit support issuer from the requirement to update earnings coverage ratios - the credit supporter is the beneficial owner of all of the issued and outstanding securities of the issuer; the credit supporter is registered under the 1934 Act and is eligible to use MJDS to distribute approved rating non-convertible debt in Canada; the issuer will incorporate into its prospectus certain continuous disclosure documents of its credit supporter in place of its own continuous disclosure

## **Applicable British Columbia Provisions**

National Instrument 51-102, ss. 13.1 and 13.4

National Instrument 44-101, s. 15.1

Form 44-101F3, Items 7, 12.1, 12.2

National Instrument 44-102, s. 11.1

In the Matter of  
the Securities Legislation  
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New  
Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador,  
Yukon Territory, Northwest Territories and Nunavut  
(the “Jurisdictions”)

and

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

and

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In the Matter of DaimlerChrysler Canada Finance Inc. and DaimlerChrysler AG  
(the “Filers”)

## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in the Jurisdictions has received an application from DaimlerChrysler Canada Finance Inc. (“DCCFI”) and DaimlerChrysler AG (“DCAG”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) exempting DCCFI from (the “Relief”):

- (i) the application of National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”), pursuant to section 13.1 of NI 51-102, and the application of any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102, except in Prince Edward Island and Northwest Territories;
- (ii) the requirements of National Instrument 44-101 - *Short Form Prospectus Distributions* (“NI 44-101”) and National Instrument 44-102 – *Shelf Distributions* (“NI 44-102”) that a person or company guaranteeing non-convertible debt issued by an issuer be a “reporting issuer” with a 12 month reporting history in a Jurisdiction and have a “current AIF” in order to qualify to file a prospectus in the form of a short form prospectus for a distribution of guaranteed non-convertible securities in the Jurisdictions (the “Eligibility Requirement”), pursuant to section 15.1 of NI 44-101 and section 11.1 of NI 44-102, respectively;
- (iii) the requirements of NI 44-101 and NI 44-102 that an issuer have a “current AIF” in order to qualify to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities with an approved rating in the Jurisdictions (the “AIF Requirement”), pursuant to section 15.1 of NI 44-101 and section 11.1 of NI 44-102, respectively;
- (iv) the requirements of NI 44-101 that a short form prospectus include the information set forth in Item 7, Items 12.1(1) and 12.1(2) and Item 12.2 of Form 44-101F3 of NI 44-101 (the “Prospectus Disclosure Requirements”), pursuant to section 15.1 of NI 44-101; and
- (v) the requirements of NI 44-102 that an issuer distributing securities by way of a medium term note program (“MTN Program”) using the Shelf Procedures

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(as hereinafter defined) update earnings coverage ratios (the “Earnings Coverage Requirement”), pursuant to section 11.1 of NI 44-102.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Autorité des marchés financiers 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*, Québec Commission Notice 14-101, National Instrument 44-101 - *Short Form Prospectus Distributions* and National Instrument 51-102 – *Continuous Disclosure Obligations* have the same meaning in this decision unless they are defined this decision.

### **Representations**

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

1. DCCFI is a corporation incorporated under the laws of Québec by articles of incorporation dated November 8, 1994.
2. DCCFI does not carry on an operating business. DCCFI was formed to access Canadian and foreign capital markets to raise funds, which it lends to the DCAG subsidiaries in Canada through a consolidated funding and cash management system. DCCFI obtains financing through the issuance in Canada and elsewhere of term debt, including medium term notes, and commercial paper.
3. DCCFI is a “reporting issuer” or its equivalent in each Jurisdiction where such status exists and is not included in a list of defaulting reporting issuers maintained by any of the Decision Makers.
4. DCAG is a corporation incorporated on May 6, 1998 under the laws of the Federal Republic of Germany.
5. DCAG and its subsidiaries develop, manufacture, distribute and sell a wide range of automotive products, mainly passenger cars, light trucks and commercial vehicles.
6. DCAG is the indirect beneficial owner of all of the issued and outstanding voting securities of DCCFI.

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7. The ordinary shares of DCAG are registered under section 12(b) of the *Securities Exchange Act of 1934*, as amended (the “1934 Act”), of the United States of America. DCAG is subject to the reporting requirements of the 1934 Act. DCAG has filed, for a period of more than 5 years, all reports required to be filed with the Securities and Exchange Commission (“SEC”) under the 1934 Act, including annual reports on Form 20-F, quarterly reports on Form 6-K and current reports on Form 6-K, and prior thereto Chrysler Corporation or its predecessors had filed, for a period of more than 40 years, all reports required to be filed with the SEC under the 1934 Act. DCAG is in compliance with the requirements of the *Securities Exchange Act of 1933*, as amended, of the United States of America and the 1934 Act.
8. The ordinary shares of DCAG are listed on, among other exchanges, the Frankfurt Stock Exchange (“FSE”) and the New York Stock Exchange (“NYSE”). DCAG is in compliance with the requirements of the FSE and NYSE in respect of making public disclosure of material information on a timely basis.
9. As at December 31, 2004, DCAG had an aggregate of 1,012,824,191 ordinary shares issued and outstanding worldwide, with a market capitalization of €5.7 billion. As at December 31, 2004, DCAG also had approximately €45.0 billion in long-term financial instruments outstanding worldwide. All of DCAG’s long-term debt is rated “BBB” by Standard & Poor’s, a division of the McGraw-Hill Companies, Inc. (“S&P”), “A-3” by Moody’s Investor Services Inc., “BBB+” by Fitch Ratings Ltd. and “A (low)” by Dominion Bond Rating Service Limited (“DBRS”), being approved ratings under NI 44-101. DCAG expects that its long-term debt will continue to receive an approved rating.
10. DCCFI established a MTN Program in the Jurisdictions under former National Policy Statement No. 47 and former National Policy Statement No. 44 by way of filing a short form base shelf prospectus dated March 14, 2000 and having received a receipt therefor from each of the Decision Makers. DCCFI renewed its MTN Program in the Jurisdictions under NI 44-101 and NI 44-102 (collectively, the “Shelf Procedures”) by way of filing a short form base shelf prospectus dated April 11, 2002 and a short form base shelf prospectus dated May 11, 2004 and applicable pricing supplements (the “2004 Prospectus”) and having received receipts therefor from each of the Decision Makers.
11. As at December 31, 2004, DCCFI had approximately CDN. \$CDN 3,438,828,000 in medium term notes outstanding under its Canadian MTN Program, approximately CDN \$1,921,420,000 or €1,200,000,000 in medium

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term notes outstanding under its European medium term note program and approximately CDN. \$732,150,000 in commercial paper outstanding. The medium term notes and the commercial paper are the only securities of DCCFI that are held by the public in Canada. All of DCCFI's medium term notes are rated "A (low)" by DBRS, with a stable trend, and "BBB" by S&P, with a stable outlook, each being an approved rating under NI 44-101. All of DCCFI's commercial paper is rated "R-1 (low)" by DBRS, with a stable trend, "A-2" by S&P and Prime-2 by Moody's Investors Service, Inc., each being an approved rating under NI 51-102. DCCFI expects that its medium term notes and its commercial paper will each continue to receive an approved rating.

12. Under DCCFI's commercial paper program ("CP Program"), the aggregate principal amount of negotiable promissory notes or commercial paper ("Commercial Paper") that DCCFI is currently entitled to distribute is not to exceed \$2,500,000,000 in lawful money of the United States of America. All Commercial Paper issued by DCCFI under its CP Program matures not more than one year from the date of issue, is not convertible into or accompanied by a right to purchase another security, has an approved rating from an approved rating organization, and each such Commercial Paper traded to an individual has a denomination or principal amount of not less than \$50,000.
13. Under DCCFI's MTN Program, the aggregate principal amount of medium term notes ("Notes") that DCCFI is entitled to distribute under the 2004 Prospectus during the twenty-five month period that the 2004 Prospectus remains valid will not exceed \$5,000,000,000 in lawful money of Canada or the equivalent thereof in other currencies (the "Current Offering").
14. DCAG is a credit supporter of DCCFI by virtue of DCAG providing a full and unconditional guarantee of the payments to be made by DCCFI under the Notes, as stipulated in the terms of the Notes, that results in the holder of such Notes being entitled to receive payment from DCAG duly and punctually on demand upon any failure by DCCFI to make a payment. Neither the terms of the Notes nor the agreements governing the rights of holders of the Notes expressly entitle holders of Notes to receive payment from DCAG within 15 days of any failure by DCCFI to make a payment.
15. DCCFI may, in the future, file renewal short form base shelf prospectuses and, if applicable, prospectus supplements and pricing supplements (collectively, the "Renewal Prospectuses") in the Jurisdictions using the Shelf Procedures prior to the lapse of the 2004 Prospectus and the Renewal Prospectuses and file additional short form base shelf prospectuses and, if applicable, prospectus supplements and pricing supplements (collectively,

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“Prospectuses”) in the Jurisdictions using the Shelf Procedures, in respect of the distribution by DCCFI of additional Notes from time to time (the “Future Offerings” and, together with the Current Offering, the “Offerings” and, individually, an “Offering”).

16. All Notes issued by DCCFI pursuant to the Current Offering and the Future Offerings will have received an approved rating and DCAG will have provided a full and unconditional guarantee of the payments to be made by DCCFI, to be stipulated in the terms of the Notes, that results in the holder of such Notes being entitled to receive payment from DCAG duly and punctually on demand upon any failure by DCCFI to make a payment.
17. DCCFI is unable to rely upon the exemption for credit support issuers from the application of NI 51-102 contained in section 13.4 of NI 51-102 (the “Credit Support Issuer Exemption”), since:
  - (a) DCAG is not incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;
  - (b) neither the terms of the Notes nor any agreement governing the rights of holders of the Notes expressly entitle holders of Notes to receive payment from DCAG within 15 days of any failure by DCCFI to make a payment; and
  - (c) DCCFI issues Commercial Paper that is not designated credit support securities.
18. On June 20, 2005, DCCFI issued and filed a news release announcing that it had submitted an application to the Decision Makers for an exemption from the continuous disclosure requirements under the Legislation of the Jurisdictions, including preparing and filing annual and interim financial statements, management’s discussion and analysis with respect thereto, an annual information form and material change reports.

### **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 Makers in Prince Edward Island and Northwest Territories) under the Legislation is that DCCFI be exempted from the application of NI 51-102, and the application of any

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comparable continuous disclosure requirements under the Legislation of the Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102, provided that:

- (a) DCAG and DCCFI are in compliance with the requirements and conditions of section 13.4 of NI 51-102, other than the requirements of:
  - (i) subsection 13.4(1) of NI 51-102 that:
    - (A) DCAG be incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia; and
    - (B) the holders of designated credit support securities be entitled to receive payment from the credit supporter within 15 days of any failure by the credit support issuer to make a payment; and
  - (ii) paragraph 13.4(2)(c) of NI 51-102 to the extent that DCCFI issues Commercial Paper that is not designated credit support securities;
- (b) DCAG remains incorporated or organized under the laws of the Federal Republic of Germany;
- (c) the only credit supporter of DCCFI is DCAG;
- (d) DCAG has provided a full and unconditional guarantee of the payments to be made by DCCFI under the Notes, as stipulated in the terms of the Notes or in any agreement governing the rights of holders of the Notes, that results in the holder of such Notes being entitled to receive payment from DCAG duly and punctually on demand upon any failure by DCCFI to make a payment; and
- (e) DCCFI does not issue any securities, other than:
  - (i) securities described in subparagraphs 13.4(2)(c)(i) through (iii) of NI 51-102, as amended or replaced from time to time; or
  - (ii) negotiable promissory notes or commercial paper that satisfies the requirements of the commercial paper exemption from the prospectus requirement of the Legislation of the Jurisdiction in

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which such notes or commercial paper are traded and, upon proposed National Instrument 45-106 – *Prospectus and Registration Exemptions* coming into force in a Jurisdiction in which such notes or commercial paper are traded, that satisfies the requirements of the commercial paper exemption from the prospectus requirement of the Legislation in that Jurisdiction contained in such instrument.

The further decision of the Decision Makers under the Legislation is that DCCFI be exempted from the Eligibility Requirement, the AIF Requirement, the Prospectus Disclosure Requirements and the Earnings Coverage Requirement in connection with any Offering, provided that:

- (a) DCCFI complies with all of the other requirements of NI 44-101 and NI 44-102, except as varied by this Decision or as permitted by NI 44-102;
- (b) at all times during the currency of the 2004 Prospectus and prior to the filing of any Renewal Prospectuses or any Prospectuses in connection with other Future Offerings, DCAG has caused to be filed with the Decision Makers, in electronic format under DCCFI'S SEDAR profile, the following documents required to be filed with the SEC under section 13 and 15(d) of the 1934 Act, at the same time or as soon as practicable after the filing by DCAG of those documents with the SEC, since its last fiscal year end:
  - (i) the most recent annual report on Form 20-F of DCAG filed with the SEC;
  - (ii) all quarterly reports on Form 6-K of DCAG filed with the SEC for the then most recently completed fiscal quarter; and
  - (iii) all current reports on Form 6-K of DCAG required to be filed with the SEC;
- (c) the 2004 Prospectus, any Renewal Prospectuses or any Prospectuses in connection with Future Offerings are prepared in accordance with NI 44-101 and NI 44-102 and comply with the requirements set out in Form 44-101F3 of NI 44-101 ("Form 44-101F3") with the disclosure required by:
  - (i) Item 12.1(1) of Form 44-101F3 being satisfied by incorporating by reference:

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- (A) the most recent annual report on Form 20-F of DCAG filed with the SEC;
  - (B) all quarterly reports on Form 6-K of DCAG filed with the SEC, and all current reports on Form 6-K of DCAG required to be filed with the SEC, in respect of the financial year following the year that is the subject of the most recent annual report on Form 20-F of DCAG filed with the SEC;
  - (C) any material change reports filed by DCCFI;
  - (D) in respect of the 2004 Prospectus filed in connection with the Current Offering only, the audited annual financial statements of DCCFI for the fiscal years ended December 31, 2004, 2003 and 2002;
- (ii) Item 12.2 of Form 44-101F3 being addressed by incorporating by reference the following documents required to be filed with the SEC or the Decision Makers, as applicable, subsequent to the date of the 2004 Prospectus and the particular Renewal Prospectuses or Prospectuses in connection with Future Offerings, but prior to the termination of the particular Offering:
- (A) any annual reports on Form 20-F of DCAG filed with the SEC;
  - (B) any quarterly reports on Form 6-K of DCAG filed with the SEC and all current reports on Form 6-K of DCAG required to be filed with the SEC; and
  - (C) any material change reports filed by DCCFI; and
- (iii) Item 7 of Form 44-101F3 (earnings coverage ratios) and section 8.4 of NI 44-102 (requirement to update earnings coverage ratios) being addressed in respect of DCCFI by disclosure with respect to DCAG and by filing updated earnings coverage ratios, concurrently with the filing of:
- (A) the most recent annual report on Form 20-F of DCAG filed with the SEC; and

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- (B) all quarterly reports on Form 6-K of DCAG filed with the SEC in respect of the financial year following the year that is the subject of the most recent annual report on Form 20-F of DCAG filed with the SEC,

either as an exhibit to such reports or as an other document incorporated by reference in the 2004 Prospectus, any Renewal Prospectuses or any Prospectuses in connection with Future Offerings,

and will state that purchasers of Notes will not receive separate continuous disclosure with respect to DCCFI;

- (d) the 2004 Prospectus, any Renewal Prospectuses or any Prospectuses in connection with Future Offerings incorporate by reference disclosure made in the then most recent annual report on Form 20-F of DCAG filed with the SEC, together with all quarterly reports on Form 6-K of DCAG filed with the SEC for the then most recently completed fiscal quarter and all current reports on Form 6-K of DCAG required to be filed with the SEC in respect of the financial year following the year that is the subject of the then most recent annual report on Form 20-F of DCAG filed with the SEC and incorporate by reference any document of the foregoing type required to be filed with the SEC after the date of the 2004 Prospectus, any Renewal Prospectuses or any Prospectuses in connection with any Future Offerings;
- (e) DCAG continues to provide a full and unconditional guarantee of the payments to be made by DCCFI under the Notes, as stipulated in the terms of the Notes or any agreement governing the rights of holders of the Notes, that results in the holder of such Notes being entitled to receive payment from DCAG duly and punctually on demand upon any failure by DCCFI to make a payment;
- (f) all Notes issued by DCCFI have received an approved rating;
- (g) DCAG signs the 2004 Prospectus, any Renewal Prospectuses and any Prospectuses in connection with any Future Offerings as credit supporter;
- (h) DCAG satisfies the criteria specified in the definition of "SEC MJDS issuer" set out in subsection 13.4(1) of NI 51-102, other than the criterion specified in paragraph (a) of that definition that DCAG be incorporated or organized under the laws of the United States of

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America or any state or territory of the United States of America or the District of Columbia, provided that DCAG remains incorporated or organized under the laws of the Federal Republic of Germany;

- (i) DCAG undertakes to cause to be filed with the Decision Makers, in electronic format through SEDAR under DCCFI's SEDAR profile, the following documents required to be filed with the SEC under section 13 and 15(d) of the 1934 Act, at the same time or as soon as practicable after the filing by DCAG of those documents with the SEC:
  - (i) all annual reports on Form 20-F of DCAG filed with the SEC;
  - (ii) all quarterly reports on Form 6-K of DCAG filed with the SEC;  
and
  - (iii) all current reports on Form 6-K of DCAG required to be filed with the SEC,until such time as the Notes are no longer outstanding; and
- (j) the consolidated annual financial statements of DCAG and the consolidated interim financial statements of DCAG dated on or after January 1, 2004 that will be included or incorporated by reference in the 2004 Prospectus, any Renewal Prospectuses or any Prospectuses in connection with Future Offerings will be prepared in accordance with National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Foreign Currency*.

Jean St-Gelais,  
Président Directeur Général