

## **2003 BCSECCOM 607**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief for a wholly-owned Canadian subsidiary of an MJDS eligible U.S. issuer from the eligibility requirements under National Instrument 71-101 – relief from the financial statement, material change reporting, insider reporting, and proxies solicitation requirements for a wholly owned subsidiary of an MJDA eligible U.S. issuer

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 91 and 119

National Instrument 71-101 *Multijurisdictional Disclosure System*, s. 12.1

**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 TEXTRON FINANCIAL CORPORATION AND  
TEXTRON FINANCIAL CANADA FUNDING CORP.**

### **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 from Textron Financial Corporation (“TFC”) and its subsidiary Textron Financial Canada Funding Corp. (the “Issuer”, and together with TFC, the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in section 3.2(b) of National Instrument 71-101 – The Multijurisdictional Disclosure System (“NI 71-101”) that the Issuer be a “U.S. issuer” (as defined in NI 71-101) shall not apply to the Issuer so that it is eligible to offer certain securities in the Jurisdictions under NI 71-101;

AND WHEREAS the Decision Maker in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and

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Labrador (the “Continuous Disclosure Jurisdictions”) has received an application from the Filer, for a decision under the Legislation of the Continuous Disclosure Jurisdictions that the requirements contained in the Legislation that:

- (a) the Issuer file with the Decision Makers and send to its security holders audited annual financial statements and an annual report, where applicable;
- (b) the Issuer file with the Decision Makers and send to its security holders unaudited interim financial statements;
- (c) the Issuer issue and file with the Decision Makers press releases and file with the Decision Makers material change reports;
- (d) the Issuer comply with the proxy and proxy solicitation requirements, including filing with the Decision Makers an information circular or report in lieu thereof and, if applicable, sending such documents to applicable securityholders of the Issuer;
- (e) insiders of the Issuer file with the Decision Makers insider reports; and
- (f) 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 “Continuous Disclosure Requirements”),

shall not apply;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Nova Scotia 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 Quebec Commission Notice 14-101;

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

1. TFC was incorporated under the laws of the State of Delaware on February 5, 1962 and is a reporting issuer or its equivalent in all of the Jurisdictions that provide for a reporting issuer regime. TFC is not in default under the Legislation.

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2. TFC has been a reporting company under the United States *Securities Exchange Act of 1934*, as amended (the “1934 Act”) since 1999 with respect to its debt securities. TFC 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 28, 2002, TFC had approximately US\$3.9 billion in long term debt and US\$916 million in commercial paper and short term debt outstanding. All of TFC’s outstanding long-term debt is rated “A-” by Standard & Poor’s and “A3” by Moody’s Investors Service.
4. The common stock in the capital of TFC is owned by Textron Inc., a publicly owned Delaware corporation. TFC derives a portion of its business from financing the sale and lease of products manufactured and sold by Textron Inc.
5. TFC is a diversified commercial finance company with core operations in aircraft finance, asset-based lending, distribution finance, golf finance, resort finance and structured capital.
6. TFC’s total assets as at December 28, 2002 were approximately US\$6.7 billion and its net profit for the year ended December 28, 2002 was approximately US\$60 million.
7. TFC satisfies all the criteria set out in paragraph 3.1(a) of NI 71- 101 (the “General Eligibility Criteria”) and, should it choose to do so, would be eligible to use the multi-jurisdictional disclosure system (“MJDS”) for the purpose of distributing non-convertible debt having an investment grade rating (as defined in NI 71-101) in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
8. The Issuer was incorporated under the *Companies Act* (Nova Scotia) as an unlimited liability company on October 31, 2000, and is a wholly-owned subsidiary of TFC.
9. The registered office of the Issuer is in Nova Scotia and the Issuer’s principal office is located in Providence, Rhode Island.
10. The Issuer is a reporting issuer or its equivalent in all of the Jurisdictions that provide for a reporting issuer regime and it is reporting company under the 1934 Act. The Issuer is not in default under the Legislation.

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11. The Issuer is a financing subsidiary of TFC with no operations, revenues or cash flows other than those related to the issuance, administration and repayment of debt securities that are and will be fully and unconditionally guaranteed by TFC.
12. The Issuer's business activities are limited to financing the business activities of Textron Financial Canada Limited, TFC's Canadian based operating subsidiary, and it will have no other operations.
13. It is proposed that the Issuer will offer, on a continuous basis in Canada and the United States, non-convertible debt having an investment grade rating that are fully and unconditionally guaranteed by TFC (the "Notes"). TFC will offer, on a continuous basis in the United States, non-convertible debt having an investment grade rating.
14. The Issuer is planning to distribute the Notes in each of the Jurisdictions under a MJDS prospectus and prospectus supplements issued thereunder (the "2003 Prospectus"). The 2003 Prospectus will be prepared in accordance with United States securities laws and filed as part of a registration statement with the SEC under the United States *Securities Act of 1933*, as amended.
15. The 2003 Prospectus will be filed with the Decision Makers in accordance with the provisions of NI 71-101, which are available to offerings which meet the alternative eligibility criteria for offerings of guaranteed non-convertible debt that have an investment grade rating as set out in paragraph 3.2 of NI 71-101 (the "Alternative Eligibility Criteria").
16. The Issuer meets all of the requirements of the Alternative Eligibility Criteria except the requirement that it be a "U.S. issuer".
17. The Issuer distributed Notes under a MJDS prospectus dated November 30, 2001 and prospectus supplement dated November 30, 2001 in each of the Jurisdictions (the "2001 MTN Program").
18. In connection with the 2001 MTN Program, the Issuer obtained from the Decision Makers in the Jurisdictions a MRRS decision document dated November 8, 2001 providing exemptive relief from the eligibility requirement contained in Section 3.2(b) of NI 71-101 that the Issuer be a "U.S. issuer". Also in connection with the 2001 MTN Program, the Issuer obtained from the Decision Makers in the Continuous Disclosure Jurisdictions a MRRS decision document dated December 21, 2001 providing exemptive relief to the Issuer from certain continuous disclosure obligations contained in the Legislation of the Continuous Disclosure Jurisdictions.

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19. The Issuer's continuous disclosure obligations in the United States will be substantially satisfied by TFC's filings with the SEC. TFC's financial reporting includes the financial reports of the Issuer and the Issuer does not report separately.

20. The 2003 Prospectus will disclose that the Filer has obtained relief from the Decision Makers from the Continuous Disclosure Requirements and will provide a description of how the Filer will satisfy the Continuous Disclosure Requirements.

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 the Jurisdictions under the Legislation is that the requirement in section 3.2(b) of NI 71-101 that the Issuer be a "U.S. issuer" shall not apply to the Issuer in connection with the offering of the Notes in the Jurisdictions under the 2003 Prospectus, provided that at the time of the offering:

- (a) TFC satisfies the General Eligibility Criteria;
- (b) the Issuer complies with all of the filing requirements and procedures set out in NI 71-101, except as varied by the Decision; and
- (c) TFC remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of the Issuer.

Dated this 29<sup>th</sup> day of August, 2003.

R. Scott Peacock

**AND THE DECISION** of the Decision Makers in the Continuous Disclosure Jurisdictions pursuant to the Legislation is that the Continuous Disclosure Requirements shall not apply to the Issuer for so long as:

- (a) TFC satisfies the Continuous Disclosure Requirements as a "U.S. issuer" in accordance with the provisions of Parts 14 through 18 of NI 71-101;

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- (b) TFC maintains a class of securities registered under section 12 of the 1934 Act;
- (c) TFC maintains direct or indirect 100% beneficial ownership of the voting securities of the Issuer;
- (d) TFC continues to fully and unconditionally guarantee the Notes issued under the 2001 MTN Program and the Notes to be issued pursuant to the 2003 Prospectus, and any future issuances of debt securities by the Issuer under a prospectus offering, as to payments required to be made by the Issuer to holders of the Notes or such other debt securities, as the case may be;
- (e) the Issuer carries on no other business than that set out in paragraphs 11 and 12 of the Decision;
- (f) the Issuer is in compliance with the requirements of the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of the Issuer that is not also a material change in the affairs of TFC;
- (g) the Issuer does not issue additional securities other than the Notes, or any other series of notes which hereafter may be issued, or debt securities ranking *pari passu* with the Notes;
- (h) if notes of another series or debt securities ranking *pari passu* with the Notes are hereinafter issued by the Issuer, TFC shall fully and unconditionally guarantee such notes or debt securities as to the payments required to be made by the Issuer to holders of such notes or debt securities; and
- (i) all filing fees that would otherwise be payable by the Issuer in connection with the Continuous Disclosure Requirements are paid.

Dated this 29<sup>th</sup> day of August, 2003.

H. Leslie O'Brien