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November 26, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 - National Instrument 51-102 *Continuous Disclosure Obligations* - An issuer of pay-through asset-backed notes wants relief from the requirements concerning the preparation, filing and delivery of unaudited interim financial statements - The issuer is a special purpose trust whose business is restricted; holders of notes will only have recourse to a pool of receivables and the related collateral and will not have any recourse to the trust or any other assets; the issuer will file quarterly and annually on SEDAR and a website, and make copies available to holders of notes who so request, management information concerning the receivables and related collateral and will make available on SEDAR and the website a monthly servicer report; the issuer will advise holders of notes at least annually that quarterly and annual management information and monthly servicer report is available on SEDAR and a website and provide the website address of both and advise that the holders may request paper copies to be sent to them by ordinary mail

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91

National Instrument 51-102 *Continuous Disclosure Obligations*

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

AND

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

AND

IN THE MATTER OF CNH CAPITAL CANADA WHOLESALE TRUST (the Trust)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Trust a decision under the

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securities legislation of the Jurisdictions (the Legislation) that the requirements in the Legislation concerning the preparation, filing and delivery of unaudited interim financial statements (the Specified Continuous Disclosure Requirements) will not apply to the Trust, subject to certain terms and conditions.

The Decision Maker in each of Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador (the MI 52-109 Jurisdictions) has received an application from the Trust for a decision pursuant to the securities legislation of such Jurisdictions that the provisions of Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) concerning the filing of interim certificates shall not apply to the Trust in respect of the 2004 financial year of the Trust.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this
- (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

1. The Trust was established by The Canada Trust Company (Canada Trust), pursuant to a declaration of trust made as of April 13, 2004 (the Declaration of Trust), under the laws of the Province of Ontario.
2. Canada Trust is the issuer trustee of the Trust (in such capacity, the Issuer Trustee). The office of the Issuer Trustee at which it carries out its administrative functions as issuer trustee is P.O. Box 100, Toronto-Dominion Tower, 79 Wellington Street West, 8th Floor, Toronto, Ontario M5K 1A2.
3. The beneficiary of the Trust is the Canadian Chamber of Commerce and future beneficiaries may be selected from time to time by the Issuer Trustee in its discretion under the Declaration of Trust.
4. The Trust is a “reporting issuer” or has equivalent status in each Jurisdiction and is not in default of any of the requirements of the Legislation in any Jurisdiction.
5. The Trust is a special purpose trust whose business is specifically limited to:

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- (a) purchasing from Case Credit Ltd. (Case Credit), pursuant to a sale and servicing agreement dated as of July 1, 2004 between Case Credit and the Issuer Trustee (the Sale and Servicing Agreement), receivables arising in certain wholesale financing accounts (Accounts) established on behalf of agricultural and construction equipment dealers by Case Credit or its affiliate, New Holland (Canada) Credit Company (the Receivables), all related security with respect thereto, all collections with respect thereto, and all proceeds of the foregoing (collectively, the Purchased Assets);
 - (b) holding, managing, and disposing of Purchased Assets;
 - (c) making payments on its securities; and
 - (d) engaging in incidental or ancillary activities.
- 6. Case Credit, as administrative agent (in such capacity, the Administrative Agent), carries out certain administrative and management activities for and on behalf of the Trust, pursuant to the administration agreement dated as of April 30, 2004 (the Administration Agreement), between Case Credit and the Issuer Trustee. Case Credit, as servicer pursuant to the Sale and Servicing Agreement (in such capacity, the Servicer), administers, services and collects the Purchased Assets.
- 7. The auditors of the Trust are Deloitte & Touche LLP.
- 8. The purchase of the initial Accounts on the Closing Date was funded in part with funds obtained by the Trust through the issuance of three series of asset-backed notes and through “vendor-take-back” indebtedness of the Trust to the Seller (the Seller Indebtedness). It is expected that the Trust will issue additional series of such asset-backed notes in the future to finance the acquisition of additional Receivables or to refinance outstanding asset-backed notes or the Seller Indebtedness.
- 9. For the purposes of creating and securing its asset-backed notes and the Seller Indebtedness, the Trust has entered into a trust indenture dated as of July 1, 2004 (the Trust Indenture), between the Trust and BNY Trust Company of Canada (the Indenture Trustee). The Trust Indenture provides for the creation and issue, pursuant to an indenture supplement to the Trust Indenture (each, a Supplement), of asset-backed notes (Notes) in series (each, a Series of Notes), each Series of which may be issued in one or more classes of Notes of the Series.

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10. Pursuant to the Trust Indenture, on July 23, 2004 the Trust has executed and delivered three series indenture supplements (the Series CW2004 Supplements) to the Trust Indenture to create and issue the following asset-backed securities (collectively, the Series CW2004 Notes): (i) the CNH Capital Canada Wholesale Trust Floating Rate Wholesale Receivables Backed Notes, Series CW2004-1, Classes A and B; (ii) the CNH Capital Canada Wholesale Trust Floating Rate Class A Wholesale Receivables Backed Notes, Series CW2004-2, Classes A and B; and (iii) the CNH Capital Canada Wholesale Trust Variable Funding Wholesale Receivables-Backed Notes, Series CW2004-3 (the Series CW2004-3 Notes).
11. Under the Indenture and the related Supplement for each Series of Notes, the Collateral and proceeds thereof (i.e., cash collections and other payments on the Receivables) is allocated amongst each outstanding Series of Notes and the portion of the Collateral that is financed with the Seller Indebtedness. In addition, under each Series CW2004 Supplement and the Trust Indenture, a portion of the Seller Indebtedness (the Series Available Subordinated Amount) is subordinated and postponed to the prior payment of the indebtedness of the Trust to the holders of the Series CW2004 Notes issued pursuant to such Series CW2004 Supplement. The allocations of the Collateral and proceeds to each Series of Series CW2004 Notes, the recourse of that Series to the Collateral and its proceeds and the recourse of that Series to the Series Available Subordinated Amount is limited under the terms of the Indenture and the Supplement.
12. The Series CW2004 Notes (other than the Series CW2004-3 Notes) were offered, and additional asset-backed securities (collectively, with the Series CW2004 Notes, Notes) may be offered from time to time, pursuant to the POP System under a short form prospectus on the basis of an Approved Rating by an Approved Rating Organization (as such terms are defined in National Instrument 44-101 -- *Short Form Prospectus Distributions* (the POP System) or any successor instrument thereto), which organization will from time to time independently review such rating based on the performance of the Purchased Assets, and the Series CW2004-3 Notes have been distributed, and additional Notes may be distributed from time to time, to the public pursuant to an exemption from the registration requirement and prospectus requirement of securities legislation, in some or all provinces of Canada.
13. The Series CW2004 Notes (other than the Series CW2004-3 Notes) were distributed to the public pursuant to two short form prospectuses dated July 14, 2004 filed with and receipted by the local securities regulatory authority or regulator in each Jurisdiction on July 14, 2004. The Series CW2004-3 Notes

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were distributed to a commercial paper conduit pursuant to an exemption from the prospectus requirement of the securities legislation of Ontario.

14. The Trust currently has no securities issued and outstanding other than the Series CW2004 Notes. None of the Series CW2004 Notes is traded on, and there is no current intention to have any of the Series CW2004 Notes or any other series of asset-backed securities traded on, any marketplace, as that term is defined in National Instrument 21-101 *Marketplace Operation*.
15. The Trust currently has, and will continue to have, no material assets or liabilities other than its rights and obligations arising in connection with the acquisition of the Purchased Assets and the issuance of Notes.
16. To secure the due payment of all principal, interest and other monies owing under the Notes from time to time under the Trust Indenture and the related Supplement for each series of Notes and the performance of the obligations of the Trust under the Trust Indenture and the related Supplement for each series of Notes, the Trust has granted to the Indenture Trustee a security interest in, among other things, all of the Purchased Assets and all collections or other proceeds in respect thereof (the Collateral).
17. The Collateral is and will be held as security for the due payment of all principal, interest and other monies owing under the Notes and such obligations are and will be secured solely by the Collateral. Each series of Notes benefits from the security interest in the Collateral only to the extent collections on and proceeds of the Collateral are allocated to such series of Notes pursuant to the Trust Indenture and the related Supplement.
18. The Sale and Servicing Agreement requires Case Credit, in its capacity as Servicer, to deliver or cause to be delivered various compliance reports, including those reports described in paragraphs 19 to 21 hereof, inclusive.
19. The Sale and Servicing Agreement requires that the Servicer deliver a monthly report (the Servicer Report) to the Indenture Trustee, the applicable rating agencies and any credit enhancement providers on or before the second business day prior to the 15th day of each month. The Servicer Report provides and will provide various items of information relating to the Purchased Assets, and also includes, on a series by series basis, information relating to distributions from, and deposits to, the related accounts for each series, as well as pertinent information regarding the Collateral allocated to such series. The Servicer Report is also made available by the Servicer on the Internet at www.cnh.com.

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20. The Sale and Servicing Agreement requires the Servicer to furnish to the Issuer Trustee, on or before April 30 of each year and in respect of the preceding calendar year, a certificate of an officer of the Servicer (the Annual Servicer's Compliance Certificate), certifying that the Servicer has performed in all material respects all of its obligations under the Sale and Servicing Agreement throughout such year and no default in the performance of such obligations has occurred or is continuing except as otherwise identified in such certificate.
21. The Sale and Servicing Agreement requires the Servicer to have a firm of independent certified public or chartered accountants deliver to the Issuer Trustee on or before April 30 of each year and in respect of the preceding calendar year, a report (the Annual Accountants' Servicing Report) expressing such accountant's opinion with respect to the assertions of management contained in the Annual Servicer's Compliance Certificate for such calendar year.
22. The Trust is subject to sections 2.1 of MI 52-109, which requires every reporting issuer to file for each interim period interim certificates (the Interim Certificates), signed by the persons specified in section 2.1 of MI 52-109 (the Certifying Officers).
23. The Interim Certificates require the Certifying Officers of the Trust to certify as follows:
 - (a) he or she has reviewed the interim filings (as hereinafter defined) of the Trust for the applicable interim period;
 - (b) based on his or her knowledge, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings; and
 - (c) based on his or her knowledge, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the Trust, as of the date and for the periods presented in the interim filings.
24. Compliance with the Specified Continuous Disclosure Requirements by the Trust will not, by virtue of the Trust's restricted business and the nature of the Notes, provide meaningful information for the holders of the Notes.

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25. The information disclosed or to be disclosed in the interim financial statements of the Trust as it will be presented will not be relevant to the holders of the Notes for the following reasons:

- (a) the financial statements of the Trust will aggregate all of the assets (including the Collateral) income and expenses and cash flows of the Trust for each financial period or as at each financial period end in order to arrive at the net assets, net income and changes in financial position of the Trust for or over each such period or as at each such period end;
- (b) However:
 - (i) the Notes of each Series are allocated or entitled to only a portion of the assets, income and cash flows of the Trust and the Collateral as described in paragraphs 8 to 11 above;
 - (ii) the Notes of each Series are responsible or chargeable for only a portion of the expenses of the Trust (such expenses (including the interest expense of the Trust in respect of that Series) are allocated to that Series pursuant to the Trust Indenture and the related Supplement);
 - (iii) holders of Notes of any Series will only have recourse to that portion of the Collateral allocated to the Notes of that Series and will generally not benefit from the Collateral and proceeds and cash flows of the Trust that are allocated to the Notes of another Series or to the Seller Indebtedness;
 - (iv) holders of Notes of any Series will generally have only limited recourse to the portion of the Collateral and proceeds and cash flows of the Trust that are allocated to Seller Indebtedness (i.e. the Series Available Subordinated Amount); and
 - (v) holders of Notes of any Series will generally not benefit from the Available Subordinated Amount for any other Series.

Accordingly, the holders of Notes of any Series do not and will not have recourse to or protection from all of Collateral, or all of the proceeds or cash flows (including interest coverage or asset coverage, if any), that are or will be presented or described in the financial statements of the Trust as the assets, income and cash flows of the Trust as a whole.

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26. On not less than an annual basis, the Trust will advise holders of Series CW2004 Notes and any future holders of Notes in a notice (the Notice), delivered to such holders pursuant to the procedures stipulated by National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or its successor instrument, that (i) the Servicer Reports, the quarterly information described in paragraph 29 hereof related to the Notes held by such holders and the annual information described in paragraph 30 hereof is available on SEDAR and on a website and provide the website address of both, and that holders of the Notes may request that paper copies of same be provided to them by ordinary mail, and (ii) the Notice will be posted on the applicable website.
27. The Trust will also advise investors of Notes of each additional series in the short form prospectus related to the offering of such additional series that the quarterly and annual information described in paragraphs 29 and 30 hereof will be available on SEDAR and on a website and provide the website address of both, and that holders of such additional series may request that paper copies of same be provided to them by ordinary mail and that a notice to this effect will be posted on the applicable website.
28. The Trust, or a representative or agent of the Trust, will make available on the applicable website and mail to holders of Notes who so request, on or before the second business day prior to the 15th day of each month, and will file contemporaneously therewith, or cause to be filed contemporaneously therewith, the Servicer Report on SEDAR.
29. Within 60 days of the end of each fiscal quarter of the Trust, the Trust, or a representative or agent of the Trust, will make available on the applicable website or mail to holders of Notes who so request and will file on SEDAR contemporaneously therewith, or cause to be filed on SEDAR contemporaneously therewith, management's discussion and analysis (MD&A) with respect to the Purchased Assets
30. Within 140 days of the end of each fiscal year of the Trust, the Trust, or a representative or agent of the Trust, will make available on the applicable website and mail to holders of Notes who so request and will file on SEDAR contemporaneously therewith, or cause to be filed on SEDAR contemporaneously therewith, the following:
 - (i) MD&A with respect to the Purchased Assets;
 - (ii) the Annual Servicer's Compliance Certificate; and

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(iii) the Annual Accountants' Servicing Report in respect of the Sale and Servicing Agreement.

31. The Annual Servicer's Compliance Certificate and Annual Accountants' Servicing Report will provide assurance to the holders of Notes as to the accuracy of the Servicer Reports.
32. The provision of information to holders of Notes on a monthly, quarterly and annual basis as described in paragraphs 29 and 30 hereof, as well as the notice to be given by, or on behalf of, the Trust as to the availability of such information in accordance with the procedures described in paragraphs 26 and 27 hereof, will meet the objectives of allowing the holders of Notes to monitor and make informed decisions about their investments.
33. The assignment and conveyance of the Purchased Assets from Case Credit to the Trust has been registered in such a manner and in such places as may be required by law to (i) ensure recognition as against third parties of the Trust's right, title and interest in the Purchased Assets, and (ii) fully preserve, perfect and protect the right, title and interest of the Trust in the Purchased Assets against third parties, including the right to collect the Purchased Assets and to enforce the Related Security. The security interest of the Indenture Trustee in the Collateral has been registered in such a manner and in such places as may be required by law to fully preserve, perfect and protect such security interest against third parties.
34. As a consequence of the grant of a security interest by the Trust to the Indenture Trustee in the Collateral, and the perfection of such security interest, the holders of Notes of any Series have the benefit of a first ranking security interest in the Collateral allocated to such Series, with the result that, in the event of the bankruptcy or insolvency of the Trust, the holders of such Series of Notes will be entitled to payment in full out of the Collateral allocated to such Series of any principal, interest or other monies owing under such Series prior to any payment being made out of the Collateral allocated to such Series to the Seller or any other creditor, whether voluntary or involuntary, of the Trust.
35. The only security holders of the Trust are and will be the holders of Notes and the holders of the Trust's other asset-backed securities issued from time to time.
36. The Trust will not carry on any activities other than those described in paragraph 5.

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37. No insider of the Trust, or associate or affiliate thereof, has a direct or indirect interest in any transaction that has materially affected or would materially affect the Trust. No insider of the Trust, or associate or affiliate thereof, has entered into a material contract with the Trust.
38. The Trust has filed, and will continue to file, an annual information form in accordance with National Instrument 44-101 in the Jurisdictions in which it is a “reporting issuer” or has equivalent status.
39. The Trust will comply with the other continuous disclosure requirements contained in the Legislation, if any, except as such requirements may be modified by the decision of the Decision Makers in connection with this application.
40. The Trust will issue, or cause to be issued, news releases and file material change reports in accordance with the requirements of the Legislation of each Jurisdiction in respect of material changes in its affairs and in respect of changes in the status (including default in payment due to holders of Notes) of any Purchased Assets which may reasonably be considered to be material to holders of Notes issued to fund the purchase or other acquisition of such Purchased Assets.

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 under the Legislation is that from and after the date of this Decision, the Trust is exempted from the Specified Continuous Disclosure Requirements provided that

- (a) the only securities that the Trust distributes to the public are Notes;
- (b) the Trust complies with paragraphs 26, 27, 28, 29, 30 and 40 hereof; and
- (c) this Decision shall terminate sixty days after the occurrence of a material change in any of the representations of the Trust contained in paragraphs 5, 12, 14, 15, 16, 17, 18, 19, 20, 21, 25, 33, 34, 35, 36, 37, 38, 39 or 40 hereof, unless the Trust satisfies the applicable Decision Makers that the exemption should continue.

It is further the decision of the Decision Makers of the MI 52-109 Jurisdictions under the Legislation of such Jurisdictions that the Trust is exempted from the

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requirements of MI 52-109 concerning the filing of Interim Certificates in respect of the 2004 financial year of the Trust, provided that the Trust is exempted from the Specified Continuous Disclosure Requirements pursuant to the exemption contained in this Decision.

Charlie MacCready
Assistant Manager