

2005 BCSECCOM 586

July 29, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 44-101, s. 15.1 - Short Form Prospectus Distributions - In connection with an offering of non-convertible debt securities, an issuer wants an exemption from the requirement that its credit supporter have a 12-month reporting issuer history in a Canadian jurisdiction, and that it include certain information in its prospectus - 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

Securities Act, s. 91 Insiders - Continuous Disclosure (Insider Reports) - An insider of an issuer wants relief from the requirement to file insider reports - The insider is the parent corporation of the issuer, owning all of the issuer's outstanding voting securities; the issuer's only business is to issue debt securities to raise capital for the parent; the relief will expire if the issuer issues any securities other than designated credit support securities, securities to its parent, or certain debt securities, or if the parent acquires any securities other than the voting securities in the issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 87 and 91

National Instrument 44-101 *Short Form Prospectus Distributions*, ss. 2.5 and 15.1
Form 44-101F3, items 12.1 and 12.2

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

2005 BCSECCOM 586

In the Matter of
American Express Credit Corporation (Amex Credit USA)

and

American Express Canada Credit Corporation (Amex Credit Canada and Together
with Amex Credit USA, the Filers)

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 Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filers be exempt from the following requirements contained in the Legislation:

- (a) the requirement under the Legislation that Amex Credit USA, as a person or company guaranteeing non-convertible debt securities issued by an issuer (i) be a reporting issuer with a twelve month reporting history and (ii) have a current annual information form (AIF) (collectively (i) and (ii), the Eligibility Relief), in order to permit Amex Credit Canada to issue guaranteed non-convertible debt securities pursuant to a short form base shelf prospectus and any applicable prospectus supplements and pricing supplements;
- (b) the requirement under the Legislation that Amex Credit Canada incorporate by reference certain documents and financial information of Amex Credit Canada in the Prospectus (as defined below) and any Future Prospectus (as defined below) (the Prospectus Disclosure Relief);
- (c) the requirement under the Legislation that Amex Credit USA, as an insider of Amex Credit Canada, file insider reports with the Decision Makers (the Insider Reporting Relief); and
- (d) the requirement under the Legislation that Amex Credit USA, as an insider of Amex Credit Canada, file insider profiles with the Decision Makers (the Insider Profile Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

2005 BCSECCOM 586

(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 otherwise set forth herein.

Representations

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

1. Amex Credit USA is incorporated under the laws of the State of Delaware and was incorporated in 1962. Its principal executive offices are located at One Christina Centre, 301 N. Walnut Street, Suite 1002, Wilmington, Delaware, 19801-2919, USA.
2. Amex Credit USA is a wholly-owned subsidiary of American Express Travel Related Services Company, Inc. (TRS), which itself is a wholly-owned subsidiary of American Express Company.
3. Amex Credit USA is the direct beneficial owner of all of the issued and outstanding voting securities of Amex Credit Canada.
4. Amex Credit USA is primarily engaged in the business of financing most non-interest-bearing charge cardmember receivables arising from the use of various American Express cards in the United States and in designated currencies outside the United States. Amex Credit USA also purchases certain interest-bearing and discounted revolving credit and extended payment plan receivables and lines of credit and loans.
5. Amex Credit USA has non-convertible debt securities outstanding with an Approved Rating (as defined in National Instrument 44-101 – *Short Form Prospectus Distributions* (NI 44-101)).
6. Amex Credit USA has a class of securities registered under Section 12(b) of the United States *Securities Exchange Act of 1934* (the 1934 Act).
7. Amex Credit USA has filed with the United States Securities and Exchange Commission (the SEC) all filings required to be made with the SEC under the 1934 Act during the last 12 calendar months.
8. Amex Credit USA is not registered or required to be registered as an investment company under the United States *Investment Company Act of 1940*, as amended.

2005 BCSECCOM 586

9. Amex Credit USA is not an issuer formed and operated for the purpose of investing in commodity future contracts, commodity futures, related products or a combination of them.
10. Amex Credit USA is not a reporting issuer or the equivalent in any of the Jurisdictions.
11. Amex Credit Canada is a wholly-owned subsidiary of Amex Credit USA and is an unlimited liability company incorporated under the laws of the province of Nova Scotia on April 15, 2004. Its principal executive offices are located at 101 McNabb Street, Markham, Ontario L3R 4H8.
12. Amex Credit Canada is not a reporting issuer or the equivalent in any of the Jurisdictions.
13. Amex Credit Canada does not currently intend to issue any securities other than non-convertible debt that has an Approved Rating, securities issued to Amex Credit USA or an affiliate of Amex Credit USA or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.
14. Amex Credit Canada meets the eligibility requirements set out in Section 13.4 (2) of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI-51-102) and is therefore exempt from the requirements of NI 51-102, Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers Annual and Interim Filings* (MI 52-109), Multilateral Instrument 52-110 – *Audit Committees* (MI 52-110) and National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (NI 58-101).
15. Amex Credit Canada proposes to file a short form base shelf prospectus together with applicable prospectus supplements and pricing supplements in each of the Jurisdictions (the Prospectus) pursuant to NI 44-101 and National Instrument 44-102 - *Shelf Distributions* (NI 44-102) (NI 44-101 together with NI 44-102, the Shelf Requirements) in order to issue medium term notes in an aggregate principal amount of up to C\$3.5 billion (the Proposed Offering) and may in the future file additional short form base shelf prospectuses together with applicable prospectus supplements and pricing supplements in each of the Jurisdictions (the Future Prospectuses and together with the Prospectus, the Prospectuses and each a Prospectus) in respect of the issuance by Amex Credit Canada of additional medium term notes from time to time (the Future Offerings and together with the Proposed Offering, the Offerings and each an Offering). All medium term notes issued by Amex Credit Canada pursuant to

2005 BCSECCOM 586

the Proposed Offering and any Future Offering (collectively, the Notes) will have an Approved Rating.

16. Amex Credit USA satisfies the criteria set forth in Section 3.1 of National Instrument 71-101 – *The Multi-jurisdictional Disclosure System* (NI 71-101) and is eligible to use the multi-jurisdictional disclosure system (MJDS) described therein for the purpose of distributing Approved Rating non-convertible debt securities in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
17. If Amex Credit Canada were incorporated under United States law, it would be permitted under Section 3.2 of NI 71-101 to effect a direct offering of the Notes in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure so long as Amex Credit USA fully and unconditionally guarantees payment of principal and interest due under such securities.
18. Amex Credit Canada is ineligible to issue Notes by way of short form base shelf prospectus under NI 44-101 and NI 44-102 as Amex Credit USA (as credit supporter of the Notes) is not a reporting issuer with a 12 month reporting issuer history in any province or territory of Canada and neither Amex Credit Canada nor Amex Credit USA has (or will have) a current AIF.
19. In connection with the Proposed Offering and any Future Offering:
 - (a) Prior to filing a Prospectus, Amex Credit USA will cause to be filed with the Decision Makers, in electronic format through SEDAR (as defined in National Instrument 13-101) under Amex Credit Canada's SEDAR profile to the extent not already filed, the following documents filed by Amex Credit USA under Sections 13 and 15(d) of the 1934 Act:
 - (i) the most recent annual report on Form 10-K of Amex Credit USA filed with the SEC;
 - (ii) all quarterly reports on Form 10-Q of Amex Credit USA filed with the SEC in respect of the financial year following the year that is the subject of Amex Credit USA's most recently filed annual report on Form 10-K; and
 - (iii) all current reports on Form 8-K of Amex Credit USA filed with the SEC in respect of the financial year following the year that is the subject of Amex Credit USA's most recently filed annual report on Form 10-K;

2005 BCSECCOM 586

- (b) Each Prospectus will be prepared and filed with the Decision Makers in accordance with the Shelf Requirements, with the disclosure required by:
- (i) Item 12.1 of Form 44-101F3 of NI 44-101 (Form 44-101F3) being addressed by incorporating by reference in each Prospectus:
 - (A) the most recent annual report on Form 10-K of Amex Credit USA filed with the SEC;
 - (B) all quarterly reports on Form 10-Q of Amex Credit USA filed with the SEC in respect of the financial year following the year that is the subject of Amex Credit USA's most recently filed annual report on Form 10-K;
 - (C) all current reports on Form 8-K of Amex Credit USA filed with the SEC in respect of the financial year following the year that is the subject of Amex Credit USA's most recently filed annual report on Form 10-K; and
 - (D) any material change reports of Amex Credit Canada filed with the Decision Makers in respect of the financial year following the year that is the subject of Amex Credit USA's most recently filed annual report on Form 10-K;
 - (ii) Item 12.2 of Form 44-101F3 being addressed by incorporating by reference the following documents filed with the SEC subsequent to the date of the particular Prospectus for so long as the particular Prospectus is in effect:
 - (A) any annual reports on Form 10-K of Amex Credit USA filed with the SEC;
 - (B) any quarterly reports on Form 10-Q of Amex Credit USA filed with the SEC;
 - (C) any current reports on Form 8-K of Amex Credit USA filed with the SEC; and
 - (D) any material change reports of Amex Credit Canada filed with the Decision Makers;

2005 BCSECCOM 586

- (c) Amex Credit USA will fully and unconditionally guarantee the payments to be made by Amex Credit Canada under the Notes, as stipulated in the terms of the Notes or in an agreement governing the rights of holders of the Notes, such that it entitles the holders of the Notes to receive payment from Amex Credit USA as contemplated in the definition of “designated credit support securities” contained in Section 13.4 of NI 51-102;
- (d) Any Notes issued by Amex Credit Canada pursuant to any Offering will have an Approved Rating;
- (e) Amex Credit USA will sign each Prospectus of Amex Credit Canada as credit supporter;
- (f) Each Prospectus of Amex Credit Canada will include, directly or through incorporation by reference, all material disclosure regarding Amex Credit Canada and Amex Credit USA;
- (g) Amex Credit USA will undertake to file with the Decision Makers, in electronic format through SEDAR under Amex Credit Canada’s SEDAR profile, the following documents that it files under Sections 13 and 15(d) of the 1934 Act: the items referenced in paragraph 19(a) above and any annual report on Form 10-K filed with the SEC, any quarterly report on Form 10-Q filed with the SEC and any current report on Form 8-K filed with the SEC until such time as the Notes are no longer outstanding;
- (h) Amex Credit USA satisfies the criteria set forth in Section 3.1 of NI 71-101 and is eligible to use the MJDS described therein 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; and
- (i) Each Prospectus will state that purchasers of the Notes will not receive separate continuous disclosure information regarding Amex Credit Canada except to the extent set forth therein.

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.

Eligibility Relief and Prospectus Disclosure Relief

2005 BCSECCOM 586

The decision of the Decision Makers under the Legislation is that, in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings), the Eligibility Relief and Prospectus Disclosure Relief is granted provided that:

- (a) Each of Amex Credit Canada and Amex Credit USA, as applicable, complies with paragraph 19 above;
- (b) Amex Credit Canada complies with all of the requirements and procedures set out in NI 44-101 and NI 44-102, except as varied in this decision or as permitted by NI 44-102;
- (c) Amex Credit USA continues to satisfy the criteria set forth in Section 3.1 of NI 71-101 (or any applicable successor provision or instrument) and remains eligible to use the MJDS described therein (or any successor instrument) 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;
- (d) Amex Credit USA remains the direct or indirect beneficial owner of all of the voting securities of Amex Credit Canada; and
- (e) The Eligibility Relief and Prospectus Disclosure Relief will cease to be effective upon (but only to the extent that) amendments to NI 44-101 and NI 44-102 (as applicable) come into force which would have substantially the same effect as the Eligibility Relief and Prospectus Disclosure Relief provided for herein.

Charlie MacCready
Assistant Manager, Corporate Finance
Ontario Securities Commission

Insider Reporting Relief

The further decision of the Decision Makers under the Legislation is that, with respect to the voting securities of Amex Credit Canada, the Insider Reporting Relief is granted provided that:

- (a) Amex Credit USA remains the direct or indirect beneficial owner of all of the voting securities of Amex Credit Canada;

2005 BCSECCOM 586

- (b) Amex Credit USA remains a SEC MJDS issuer (as defined in Section 13.4 of NI 51-102);
- (c) Amex Credit Canada has not issued any securities other than (i) designated credit support securities, (ii) securities issued to Amex Credit USA or an affiliate of Amex Credit USA or (iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions;
- (d) Amex Credit USA does not have direct or indirect beneficial ownership, control or direction over any securities of Amex Credit Canada other than the voting securities of Amex Credit Canada; and
- (e) Each of Amex Credit Canada and Amex Credit USA, as applicable, complies with the conditions of paragraph 19 above.

Paul M. Moore
Commissioner
Ontario Securities Commission

Harold P. Hands
Commissioner
Ontario Securities Commission

Insider Profile Relief

The further decision of the Decision Makers under the Legislation is that, with respect to the voting securities of Amex Credit Canada, the Insider Profile Relief is granted provided that:

- (a) Amex Credit USA remains the direct or indirect beneficial owner of all of the voting securities of Amex Credit Canada;
- (b) Amex Credit USA remains a SEC MJDS issuer (as defined in Section 13.4 of NI 51-102);
- (c) Amex Credit Canada has not issued any securities other than (i) designated credit support securities, (ii) securities issued to Amex Credit USA or an affiliate of Amex Credit USA or (iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions;
- (d) Amex Credit USA does not have direct or indirect beneficial ownership, control or direction over any securities of Amex Credit Canada other than the voting securities of Amex Credit Canada; and

2005 BCSECCOM 586

- (e) Each of Amex Credit Canada and Amex Credit USA, as applicable, complies with the conditions of paragraph 19 above.

Charlie MacCready
Assistant Manager, Corporate Finance
Ontario Securities Commission