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December 14, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101, s. 15.1 - Short Form Prospectus Distributions - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - National Instrument 44-102, s. 11.1 - Shelf Prospectus Offerings - An issuer wants relief from the qualification criteria in NI 44-102 so it can file a shelf prospectus - The issuer is issuing guaranteed convertible debt securities or preferred shares; the issuer's securities have an approved rating from at least one approved rating organization; the issuer's guarantor is eligible to use the US equivalent of a short form prospectus and NI 71-101 to offer securities into Canada; the issuer's guarantor is one of the largest non-governmental, non-bank issuers of debt securities

## **Applicable British Columbia Provisions**

National Instrument 44-101, ss. 2.1 and 15.1

National Instrument 44-102, ss. 2.1 and 11.1

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

and

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

and

In the Matter of  
General Motors Acceptance Corporation of Canada, Limited (the Issuer)  
and General Motors Acceptance Corporation (GMAC) (Collectively, the Filer)

## **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 Filer for decisions under

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the securities legislation of the Jurisdictions (the Legislation) requesting a decision by each Decision Maker under the Legislation in connection with:

- (a) the Issuer's continuous offerings of non-convertible debt securities (the Notes), including (i) medium-term notes, and (ii) variable denomination adjustable rate demand notes (the Demand Notes), pursuant to:
  - short form base shelf prospectus dated October 18, 2004 (the Demand Notes Prospectus);
  - a short form base shelf prospectus dated June 22, 2004 and a prospectus supplement dated June 22, 2004;
  - applicable pricing supplements to the foregoing shelf prospectuses and prospectus supplements (collectively, the Prospectuses); and
- (b) future offerings of Notes pursuant to renewal short form base shelf prospectuses and, if applicable, prospectus supplements and pricing supplements (collectively, Renewal Prospectuses) upon the lapse of the Prospectuses and Renewal Prospectuses or by filing additional short form base shelf prospectuses and, if applicable, prospectus supplements and pricing supplements (collectively, the Future Offerings), in each of the Jurisdictions;

requesting a decision by each Decision Maker under the Legislation varying the MRRS Decision Document dated April 21, 2004 – *In the Matter of General Motors Acceptance Corporation and General Motors Acceptance Corporation of Canada, Limited* (the Original Decision Document) as follows (the Requested Relief):

- (a) by deleting, in paragraph (g) of the second decision in the Original Decision Document, the words “the Notes have an Approved Rating (as defined in NI 44-101)”; and
- (b) by substituting the words “the Notes have an investment grade rating from at least one approved rating organization, which rating organization has not made an announcement, of which the Issuer is or ought reasonably to be aware, that the investment grade rating given by the organization may be down-graded to a rating category that would not be an investment grade rating, all as defined in NI 71-101”.

Under the Mutual Reliance Review System for Exemptive Relief Applications, the Ontario Securities Commission is the principal regulator for this application.

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### **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**

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

1. GMAC is a wholly-owned subsidiary of General Motors Corporation (GM) and was incorporated in 1997 under the laws of the State of Delaware. On January 1, 1998, GMAC merged with its predecessor, which was originally incorporated in New York in 1919. GMAC is not a reporting issuer or the equivalent in any of the Jurisdictions.
2. GMAC or its predecessor has been a reporting company under the United States Securities Exchange Act of 1934, as amended (the 1934 Act), for more than six years with respect to its debt securities. GMAC or its predecessor 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. GMAC has, for a period of more than 12 months, filed its annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K 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. GMAC is a “credit supporter” for the purposes of section 13.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).
4. The common stock in the capital of GMAC is indirectly owned by GM, a publicly traded Delaware corporation.
5. In conducting its primary line of business, namely financing, GMAC and its affiliated companies have a presence in 41 countries and offer a wide variety of automotive financial services to and through franchised GM dealers throughout the world. GMAC also offers financial services to other automobile dealerships and to the customers of those dealerships. Additionally, GMAC provides commercial financing for real estate, equipment and working capital to automobile dealerships, GM suppliers and customers of GM affiliates. GMAC also provides commercial financing and factoring services for companies in the apparel, textile, automotive supplier and numerous other industries. GMAC’s other financial services include insurance and mortgage banking. For the year ended December 31, 2004, the

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net income of GMAC was approximately US\$2.9 billion.

6. As at September 30, 2005, GMAC had in excess of US\$203 billion in long-term debt outstanding. GMAC is one of the world's largest non-governmental, non-bank issuers of debt securities, measured by principal amount outstanding.
7. The Issuer was incorporated under the laws of Canada on October 15, 1953. On February 12, 1975, the Issuer's name was changed by adding a French version (General Motors Acceptance Corporation du Canada, Limitée). The Issuer was continued under the *Canada Business Corporations Act* by Articles of Continuance effective December 3, 1979. The Issuer is a wholly-owned subsidiary of GMAC.
8. The principal business carried on by the Issuer is to offer a wide variety of automotive financial services to over 780 franchised GM dealers in Canada, their affiliates and their customers. The Issuer also offers a range of other financial services. In particular, the Issuer provides wholesale financing and capital loans to authorized General Motors 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. The Issuer employs over 570 people in Canada.
9. 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. The Issuer is a "credit support issuer" for the purposes of section 13.4 of NI 51-102, and has been filing its continuous disclosure documents in accordance with the provisions of that section, as modified by the Original Decision Document and by the MRRS Decision Document *In the Matter of General Motors Acceptance Corporation and General Motors Acceptance Corporation of Canada, Limited* dated August 11, 2005, since April 2004.
10. Pursuant to the Prospectuses, the Issuer established programs: (i) to offer and issue up to \$8.5 billion aggregate principal amount of unsecured debt securities (or the equivalent in other currencies), including by way of medium term notes, and (ii) to offer and issue up to \$1.25 billion aggregate principal amount of Demand Notes, in each case, during the currency of the applicable Prospectus.
11. The Notes are fully and unconditionally guaranteed by GMAC as to payment of principal and interest when and as the same become due and payable, such

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that the holders thereof will be entitled to receive payment from GMAC upon the failure by the Issuer to make any such payment.

12. As of September 30, 2005, the Issuer had approximately Cdn.\$8.1 billion of Notes outstanding, either pursuant to the Prospectuses or previously filed prospectuses. The Issuer believes that, measured by principal amount outstanding, it is one of the largest non-government, non-bank issuer of debt securities in the Canadian capital markets.
13. The long-term debt of each of GMAC and the Issuer is rated by each of Dominion Bond Rating Service Limited, Standard & Poor's, Moody's Investors Service and Fitch, Inc., each of which qualifies as an approved rating organization under both National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) and NI 71-101 *The Multijurisdictional Disclosure System* (NI 71-101). Generally, the approved rating organizations assess the credit ratings of GMAC and its subsidiaries (including the Issuer) on a consolidated basis. GMAC and the Issuer have currently been assigned the same long-term debt ratings and, since the Issuer's incorporation in 1953, these ratings have remained consistent and have been upgraded or downgraded, as applicable, in tandem.
14. On May 5, 2005, Standard & Poor's downgraded its rating of the long-term debt of each of GMAC and the Issuer from "BBB-" to "BB" and its rating of the short-term debt of each of GMAC and the Issuer from "A-3" to "B-1". Consequently, on May 24, 2005, Fitch, Inc. downgraded its rating of the long-term debt of each of GMAC and the Issuer from "BBB-" to "BB+" and its rating of the short-term debt of each of GMAC and the Issuer from "F-3" to "B". On September 26, 2005, Fitch, Inc. further downgraded its rating of GMAC's long-term debt from "BB+" to "BB". In addition, on August 24, 2005, Moody's Investors Service downgraded its rating of the long-term debt of each of GMAC and the Issuer from "Baa2" to "Ba1" and its rating of the short-term debt of each of GMAC and the Issuer from "Prime-3" to "Not-Prime". Therefore, with respect to the ratings assigned by each of Standard & Poor's, Fitch, Inc. and Moody's Investors Service Inc., the debt securities of each of GMAC and the Issuer no longer have an approved rating (as defined in NI 44-101) or an investment grade rating (as defined in NI 71-101). Accordingly, on May 5, 2005, the Issuer suspended the issue and sale of Notes, which were formerly offered pursuant to the Prospectuses.
15. On October 17, 2005, GM announced its plans to take action to provide GMAC with separate credit ratings and that it is exploring the possible sale of a controlling interest in GMAC to a strategic partner (the GM Announcement). Following the GM Announcement, on October 17, 2005, Fitch, Inc. placed its

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rating of the debt securities of each of GMAC and the Issuer on “Rating Watch Evolving” and Moody’s Investors Service Inc. changed the review status of its long-term debt ratings of each of GMAC and the Issuer to “direction uncertain” from “review for possible downgrade”, where they had been placed on October 10, 2005. Standard & Poor’s announced that it would keep its ratings of each of GMAC and the Issuer on CreditWatch, but with implications changed from “negative” to “developing”.

16. The long-term debt of each of GMAC and the Issuer is currently rated “BBB (low)” by Dominion Bond Rating Service Limited. The short-term debt of each of GMAC and the Issuer is currently rated “R-2 (low)” by Dominion Bond Rating Service Limited. Therefore, the rating assigned to the debt securities of each of GMAC and the Issuer by Dominion Bond Rating Service Limited currently continues to qualify as an approved rating (as defined in NI 44-101) and an investment grade rating (as defined in NI 71-101). Following the GM Announcement, Dominion Bond Rating Service Limited changed its review status to “Under Review with Developing Implications” from “Under Review with Negative Implications”, where it had been placed on July 22, 2005.
17. Prior to obtaining the Original Decision Document, the Issuer was eligible to file a short form base shelf prospectus under section 2.4(1) of NI 44-101 and section 2.4 of NI 44-102. However, subsequent to the implementation of NI 51-102, to the extent that the Issuer relies on the exemptions available to a “credit support issuer” (as defined in section 13.4 of NI 51-102), the Issuer would no longer have a “current AIF” (as defined in NI 44-101).
18. Pursuant to the Original Decision Document, the Decision Makers granted relief, among other things, from the requirement under section 2.5(1) of NI 44-101 and section 2.5 of NI 44-102 that GMAC, as a person or company guaranteeing the Notes, be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current AIF, in order to permit the Issuer to issue Notes which are fully and unconditionally guaranteed by GMAC.
19. Section 3.1 of NI 71-101 allows a U.S. issuer to distribute in Canada debt that has an “investment grade rating”, provided the various conditions are met. An investment grade rating is defined as a provisional rating by a rating organization in one of its generic rating categories that signifies investment grade. Accordingly, GMAC would be eligible to effect a distribution of its own debt securities into Canada under section 3.1 of NI 71-101 in circumstances where all but one approved rating organization had downgraded

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its debt securities below the level of investment grade.

20. Section 3.2 of NI 71-101 further allows a U.S. issuer that does not satisfy the eligibility requirements of section 3.1 of NI 71-101 to utilize NI 71-101 to distribute its non-convertible debt, provided such debt also has an investment grade rating, its parent company meets the eligibility requirements set out in sections 3.1(a)(i) through (v) of NI 71-101, and the parent company fully and unconditionally guarantees payment of principal, interest and other amounts due under such securities. Therefore, a U.S. subsidiary of GMAC would be permitted to use NI 71-101 to issue its non-convertible debt in circumstances where all but one approved rating organization had downgraded its debt below the level of investment grade.
21. So long as it maintains at least an investment grade rating, GMAC will continue to be eligible to file prospectuses with the SEC as part of a registration statement on Form S-3 (the U.S. equivalent of a short form prospectus). In addition, GMAC and any U.S. subsidiary of GMAC would be eligible to file such a U.S. prospectus as an MJDS prospectus under NI 71-101 and access the Canadian capital markets directly, with the proceeds directed to the Issuer.

### **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 the Requested Relief is granted.

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