

# 2004 BCSECCOM 312

## Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirements of NI 51-102 – issuer not eligible for exemption under section 13.4 of NI 51-102 because it prepares a non-classified balance sheet

## Applicable British Columbia Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 13.1, 13.4

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, QUÉBEC, NEW BRUNSWICK, NEWFOUNDLAND AND  
LABRADOR, NOVA SCOTIA, YUKON, NORTHWEST TERRITORIES  
AND NUNAVUT**

**AND**

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

**AND**

**IN THE MATTER OF FORD MOTOR CREDIT COMPANY AND  
FORD CREDIT CANADA LIMITED**

## 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, Newfoundland and Labrador, Nova Scotia, Yukon, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from Ford Motor Credit Company (“Ford Credit”) and its subsidiary Ford Credit Canada Limited (the “Issuer”, and together with Ford Credit, the “Filer”) for a decision by each Decision Maker under the securities legislation of the Jurisdictions (the “Legislation”) that the Issuer:

- (i) except in the Northwest Territories, be exempted from the application of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) pursuant to section 13.1 of NI 51-102 and in Québec by a revision of the general order that will provide the same result as an exemption order, and
- (ii) except in British Columbia and Québec, be exempted from the application of Multilateral Instrument 52-109 *Certification of*

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*Disclosure in Issuers' Annual and Interim Filings* ("MI 52-109") pursuant to section 4.5 of MI 52-109;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario 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 Québec Commission Notice 14-101;

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

1. Ford Credit was incorporated under the laws of the State of Delaware in 1959 and is not a reporting issuer or the equivalent in any of the Jurisdictions.
2. Ford Credit has been a reporting company under the 1934 Act for more than 20 years with respect to its debt securities. Ford Credit has filed with 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. Ford Credit has, for a period of more than 12 months, filed its annual reports on Form 10K, quarterly reports on Form 10Q, and current reports on Form 8K 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.
4. Ford Credit offers a wide variety of automotive financial services to and through automotive dealers throughout the world under the Ford Credit brand name and through dealers of Ford vehicles and non-Ford dealers.
5. The common stock in the capital of Ford Credit is indirectly owned by Ford Motor Company, a publicly traded Delaware corporation.
6. As at March 31, 2004, Ford Credit had in excess of US\$115.5 billion in long-term debt outstanding.
7. The Issuer was incorporated under the federal laws of Canada on July 23, 1962 and was continued under the *Canada Business Corporations Act* on December 5, 1980. The Issuer is an indirect wholly-owned subsidiary of Ford Credit.
8. The registered and principal office of the Issuer is in Ontario.

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9. The Issuer provides wholesale financing and capital loans to authorized Ford Motor Company 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.
10. The Issuer is, and has been for more than 12 months, a reporting issuer or the equivalent thereof in all Jurisdictions where such status exists. The Issuer is not in default of any of its obligations under the Legislation.
11. The Issuer has established a program in Canada for the issuance of its medium term notes ("Notes") from time to time. The Notes are fully and unconditionally guaranteed by Ford Credit as to payment of principal, premium, if any, and interest, if any, such that the holders thereof will be entitled to receive payment from Ford Credit upon the failure by the Issuer to make any such payment.
12. As at May 14, 2004, the Issuer had approximately Cdn\$4.74 billion of Notes outstanding.
13. The Notes currently have an Approved Rating (as defined in NI 51-102) and it is expected by the Issuer that its long-term debt will continue to receive an Approved Rating.
14. Because the Issuer prepares its balance sheet without segregating its assets and liabilities between current and non-current (a "Non-Classified Balance Sheet"), it cannot provide the information required by subsection 13.4(2)(g) of NI 51-102. Consequently, the Issuer cannot rely upon the exemption from NI 51-102 contained in section 13.4 of that instrument.
15. Because the Issuer cannot rely upon the exemption in section 13.4 of NI 51-102, the Issuer cannot rely upon the exemption from MI 52-109 contained in section 4.4 of that instrument.

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;

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THE DECISION of the Decision Makers (other than the Decision Maker in the Northwest Territories) under the Legislation is that the requirements of NI 51-102 shall not apply to the Issuer provided that:

- (a) the Issuer is in compliance with the requirements and conditions of section 13.4 of NI 51-102, other than the requirement in subsection 13.4(2)(g);
- (b) the Issuer files, in electronic format, within 90 days of the Issuer's then most recently completed financial year beginning on or after January 1, 2004, annual comparative selected financial information for such completed financial year and the financial year immediately preceding such financial year derived from its financial statements, prepared in accordance with Canadian GAAP and accompanied by a specified procedures report of the auditors to the Issuer;
- (c) the Issuer's annual comparative selected financial information referred to in paragraph (b), above, shall include the following line items:
  - (i) total financing revenues;
  - (ii) net income/loss and, if applicable, income/loss from continuing operations and income/loss from discontinued operations;
  - (iii) finance receivables, net;
  - (iv) allowance for credit losses (included in (iii) above and (v) below);
  - (v) net investment in operating leases;
  - (vi) all other assets;
  - (vii) total assets;
  - (viii) short-term debt;
  - (ix) long-term term debt;
  - (x) all other liabilities; and
  - (xi) total shareholders' equity;

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- (d) the Issuer files, in electronic format, within 45 days of its then most recently completed interim period for financial years beginning on or after January 1, 2004, interim comparative selected financial information for such interim period and for items (i) and (ii) of paragraph (e) below, the corresponding interim period in the previous financial year and for items (iii) through to and including (xi) of paragraph (e) below, as at the end of the previous financial year, with all such information derived from its financial statements, prepared in accordance with Canadian GAAP;
- (e) the Issuer's interim comparative selected financial information referred to in paragraph (d) above shall include the following line items:
  - (i) total financing revenues;
  - (ii) net income/loss and, if applicable, income/loss from continuing operations and income/loss from discontinued operations;
  - (iii) finance receivables, net;
  - (iv) allowance for credit losses (included in (iii) above and (v) below);
  - (v) net investment in operating leases;
  - (vi) all other assets;
  - (vii) total assets;
  - (viii) short-term debt;
  - (ix) long-term term debt;
  - (x) all other liabilities; and
  - (xi) total shareholders' equity;
- (f) this relief will remain in effect for so long as the Issuer's presentation of a Non-Classified Balance Sheet remains permissible under Canadian GAAP;

AND THE FURTHER DECISION of the Decision Makers (other than the Decision Makers in British Columbia and Québec) is that MI 52-109 shall not apply to the Issuer provided that:

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- (a) the Issuer is compliance with the conditions set out in paragraph (a) through (e) of the Decision above; and
- (b) this relief will remain in effect for so long as the Issuer's presentation of a Non-Classified Balance Sheet remains permissible under Canadian GAAP.

DATED May 21, 2004

Cameron McInnis