

## **2003 BCSECCOM 29**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - relief granted from the requirement in National Instrument 44-101 to file the consent of the issuer's former auditors, Arthur Andersen LLP - Canada, to being named, and to the incorporation by reference of such auditor's report on certain audited financial statements of the issuer included in a shelf prospectus

### **Applicable British Columbia Provisions**

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 15.1

National Instrument 44-102 *Shelf Distributions*, s. 11.1

CSA Staff Notice 43-304, 62-302 and 81-308 *Prospectus Filing Matters – Arthur Andersen LLP Consent*

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

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

### **AND IN THE MATTER OF CNH CAPITAL CANADA RECEIVABLES TRUST**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, Nova Scotia, New Brunswick, Prince Edward Island, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from CNH Capital Canada Receivables Trust ("CNH") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that CNH be exempt from the requirement (the "Consent Requirement") in the Legislation to file a consent of CNH's former auditors, Arthur Andersen LLP – Canada ("Andersen Canada"), to being named, and to the incorporation by reference of the auditor's report of Andersen Canada on the audited annual financial statements of CNH for the financial year ended December 31, 2001, in the base shelf prospectus of CNH dated October 11, 2001 (the "Base Shelf Prospectus");

## 2003 BCSECCOM 29

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS CNH has represented to the Decision Makers that:

1. CNH is a trust formed under the laws of Ontario. The head office of the trustee of CNH is in Ontario.
2. CNH is a reporting issuer or the equivalent in all of the provinces and territories of Canada where that term is applicable.
3. CNH intends to offer a series of receivable-backed notes to the public under prospectus supplements to the Base Shelf Prospectus. CNH plans to file a prospectus supplement with securities regulatory authorities in Canada in early to mid-November, 2002.
4. On June 3, 2002, Andersen Canada ceased practising public accounting. As a result, Andersen Canada will no longer consent to the use of previously issued auditor’s reports for purposes of securities filings.
5. The inability of CNH to obtain a consent letter from Andersen Canada is an exceptional situation that is outside the control of CNH.
6. The Canadian Securities Administrators (“CSA”) issued CSA Staff Notice 43-304, 62-302, and 81-308 *Prospectus Filing Matters – Arthur Andersen LLP Consent* (the “Andersen Notice”) to provide guidance to issuers with respect to the inclusion in securities filings of financial statements previously audited by Andersen Canada.
7. The Andersen Notice states that CSA staff will consider applications from issuers to waive the requirement to obtain the consent of Andersen Canada for audit reports relating to financial statements incorporated by reference in a prospectus or prospectus supplement provided that the prospectus or prospectus supplement includes certain prominent disclosure immediately prior to the listing of the documents incorporated by reference.
8. In the absence of a consent from Anderson Canada, CNH will include in each prospectus supplement filed under the Base Shelf Prospectus the disclosure set out in Appendix A.
9. The exemptive relief application procedure contemplated by the Andersen Notice is not available to CNH because the application procedure described in

## **2003 BCSECCOM 29**

the Andersen Notice is not available to an issuer offering securities under a base shelf prospectus and prospectus supplement thereunder where the prescribed disclosure is not included in the base shelf prospectus.

AND WHEREAS pursuant to 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 pursuant to the Legislation is that CNH is exempt from the Consent Requirement in connection with each prospectus supplement filed under the Base Shelf Prospectus.

DATED October 28<sup>th</sup>, 2002.

“Iva Vranic”

AND THE FURTHER DECISION of the Decision Makers in the Jurisdictions pursuant to the Legislation is that the Application and the Decision shall be held in confidence by the Decision Makers until the earlier of (a) the public announcement of an offering of receivable backed notes under a prospectus supplement to the Base Shelf Prospectus, and (b) January 1, 2003.

DATED October 28<sup>th</sup>, 2002.

Robert W. Korthals

Harold P. Hands

### APPENDIX A

#### **Cover Page Disclosure:**

The Shelf Prospectus incorporates by reference financial statements audited and reported on by Arthur Andersen LLP (“Andersen Canada”). We have not obtained the consent of Andersen Canada to the use of its audit report in respect of the financial statements for the year ended December 31, 2001. Because Andersen Canada has not provided this consent, purchasers of notes pursuant to this Prospectus Supplement will not have the statutory right of action for damages against Andersen Canada prescribed by applicable securities legislation with respect to the financial statements for the year ended December 31, 2001. See “Documents Incorporated by Reference” and “Statutory Rights of Withdrawal and Rescission” in this Prospectus Supplement.

#### **Disclosure Immediately Prior to “Documents Incorporated by Reference”**

The Shelf Prospectus incorporates by reference financial statements audited and reported on by Andersen Canada. We have not obtained the consent of Andersen Canada to the use of its audit report in respect of the financial statements for the year ended December 31, 2001. Andersen Canada’s consent was not obtained because, on June 3, 2002, Andersen Canada ceased to practice public accounting. Because Andersen Canada has not provided this consent, purchasers of notes pursuant to this Prospectus Supplement will not have the statutory right of action for damages against Andersen Canada prescribed by applicable securities legislation with respect to the financial statements for the year ended December 31, 2001. Andersen Canada may not have sufficient assets available to satisfy any judgements against it. See “Statutory Rights of Withdrawal and Rescission” in this Prospectus Supplement. Relief from the requirement of applicable securities legislation to file the consent of Andersen Canada with certain Canadian securities regulatory authorities was obtained under an MRRS Decision Document dated October 28, 2002.