

**IN THE MATTER OF  
the Securities Legislation of the Provinces of  
Saskatchewan, Manitoba, Québec and New Brunswick**

**AND IN THE MATTER OF  
The Mutual Reliance Review System For  
Exemptive Relief Applications**

**AND IN THE MATTER OF  
Air Canada and ACE Aviation Holdings Inc.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the provinces of Saskatchewan, Manitoba, Québec and New Brunswick (collectively the "**Jurisdictions**") have received an application (the "**Application**") from Air Canada and ACE Aviation Holdings Inc. (collectively, the "**Applicants**") and certain of Air Canada's subsidiaries ("**ACE**") together with Air Canada the "**Air Canada Parties**") for a decision (the "**Decision**") under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirements contained in the Legislation to be registered to trade in a security (the "**Registration Requirements**") shall not apply to the issuance of the ACE Rights (as defined herein) and ACE Rights Shares (as defined herein) by the Applicants to holders of proven claims (the "**Creditors**") pursuant to the Offering (as defined herein) contemplated by a consolidated plan of reorganization, compromise and arrangement (the "**Plan**") under the Companies' Creditor Arrangement Act, the Canada Business Corporations Act and the Business Corporations Act (Alberta) to the extent that there are no specific statutory exemptions from Registration Requirements in the Legislation in respect of such trades in ACE Rights and ACE Rights Shares;

**AND WHEREAS** unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 - Definitions;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Application (the "**System**"), the Agence nationale de l'encadrement du secteur financier also known as Autorité des marchés financiers is the principal regulator for this application;

**AND WHEREAS** the Applicant has represented to the Decision Makers that:

**I. AIR CANADA**

1. Air Canada is Canada's largest domestic and international full-service airline and the largest provider of scheduled passenger services in the domestic market, the Canada-United States market, as well as in the Canada-Europe and Canada-Pacific markets. Air Canada also operates Aeroplan, one of Canada's largest loyalty programs, and provides other services such as groundhandling, technical, cargo and tourism related services.

2. The registered and principal office of Air Canada is located at the Air Canada Headquarters Building, Air Canada Centre, 7373 Côte Vertu Boulevard West, Saint-Laurent, Québec, H4Y 1H4.

3. Air Canada is, and has been for the last 12 months, a reporting issuer (or equivalent) in each of the provinces of Canada. Air Canada is also subject to the reporting requirements of the United States Securities Exchange Act of 1934, as amended, and to the best of its knowledge, is not in default of any requirement of the Legislation or of the federal securities laws of the United States of America.

4. The issued and outstanding share capital of Air Canada currently consists of common shares (the "**Existing AC Common Shares**"), Class A non-voting shares (the "**Existing AC Class A Shares**") and Class A convertible participating non-voting preferred shares, series 1 and series 2 (the "**Existing AC Preferred Shares**").

5. The Existing AC Common Shares and the Existing AC Class A Shares are currently listed on the Toronto Stock Exchange (the "**TSX**"), under the symbols "AC" and "AC.A", respectively.

6. As a result of the implementation of the Plan, Air Canada's authorized share capital will consist of four classes of shares: (i) common shares, which are voting and participating; (ii) Class A non-voting shares, which are non-voting and participating; (iii) non-voting shares (the "**AC Non-Voting Shares**"), which will be non-voting and participating and exchangeable for ACE Variable Voting Shares or ACE Voting Shares; and (iv) exchangeable distressed preferred shares (the "**EDP Shares**"), which will be non-voting and participating and will be exchangeable for, in the case of non-Canadian holders, ACE Variable Voting Shares (as defined herein) or, in the case of Canadian holders, ACE Voting Shares (as defined herein) at any time by holders thereof or by Air Canada at any time on or before the date immediately before the fifth anniversary date of issuance of the EDP Shares. There is a possibility that the EDP Shares will not be utilized once the tax structure for the restructuring of Air Canada will be finalized (which is anticipated shortly).

## **II. ACE**

7. ACE will be incorporated under the Canada Business Corporations Act ("**CBCA**") prior to the filing of the preliminary prospectus with the Jurisdictions for the purpose of, among other things, effecting an exchange of the claims of the Creditors with proven claims in accordance with the provisions of the Plan and to proceed with the offering of rights (the "**Offering**") described herein.

8. Following the implementation of the Plan, Air Canada will be the main operating company in a consolidated group of which ACE will be the parent holding company.

9. Subject to any changes that could result from the restructuring process, ACE's authorized share capital is expected to consist of three classes of shares: (i) an unlimited number of variable voting shares (the "**ACE Variable Voting Shares**"), which are variable voting and participating; (ii) an unlimited number of voting shares (the "**ACE Voting Shares**"), which are voting and

participating; and (iii) an unlimited number of preferred shares, which are voting and participating on an as converted basis and convertible for, in the case of non-Canadian holders, ACE Variable Voting Shares, or in the case of Canadian holders, ACE Voting Shares.

### **III. BACKGROUND AND SUMMARY OF THE PLAN**

#### **CCAA Filing**

10. On April 1, 2003, Air Canada obtained an order from the Ontario Superior Court of Justice (the "**Court**") providing for debtor protection under the Companies' Creditors Arrangement Act (Canada) ("**CCAA**"). Through the Court-appointed monitor, Ernst & Young Inc. (the "**Monitor**"), Air Canada also made a concurrent petition for recognition and ancillary relief under Section 304 of the United States Bankruptcy Code. The CCAA and U.S. proceedings cover Air Canada and the following of its wholly-owned subsidiaries: 3838722 Canada Inc., Air Canada Capital Ltd., Jazz Air Inc., Manoir International Finance Inc., Simco Leasing Ltd., Wingco Leasing Inc. and Zip Air Inc. (collectively, the "**Air Canada Parties**").

#### **Equity Financing**

11. On July 16, 2003, Air Canada commenced an equity investment solicitation process to raise approximately \$700 million of its overall equity financing needs in connection with the Plan. Following a lengthy equity investment solicitation process, Trinity Time Investments Limited ("**Trinity**") was initially selected as the equity sponsor for the Plan. On April 2, 2004, Trinity announced that it was not going to seek an extension of its investment agreement with Air Canada upon its expiry on April 30, 2004.

12. Consequently, after having held numerous discussions with Air Canada's stakeholders, including labour unions, Financial Creditors (as defined below), advisors to the unsecured creditors committee, General Electric Capital Corporation and GE Capital Aviation Services, the Monitor and Air Canada developed a revised equity process consisting of: (i) the expansion of the Offering to \$850 million with the continued support of Deutsche Bank Securities Inc. ("**Deutsche Bank**") through the Amended Standby Agreement (as defined below), and (ii) the design of a new equity solicitation process to potentially raise an additional \$250 million with a short due diligence period and low conditionality provisions so as to mitigate closing risk. The equity raised pursuant to the Amended Standby Agreement (as defined below) will be sufficient to fund Air Canada's exit from CCAA Proceedings in the event the new equity solicitation process does not result in raising an additional \$250 million. The terms of the revised equity process were approved by the Court on May 4, 2004.

### **IV. THE OFFERING**

13. In the context of the original equity solicitation process, informal expressions of interest were received from certain of the Air Canada Party's Creditors in connection with a possible offering of subscription rights. Extensive negotiations between Air Canada, its advisors and certain of the interested Creditors resulted in the announcement, on October 24, 2003, that Air Canada had entered into a standby purchase agreement with Deutsche Bank pursuant to which Air Canada would offer its Creditors the opportunity to subscribe for equity of ACE for an aggregate amount up to \$450 million (the "**Offering**").

14. Further to Trinity Time Investments Limited's announcement on April 2, 2004 that it was not to seek an extension of the investment agreement with Air Canada upon its expiry on April 30, 2004, Deutsche Bank indicated its willingness to continue to support Air Canada through a possible expansion of its commitment to back-stop a larger Offering. Consequently, Air Canada, with the substantial and direct involvement of the Ernst and Young Inc., the Court appointed monitor (the "**Monitor**"), commenced negotiations with Deutsche Bank in connection with finalizing amendments to the original standby purchase agreement, that had already received approval of the Court. Deutsche Bank and Air Canada, with the concurrence of the Monitor, agreed that the standby funding commitment to be extended by Deutsche Bank should not be conditional upon the raising of additional financing pursuant to the new equity solicitation process. On April 29, 2004, an amended and restated standby purchase agreement (the "**Amended Standby Agreement**"), increasing the size of the Offering from \$450 million to \$850 million was entered into between Air Canada and Deutsche Bank and was approved by the Court on May 5, 2004. Deutsche Bank is entitled to terminate the Amended Standby Agreement if, among other things (i) Air Canada fails to file the Plan with the Court on or before June 30, 2004; (ii) the Creditors' meeting does not take place on or prior to August 15, 2004; or (iii) the completion of the restructuring does not occur on or before September 30, 2004.

15. Under the terms of the Offering, Creditors will have the right to subscribe for up to \$850 million of equity of ACE. Pursuant to the Amended Standby Agreement, Deutsche Bank will act as the exclusive standby purchaser and, in that capacity, will purchase all unsubscribed equity at a price equal to the price paid by the Creditors plus a premium of 7.5%. Under the terms of the Amended Standby Agreement, Deutsche Bank has the right to participate out its right (but not its direct obligations to Air Canada) to purchase any equity not purchased by other Creditors under the Offering.

16. Under the terms of the Offering, Creditors who exercise their rights under the Offering and Deutsche Bank, as standby purchaser under the Offering, will be issued subscription rights (the "**ACE Rights**") for Class A variable voting shares of ACE or, in case of Creditors who are residents of Canada, Class B voting shares of ACE (collectively, the "**ACE Rights Shares**").

17. The Plan is subject to approval by Air Canada's Creditors, voting as a single class, as well as approval by the Court following a sanction hearing at which Air Canada's Creditors and shareholders will have the right to appear and be heard (the "**Hearing**"), and the satisfaction of certain other conditions. among other things, the Court must make an affirmative determination that the terms and conditions of the Plan are fair and reasonable. Air Canada expects the Hearing to occur shortly after the meeting of the creditors, which is scheduled to be held on or about August 17, 2004.

18. The Information Circular containing prospectus-level disclosure is being prepared in connection with the Plan and will also constitute the Prospectus to qualify the distribution of the rights and shares of ACE pursuant to the Offering. Prior to its mailing, the Information Circular has been submitted to the Court on June 30, 2004. Since the interests of Air Canada's existing shareholders will be essentially eliminated under the Plan, Air Canada's existing shareholders will not be entitled to vote on the Plan. Pursuant to the CCAA and the CBCA, and as contemplated by the Plan, the Court will be asked to issue an order providing that only Creditors

of the Air Canada Parties will be permitted to vote on the Plan and setting forth the notice procedures with respect to the meeting of Creditors (the "**Meeting**"). The Information Circular and notice of the Meeting will be mailed to all Creditors whose claims have not been rejected as of the time of mailing. Pursuant to the CCAA, in order for the Plan to be binding on Air Canada's Creditors, the resolution to approve the Plan (the "**Resolution**") must first be accepted by a majority in number of the Creditors voting on the Resolution (in person or by proxy) at the Meeting and representing not less than 66 2/3% in value of the claims of the Creditors voting at the Meeting.

19. As part of the Plan, the Court has issued a claims procedure order setting forth a procedure for resolving and establishing the level of proven claims of Creditors. The claims resolution process is likely to continue beyond the time of Closing. When the amount of disputed claims has been reduced to an amount specified in the Plan (the "**Initial Determination Date**"), the initial distributions to be made under the Plan will be calculated. The equity securities to be distributed to Creditors per dollar of proven claim will be based upon the total amount of proven and disputed claims as of the Initial Determination Date. The first distribution of securities will be made on the Initial Distribution Date only to holders of proven claims as of the Initial Determination Date. The balance of the securities will be issued but held in escrow by the Monitor, pending resolution of the disputed claims. It is expected that there will be one or more subsequent distributions of securities as disputed claims are resolved. To the extent that disputed claims are resolved in favour of the Creditors, distributions of securities will be made to such Creditors. To the extent that the disputed claims are rejected, the holders of previously proven claims will receive additional securities. Each subsequent distribution of securities will be purely a mechanical exercise, with the identity of Creditors receiving securities and the number received by each determined solely by the results of the claims resolution process. No further investment decisions with respect to these distributions will be made by Creditors after the time of the vote on the Plan.

20. The Offering will follow a similar timeline. Creditors holding disputed claims will be permitted to participate in the Offering pending the resolution of their claims. Under the Amended Standby Agreement, Deutsche Bank will purchase the equity securities of ACE that are not purchased by Creditors pursuant to the Offering. The equity securities of ACE issued pursuant to the Offering (including those issued to Deutsche Bank as standby purchaser) will be qualified by the Prospectus in Canada and registered by registration statement on Form F 10 in the United States under MJDS.

21. A final closing will be held several months after the Closing, once the disputed claims will have been resolved or reduced to a nominal amount. At that time, to the extent that disputed claims are resolved in favor of the Creditors, such Creditors will receive their entitlement pursuant to the Plan, as well as equity securities of ACE subscribed for pursuant to the Offering. To the extent that disputed claims are rejected, holders of previously proven claims will receive additional distributions and, to the extent that they submitted subscriptions pursuant to the Offering, will receive additional equity securities of ACE. As standby purchaser, Deutsche Bank will also receive additional equity securities of ACE that were not ultimately subscribed for by Creditors pursuant to the Offering.

22. One of the conditions to the implementation of the Plan is the obtaining of all applicable approvals and orders of applicable Canadian and U.S. securities regulatory authorities and the TSX with respect to the issuance, listing and posting for trading of all securities to be issued under or in connection with the Plan to permit holders of such securities to freely trade and dispose of all securities in the ordinary course.

23. The Prospectus qualifies the distribution of ACE Rights as well as the distribution of ACE Rights Shares.

24. Pursuant to the Plan, all distributions of securities will be made by ACE, whether such distributions are Exempt Trades or Qualified Trades.

**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;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that the Registration Requirements contained in the Legislation shall not apply to the issuance of ACE Rights and ACE Rights Shares of ACE made under or in connection with the Offering.

Dated July 8, 2004

La Surintendante de l'encadrement de la distribution  
Nancy Chamberland, notaire