

2003 BCSECCOM 308

Headnote

Mutual Reliance Review System for Exemptive Relief Application – variation of order exempting issuer of mortgage pass-through certificates from the preparation, filing and delivery of continuous disclosure documents subject to certain conditions – order varied to include future mortgage pass-through certificates

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, s. 171

National Instrument 44-101 *Short Form Prospectus Distributions*.

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF SOLAR TRUST/FIDUCIE SOLAR

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) issued on February 1, 2001 an order (as subsequently amended on December 17, 2001, the “Solar Order”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that provisions of the Legislation concerning the preparation, filing and delivery of interim and annual financial statements and the annual filing of a form by a reporting issuer shall not apply to Solar Trust/Fiducie Solar (the “Applicant”) in respect of an offering of commercial mortgage pass-through certificates specified in the Solar Order;

2003 BCSECCOM 308

AND WHEREAS the Solar Order contemplates that the Applicant will from time to time issue additional certificates in connection with similar asset-backed securities transactions, and will periodically apply for a variation of the terms of the Solar Order to extend the relief granted thereby to such additional certificates;

AND WHEREAS the Solar Order was amended on December 17, 2001 to include reference to \$214,660,426 (initial certificate balance) of commercial mortgage pass-through certificates evidencing co-ownership interests in a pool of 47 conventional, fixed rate mortgage loans, designated as Commercial Mortgage Pass-Through Certificates, Series 2001-1;

AND WHEREAS the Applicant has now completed an additional offering of commercial mortgage pass-through certificates and is seeking a variation of the Solar Order so as to extend such relief to such additional certificates and any mortgage pass-through certificates offered by the Issuer in the future, without any further amendment to the Schedule attached to the Solar Order;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "MRRS") the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS the Applicant has represented to the Decision Makers as follows:

1. The Applicant is a private, special purpose trust which was organized pursuant to a declaration of trust under the laws of Ontario dated July 5, 2000, the beneficiary of which is a registered charity. The Applicant trustee is CIBC Mellon Trust Company. The only security holders of the Applicant will be the holders of its asset-backed securities (the "Certificateholders").
2. The Applicant's activities are limited to purchasing certain assets ("Securitized Assets") and of issuing asset-backed securities to fund the purchases of such Securitized Assets. The issuer has no material assets and does not and will not carry on any activities other than the issuance of asset-backed securities.
3. The Toronto-Dominion Bank ("TD") administers the ongoing operations of the Applicant pursuant to an administration agreement dated July 5, 2000 (the "Administration Agreement") for which TD receives nominal consideration. The Applicant is not required to compensate TD for the fees and expenses paid on the Applicant's behalf thereunder.

2003 BCSECCOM 308

4. The Applicant is a reporting issuer or equivalent pursuant to the Legislation and is not in default of any of the requirements thereunder. As described below, the Applicant has received relief from the continuous disclosure requirements under the Legislation from the securities regulatory authorities in the Jurisdictions in respect of its initial public offering of \$189,550,000 (initial certificate balance) of pass-through certificates designated as "Commercial Mortgage Pass-Through Certificates, Series 2000-1", which were issued on October 31, 2000 and its offering of \$214,660,425 (initial certificate balance) of pass-through certificates designated as "Commercial Mortgage Pass-Through Certificates, Series 2001-1", which were issued on August 9, 2002.
5. On February 1, 2001 the Decisions Makers issued the Solar Order pursuant to the Legislation that provisions of the Legislation concerning the preparation, filing and delivery of interim and annual financial statements and the annual filing of a form by a reporting issuer shall not apply to the Applicant in respect of the offering of commercial mortgage pass-through certificates specified in the Solar Order.
6. In the Solar Order, the Applicant represented that it may from time to time seek to issue additional certificates in connection with similar asset-backed securities transactions which it may undertake in the future, in which case the Applicant may seek from the Decision Makers a variation of the relief granted to the Applicant so as to include such additional certificates.
7. The Solar Order contemplates the periodic application by the Applicant for a variation of the terms of the Solar Order to extend the relief granted thereby to such additional offerings. The Solar Order contemplates the extension of such relief to additional offerings by means of periodic amendment to the defined term "Additional Certificates", which is defined to mean the issuance of further certificates by the Applicant in connection with similar asset-backed securities transactions from time to time.
8. By MRRS Decision Document dated December 17, 2001, the Solar Order was amended to, among other things, include a reference to Commercial Mortgage Pass-Through Certificates, Series 2001-1 in the Schedule (as defined herein).
9. On November 26, 2002 the Applicant filed an amended and restated short form base PREP prospectus and on December 4, 2002 the Applicant filed a prospectus supplement with each of the Canadian provincial securities regulatory authorities for the issuance of \$253,955,000 (initial certificate balance) of commercial mortgage pass-through certificates evidencing co-ownership interests in a pool of 67 conventional, fixed rate mortgage loans, designated as Commercial Mortgage Pass-Through Certificates, Series 2002-1

2003 BCSECCOM 308

(the “Commercial Mortgage Pass-Through Certificates, Series 2002-1 Certificates”) and received receipts for such prospectus from each of the Canadian provincial securities regulatory authorities.

10. The Issuer intends to offer to the public from time to time certificates (the “Future Certificates”) which, as is the case with the Commercial Mortgage Pass-Through Certificates, Series 2000-1, 2001-1 and 2002-1, are primarily serviced by the cash flows of discrete pools of mortgage loans or certain other financial assets (the “Securitized Assets”) that by their terms convert into cash within a finite time period, with an approved rating by an approved rating organization, as those terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions* (the “POP System”) or in any successor instruments thereto. The Issuer proposes to make such offerings pursuant to the POP System and pursuant to National Instrument 44-102 *Shelf Distributions* with the proceeds of such offerings to be used to finance the purchase of Securitized Assets from originators of such Securitized Assets.
11. In order for the Applicant to continue to be permitted the continuous disclosure relief which was granted in the Solar Order, the Applicant hereby requests that the Solar Order be amended to provide continuous disclosure relief for the Commercial Mortgage Pass-Through Certificates, Series 2002-1 and any Future Certificates, without any further amendment to the Schedule attached to the Solar Order.
12. All of the factual statements concerning the Applicant that are contained in the Solar Order remain true as of the date hereof.

AND WHEREAS pursuant to the MRRS this 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;

IT IS ORDERED pursuant to the Legislation that:

1. the first recital of the Solar Order be amended by deleting the following words from the end of the recital: “offering of the Certificates (as defined below) and such additional certificates as may be set forth in the Schedule attached hereto” and by substituting the words “Issuer in connection with public offerings of mortgage pass-through certificates of the Issuer (“Certificates”)” in their place;

2003 BCSECCOM 308

2. Paragraph 3 of the Solar Order be amended by deleting the following words in the fifth line: “(the “Certificates”)” and by deleting the following words in the seventh line “(the “Transaction”);”;
3. Paragraph 4 of the Solar Order be amended by deleting the following sentence: “The Issuer may from time to time seek to issue Additional Certificates (as defined in the Schedule attached hereto) in connection with asset backed securities transactions, similar to the Transaction, which it may undertake in the future, in which case the Issuer may seek from the Decision Makers a variation of the relief granted hereunder so as to include such Additional Certificates.”;
4. Paragraph 5 of the Solar Order be amended by deleting the following sentence: “The Issuer does not presently carry on any activities except in relation to the Transaction.”;
5. Paragraph (a) of the Decision in the Solar Order be amended by deleting the following words in the fourth line: “and the Additional Certificates” and by adding the following words after the word “hereof” in the fifth line “and the only securities that the Issuer distributes to the public are Certificates”;
6. Paragraph 17 of the Solar Order be amended by adding the following words at the end of that Paragraph: “Fees payable in connection with the filing of annual financial statements in provinces other than Ontario will be paid at the time that, and in respect of, the annual financial information specified in this paragraph is filed. In the province of Ontario, the Issuer will pay corporate finance participation fees and activity fees in accordance with Ontario Securities Commission Rule 13-502 Fees.”; and
7. the Solar Order be amended by deleting the Schedule attached thereto.

DATED May 2, 2003.

Paul M. Moore

Robert L. Shirriff