

2002 BCSECCOM 375

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from independent underwriter requirement to permit registrant to underwrite 100% of an offering of asset-backed securities by a related party, subject to conditions.

Applicable Rules

National Instrument 33-105 Underwriting Conflicts, ss. 2.1, 5.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,
BRITISH COLUMBIA, ALBERTA, QUÉBEC, NOVA SCOTIA, PRINCE
EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
MERRILL LYNCH FINANCIAL ASSETS INC.
(formerly MERRILL LYNCH MORTGAGE LOANS INC.)
AND MERRILL LYNCH CANADA INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Québec, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from Merrill Lynch Financial Assets Inc. (formerly Merrill Lynch Mortgage Loans Inc.) (the "Issuer") and Merrill Lynch Canada Inc. ("ML Canada") (the Issuer and ML Canada are collectively referred to herein as the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the provision contained in the Legislation mandating independent underwriter involvement shall not apply to ML Canada and the Issuer in respect of the proposed offering of Canada 7 Pass-Through Certificates (as defined below);

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 it has been represented by the Filer to the Decision Makers that:

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1. the Issuer was incorporated under the laws of Canada on March 13, 1995; effective March 15, 2001, the Issuer changed its name from Merrill Lynch Mortgage Loans Inc. to Merrill Lynch Financial Assets Inc.; the authorized share capital of the Issuer consists of an unlimited number of common shares, of which 1,000 common shares are issued and outstanding, all of which are held by Merrill Lynch & Co., Canada Ltd. ("ML & Co."); the head office of the Issuer is located in Toronto, Ontario;
2. to date the Issuer has completed ten public real estate-based securities transactions (the "Prior Transactions");
3. The Issuer filed a renewal annual information form on May 18, 2001.
4. the Issuer has been a "reporting issuer" pursuant to the securities legislation in each of the provinces of Canada for over 12 calendar months. Pursuant to a decision dated November 30, 2000 of the Decision Makers of Ontario, British Columbia, Alberta, Newfoundland, Nova Scotia and Saskatchewan (the "November 30, 2000 Decision"), the Issuer has been granted certain relief in connection with the requirement in securities legislation of such jurisdictions to make continuous disclosure of its financial results, and from other forms of continuous disclosure required under such legislation, provided that the Issuer complies with the conditions set out in the November 30, 2000 Decision;
5. the Issuer currently has no assets or liabilities other than its rights and obligations under certain of the material contracts related to the Prior Transactions and does not presently carry on any activities except in relation to the certificates issued under the Prior Transactions;
6. the officers and directors of the Issuer are employees of ML Canada or its affiliates;
7. ML Canada was continued and amalgamated under the laws of Canada on August 26, 1998; the authorized share capital of ML Canada consists of an unlimited number of common shares; the common shares of ML Canada are owned by ML & Co. and Midland Walwyn Inc; the head office of ML Canada is located in Toronto, Ontario;
8. ML Canada is not a reporting issuer in any Canadian province;
9. ML Canada is registered as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada;

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10. the Issuer proposes to offer Commercial Mortgage Pass-Through Certificates, Series 2002-Canada 7 (the "Canada 7 Pass-Through Certificates"), issuable in classes, with an Approved Rating by an Approved Rating Organization, as those terms are defined in the Legislation with respect to short form prospectus distributions, to the public in Canada, to finance the purchase by the Issuer from Merrill Lynch Capital Canada Inc. and from other originators of mortgage loans as may be specified in the prospectus in respect of the Canada 7 Pass-Through Certificates of ownership interests in particular mortgage loans deposited with Computershare Trust Company of Canada as custodian; each Canada 7 Pass-Through Certificate of a particular class will represent an undivided co-ownership interest in a particular pool of mortgage loans;
11. ML Canada proposes to act as the underwriter in connection with the distribution of 100% of the dollar value of the distribution for the proposed Offering;
12. the Filers expect that approximately 90% of the Offering, in which the minimum subscription will be \$500,000, will be made to Canadian institutions, pension funds, endowment funds or mutual funds based upon the experience of the Prior Transactions and ML & Co.'s U.S. experience;
13. the only financial benefits which ML Canada will receive as a result of the proposed Offering are the normal arm's length underwriting commission and reimbursement of expenses associated with a public offering in Canada, which commissions and reimbursements shall for purposes of this Decision be deemed to include the increases or decreases contemplated by Section 1.5(b) of Form 44-101F3 Short Form Prospectus and by the applicable securities legislation in Québec;
14. ML Canada administers the ongoing operations and pays the ongoing operating expenses of the Issuer, for which ML Canada receives no additional compensation;
15. the Issuer may be considered to be a related (or equivalent) issuer (as defined in the Legislation) and therefore a connected (or equivalent) issuer (as defined in the Legislation) of ML Canada for the purposes of the proposed Offering because:
 - (a) both ML Canada and the Issuer are subsidiaries of ML & Co.;
 - (b) the officers of the Issuer are employees of ML Canada or its affiliates;

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(c) ML Canada administers the on-going operations of the Issuer;

16. in connection with the proposed distribution by ML Canada of 100% of the Canada 7 Pass-Through Certificates of the Issuer, the preliminary and final prospectus and the prospectus supplement of the Issuer shall contain the following information:

(a) on the front page of each such document,

- (i) a statement, naming ML Canada, in bold type which states that the Issuer is a related or connected issuer of ML Canada in connection with the distribution,
- (ii) a summary, naming ML Canada, stating the basis upon which the Issuer is a related or connected issuer of ML Canada,
- (iii) a cross-reference to the applicable section in the body of the document where further information concerning the relationship between the Issuer and ML Canada is provided, and
- (iv) a statement that the minimum subscription amount is \$500,000;

(b) in the body of each such document,

- (i) a statement, naming ML Canada, setting out that the Issuer is a related or connected issuer of ML Canada in connection with the distribution,
- (ii) the basis on which the Issuer is a related or connected issuer to ML Canada, including details of the common ownership by ML & Co. of ML Canada and the Issuer, and other aspects of the relationship between ML Canada and the Issuer,
- (iii) disclosure regarding the involvement of ML Canada in the decision to distribute the Canada 7 Pass-Through Certificates and the determination of the terms of the distribution, and
- (iv) details of the financial benefits described in paragraph 13 of this Decision Document which ML Canada will receive from the proposed Offering;

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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;

THE DECISION of the Decision Makers, pursuant to the Legislation, is that the requirement contained in the Legislation mandating independent underwriter involvement shall not apply to ML Canada and the Issuer in connection with the Offering provided that the Issuer complies with Paragraph 16 hereof.

DATED this 6th day of May, 2002.

Iva Vranic