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Headnote

An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates

Exemption Order

Schooner Trust

Section 4.5 of Multilateral Instrument 52-109

Background

- ¶ 1 Schooner Trust applied for an exemption from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates.

Representations

- ¶ 2 Schooner Trust represents that:
1. it is a special purpose trust established under the laws of Ontario pursuant to a declaration of trust dated July 5, 2000; it was created under the name of Solar Trust and subsequently changed its name to Schooner Trust;
 2. its only securityholders are and will be the holders (the Certificateholders) of its asset-backed securities (the Certificates);
 3. it is a reporting issuer or equivalent in each of the provinces of Canada that provides for a reporting issuer regime;
 4. it is a venture issuer (as such term is defined in National Instrument 51-102 – *Continuous Disclosure Obligations*);
 5. its financial year end is December 31;
 6. since October 24, 2000, it has issued commercial mortgage pass-through certificates in the approximate aggregate principal amount of \$2,750,735,425 under short form prospectuses, and in the approximate aggregate principal amount of \$199,256,262 on a private placement basis in Canada; all issues completed prior to November 17, 2003 continue to trade under the name of Solar Trust;

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7. it does not carry on any activities other than issuing Certificates and acquiring certain property (the Custodial Property) in connection with issuing such Certificates;
8. it currently has, and will continue to have, no material assets or liabilities other than its rights and obligations arising from acquiring Custodial Property and issuing Certificates; Certificateholders will only have recourse to the applicable Custodial Property and will not have any recourse to Schooner Trust;
9. under an MRRS decision document dated May 20, 2005 (the Continuous Disclosure Order), Schooner Trust is exempted, on certain terms and conditions, from the requirements of securities legislation in British Columbia and certain other provinces concerning the preparation, filing and delivery of interim financial statements and annual financial statements;
10. under an MRRS decision document dated May 31, 2005, in certain provinces other than British Columbia Schooner Trust is exempted, on certain terms and conditions, from the requirements under MI 52-109 to file annual and interim certificates;
11. for each offering of Certificates, the Issuer enters into a pooling and servicing agreement (the Pooling and Servicing Agreement) with a reporting agent (the Reporting Agent), one or more servicers (each, a Servicer), a Canadian trust company as custodian on behalf of the Certificateholders (the Custodian) providing for, among other things, the preparation by the Servicer and the Reporting Agent of periodic reports (the Reports) to Certificateholders containing financial and other information about the applicable Custodial Property;
12. under the Pooling and Servicing Agreement the Reporting Agent prepares the Reports based solely on information provided by a Servicer;
13. in accordance with the Continuous Disclosure Order, within 60 days of the end of each of its interim periods as defined in NI 51-102 (or within 45 days of the end of an interim period if Schooner Trust is not a venture issuer at the end of such period), the Reporting Agent or Schooner Trust or its duly appointed representative or agent will post on the applicable website and file on SEDAR, and mail to Certificateholders who so request, interim management's discussion and analysis (MD&A) relating to the Custodial Property acquired with the proceeds of the Certificates, and a quarterly report containing information on the Certificates;

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14. in accordance with the Continuous Disclosure Order, within 120 days of the end of each of its financial years (or within 90 days of the end of a financial year if Schooner Trust is not a venture issuer at the end of such year), the Reporting Agent or Schooner Trust or its duly appointed representative or agent will post on the applicable website and file on SEDAR, and mail to Certificateholders who so request:
- (a) annual MD&A relating to the Custodial Property acquired with the proceeds of the Certificates and an annual report containing information on the Certificates;
 - (b) an annual statement of compliance signed by a senior office of the Servicer or other party acting in a similar capacity for the applicable Custodial Property; and
 - (c) an annual accountants' report prepared by a firm of independent public or chartered accountants regarding compliance by each Servicer (or such other party acting in a similar capacity) with the Uniform Single Attestation Program for Mortgage Bankers, or such other servicing standard acceptable to the Commission.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Commission orders under section 4.5 of MI 52-109 that Schooner Trust is exempt from the requirements in MI 52-109 to file annual and interim certificates, provided that:
- (a) Schooner Trust is not required to prepare, file and deliver financial statements under the legislation of British Columbia or under an exemption;
 - (b) within 120 days of the end of each of its financial years (or within 90 days of the end of a financial year if Schooner Trust is not a venture issuer at the end of such year), Schooner Trust or its duly appointed representative or agent will file through SEDAR an annual certificate in the form set out in Schedule A and signed by a person who, at the time of filing, is a senior officer of Schooner Trust, its administrative agent or a Servicer;
 - (c) if Schooner Trust voluntarily files an annual information form for a financial year after it has filed the annual certificate for that year under paragraph (b), Schooner Trust will file through SEDAR a second annual certificate that:
 - (i) is in the form set out in Schedule A;

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- (ii) is signed by a person who, at the time of filing, is a senior officer of the same person or company whose officer signed the annual certificate under paragraph (b); and
- (iii) certifies the annual information form in addition to the other documents identified in the annual certificate;
- (d) within 60 days of the end of each of its interim periods (or within 45 days of the end of an interim period if Schooner Trust is not a venture issuer at the end of such period), Schooner Trust or its duly appointed representative or agent will file through SEDAR an interim certificate in the form set out in Schedule B and signed by a person who, at the time of filing, is a senior officer of Schooner Trust, its administrative agent or a Servicer; and

This Order will cease to be effective on the earlier of:

- (a) June 1, 2008; and
- (b) the date on which a rule regarding the continuous disclosure requirements for issuers of asset-backed securities come into force in British Columbia.

¶ 4 February 7, 2006

Noreen Bent
Manager, Legal Services, Corporate Finance
British Columbia Securities Commission

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Schedule A

Certification of annual filings for issuers of asset-backed securities

I, [identify (i) the certifying individual, (ii) his or her position in relation to the issuer and (iii) the name of the issuer], certify that:

1. I have reviewed the following documents of [identify issuer] (the issuer):
 - (a) the servicer reports for each month in the financial year ended [insert financial year end] (the servicer reports);
 - (b) annual MD&A in respect of the issuer's pool(s) of assets for the financial year ended [insert the relevant date] (the annual MD&A);
 - (c) AIF for the financial year ended [insert the relevant date] (the AIF); [if applicable] and
 - (d) each annual statement of compliance regarding fulfillment of the obligations of the servicer(s) under the related servicing agreement(s) for the financial year ended [insert the relevant date] (the annual compliance certificate(s)),

(the servicer reports, the annual MD&A, the AIF [if applicable] and the annual compliance certificate(s) are together the annual filings);
2. Based on my knowledge, the annual filings, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make the statements not misleading in light of the circumstances under which they were made, with respect to the periods covered by the annual filings;
3. Based on my knowledge, all of the distribution, servicing and other information and all of the reports on assessment of compliance with servicing criteria for asset-backed securities and the annual accountant's report respecting compliance by the servicer(s) with servicing criteria for asset-backed securities required to be filed under the decision(s) [identify the decision(s)] as of the date of this certificate, other than material change reports and press releases, have been filed with the securities regulatory authorities through SEDAR;
4. **Option #1 [use this alternative if a servicer is providing the certificate]**
I am responsible for reviewing the activities performed by the servicer(s) and

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based on my knowledge and the compliance review(s) conducted in preparing the annual compliance certificate(s), and except as disclosed in the annual filings, the servicer(s) **[has/have]** fulfilled **[its/their]** obligations under the servicing agreement(s); and

Option #2 [use this alternative if the Issuer or the administrative agent is providing the certificate]

Based on my knowledge and the annual compliance certificate(s), and except as disclosed in the annual filings, the servicer(s) **[has/have]** fulfilled **[its/their]** obligations under the servicing agreement(s); and

5. The annual filings disclose all material instances of non-compliance with the servicing criteria based on the **[servicer's/servicers']** assessment of compliance with such criteria.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [insert name of issuer, servicer, sub-servicer, co-servicers, administrative agent, reporting agent or trustee].

Date: **[insert date of filing]**

[Signature]

[Title]

[indicate the capacity in which the certifying officer is providing the certificate]

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Schedule B

Certification of interim filings for issuers of asset-backed securities

I, [identify (i) the certifying individual, (ii) his or her position in relation to the issuer and (iii) the name of the issuer], certify that:

1. I have reviewed the following documents of [identify issuer] (the issuer):
 - (a) the servicer reports for each month in the interim period ended [insert financial year end] (the servicer reports); and
 - (b) interim MD&A in respect of the issuer's pool(s) of assets for the interim period ended [insert the relevant date] (the interim MD&A),(the servicer reports and the interim MD&A are together the interim filings);
2. Based on my knowledge, the interim filings, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make the statements not misleading in light of the circumstances under which they were made, with respect to the periods covered by the interim filings;
3. Based on my knowledge, all of the distribution, servicing and other information required to be filed under the decision(s) [identify the decision(s)] as of the date of this certificate, other than material change reports and press releases, have been filed with the securities regulatory authorities through SEDAR;

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [insert name of issuer, servicer, sub-servicer, co-servicers, administrative agent, reporting agent or trustee].

Date: [insert date of filing]

[Signature]

[Title]

[indicate the capacity in which the certifying officer is providing the certificate]